

# The Bailiff Manual

A Procedural Guide for County Court Bailiffs

August 2012

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## Section 1 – Introduction

This is the revised Bailiff Manual which has been produced in joint consultation with the Public and Commercial Services Union (PCS). It provides procedural guidance on day to day matters as well as issues such as Interpleader Proceedings and contempt matters. The Health and Safety section has been updated taking into account issues that have been brought to our attention that needed

clarifying.

The manual cannot contain every circumstance that you will meet. It is however an easy reference guide that will help those Bailiffs new to the work and be a refresher to those with more experience.

References to Delivery Managers in this manual relates to the most senior manager at a court, equivalent of the old Court Manager post.

This manual is for all County Court Bailiffs and can only be amended centrally - there are to be no local variations of this manual.

The manual will be available on the Intranet.

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## **Section 2 - General duties and responsibilities**

Most of the issues here are common sense but they are set out to make sure that everyone is aware. There will be occasions when the handbook does not give you the answer you need as it cannot cover everything. If this happens you should talk to your Bailiff Manager.

### **2.1 Identity card**

You will have a Bailiff identity card with your photograph on and your Bailiff identity badge. You must carry the identity card and identity badge with you at all times whilst on duty so you can use them to prove who you are and your authority. When carrying out your duties you must always identify yourself as a county court Bailiff at the earliest possible opportunity. If you lose your Bailiff identity card or Bailiff identity badge you must report the loss to your Bailiff Manager immediately.

### **2.2 General principles of Bailiff duties**

You should note the following:

- You must carry out your duties with firmness but strict fairness; always treat everyone with tact, consideration and courtesy.

Always respect confidentiality.

- You must not accept gifts, money, goods or services from any person or organisation connected with any process that you are holding. You must not borrow money from any person or organisation connected with any process that you are holding. If you do you could be subject to disciplinary proceedings.

- In a private capacity you must not take on the collection of debts or the service of any court documents for creditors, their solicitors or anyone employed by them. If you do you could be subject to disciplinary proceedings.

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- If you have an accident or are assaulted whilst carrying out your duties, you must report it immediately to your Bailiff Manager and or your Delivery Manager. You must also complete the Riddor form, the Minor Assault / Verbal Abuse Form or the Accident Report form at the earliest possible time.

- Keep an accurate record of the visits you make and ensure it supports your claim for travel expenses or use of your official

car. This should be done by completing a daily record sheet.

- You must also follow the Risk Assessment Guidelines to protect yourself from any risks whilst carrying out your duties. Full details can be found in the Health & Safety (Section 22) of this manual.

- Record precisely any information you have about the debtor and or their circumstances that has been given to you by the debtor or any occupier of the debtors address that you are visiting, so that you can pass this information onto the claimant.

Your duties as a Bailiff will mean you being in contact with the public at all times.

Remember:

- When you meet a person talk clearly using simple terms and speak slowly. Do not use jargon, slang or hide behind authority. Remember the person you are talking to may not use English as their first language.

- Speak firmly but not aggressively, do not be drawn into an argument and above all else stay calm.

- Respect the other people's space by keeping an acceptable distance from them and avoid looking down on them.

- Avoid an aggressive stance such as standing with your hands on your hips or with your arms folded. Do not make any aggressive movements such as pointing at the person or wagging your finger at them.

- If you have to write to a customer using HMCTS headed Bailiff letters, make sure the letter has your name, phone numbers and when you are likely to be available for them to contact you, for example the times when you are most likely to be in the office.

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### **2.3 Use of Computers**

Bailiffs should use computers as part of their normal duties, local management need to be aware of the requirements in relation to the segregation of duties and the requirement to provide appropriate training where it is required.

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## **Section 3 – Training courses**

There are a number of training courses that are designed for bailiffs or that may assist you with your duties. You can expect to receive training within the first 6 months of taking up post. The relevant courses are:

- Induction (Mandatory) – carried out locally with your line Manager.

- Bailiff Development Programme (Mandatory) - this covers the key components of how you do your job.

- Personal Safety and Risk Analysis, Handling Conflict and Breakaway Techniques, Job Specific Search and Entry Duties (Mandatory) - a 2 day course with a one day refresher which must be taken after 13 months of the initial course. If the refresher course is not taken within 23 months of the initial



course you will need to attend the full course.

- Emergency First Aid Work (Optional)
- Safe Driving Awareness (Optional)

All courses should be arranged by your Bailiff Manager or Line Manager.

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## **Section 4 – Annual leave and working hours**

Bailiffs on Deal terms are subject to the annual leave statement available on the intranet at:

<http://intranet.justice.gsi.gov.uk/guidance-support/myservices/leave/annual-leave.htm>

The relevant section for Bailiffs is headed ‘All hours worked posts’. Annual leave for bailiffs should be converted into hours as shown in Annex A on the following intranet page – Calculation of annual leave from days to hours:

<http://intranet.justice.gsi.gov.uk/guidance-support/myservices/leave/calculator.htm>

When a Bailiff takes annual leave, the amount deducted is recorded in hours not days. Full-time Bailiffs work the same number of hours as their colleagues, albeit over a different working week, so are subject to the same annual leave entitlement as their full-time colleagues, with the same amount of service.

**PLEASE NOTE** – Staff who opted into the Deal with an annual leave entitlement in excess of 30 days were allowed to retain this entitlement on a protected basis until such time as they change post as a result of promotion. On promotion, they move to the Deal terms in full, including standard annual leave entitlement.

The chart on the next page sets out how many days annual leave bailiffs need to take depending on which days you wish to be away from the office.

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## **Section 5 – Travel and allowances**

### **5.1 Travel allowances – home to office journeys**

Most of your time will be spent outside the office travelling around your area and you are entitled to claim expenses / mileage for the majority of this travelling. However certain elements of the journeys you make during the course of performing your duties are “home to office” and cannot usually be reimbursed.

Unless you correctly record “home to office” journeys you will be contravening the requirements of the Pay and Allowances Handbook, the Departmental Car Manual and the HM Courts and Tribunals (HMCTS) Financial Management & Accounting Guide. Errors in calculating “home to office” journeys will also mean that mileage details on your car record sheets or travel and subsistence claims will not be accurate therefore giving rise to possibly erroneous claims. Both these eventualities could result in disciplinary action.

### **5.2 Requirements**

A usual "home to office" journey (and vice versa), is the distance by the most economical route, between an officer's home and their place of work i.e. base court.

The situation can become rather complicated, particularly if you combine any usual "home to office" journey (or return), with say, the execution of a warrant. Although you are still entitled to make a claim for a certain amount of mileage, this must be on the basis of the **lesser of rule**.

This rule is applied throughout HMCTS and, based on journeys taken by the shortest practicable route, is applied in the following way:

- Calculate the actual distance between the court office (your base), and the place visited.

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- Calculate the actual distance travelled between home and the place visited.
- Compare the two distances.

The lesser of the two distances is that recorded as official. The remainder is recorded as private mileage.

Examples of the most common travelling scenarios, together with how the mileage is classified, are listed below.

1. If you spend the whole day in the office, the amount of mileage recorded for the day would be entirely private i.e. 2 x "home to office journeys"
2. If your day is broken by a period travelling on your area, but this starts and ends from your office, you must record 2 x "home to office journeys" as private mileage, but the remainder is classed as official.
3. If you make a visit in the morning before calling into the office, you must ensure that the distance between home and your base court is accounted for appropriately i.e. the distance from your home to base is 5 miles and the distance from your home to the call is 3 miles, then the mileage (3 miles) is counted as private. If the distance to the call is 7 miles, then the first 5 miles should be classed as private mileage and only 2 miles as official mileage.
4. There will be occasions when, having travelled on your area during the day, you return home and then need to make a second round of visits in the evening. The entire mileage for the second journey, both outward and return, can be treated as official mileage, providing that the following conditions are met:
  - The second trip commences from home;
  - it incorporates the "home to office" journey;
  - you do not attend the office.

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In the event that any or all of these conditions are not met, mileage for the second trip must be recorded on the basis of the lesser of rule. If you are a departmental car user, these journeys must be clearly identified on your car record sheet.

5. There may be an occasion when you travel direct from home and return to home without visiting or making the usual "home to office" journey. Irrespective of whether this was a first or second

round visit, your official mileage must be calculated on the basis of the lesser of rule.

Further information can be found in the Pay and Allowances Manual.

### **5.3 Congestion Charge for London**

The Congestion Charge for London commenced on 17 February 2003. The current charge is £10.00 daily if you enter, drive or park in the zone between the hours of 7.00 am to 6.00pm Monday to Friday. The charge is not payable on weekends or bank holidays.

### **5.4 Reimbursement by the Department for the Congestion Charge**

The Congestion Charge will only be met by the Department for your official business journeys. It will not be met for normal commuting home to office journeys, which are private journeys.

However, if the congestion charge is triggered on a home to office journey, because your intention is to make a visit later that day the Department will meet the charge. In these circumstances the charge will be subject to tax and National Insurance Contributions (NICs).

The tax will be grossed up and met by the Department. If in the course of an official journey, which does not include any home to office travel, and you enter the congestion charge zone, the charge will be reimbursed by the Department without the charge being liable for tax.

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#### **Please note:**

Bailiffs or Bailiff Managers, whose permanent court or patch is within the congestion charge zone, will be indemnified by HMCTS for the charge. If the journey to their permanent court triggers the charge then this will be subject to tax and NIC's. The tax will be grossed up and met by the Department.

### **5.5 Payment of the Congestion Charge**

Payment of congestion charge is the responsibility of the individual. Payment must be made in advance or on the day of travel up to 10.00pm. There is a surcharge of an extra £5.00 if you pay between 10.00pm and midnight. This surcharge or any penalty for nonpayment is a matter for the individual.

Payments may be made in advance for consecutive charging days: 5 days (weekly – although this does not have to be Monday to Friday, it can be Wednesday to Tuesday), 20 days (monthly) and 252 days (annually). You may also buy as many non-consecutive days as you want but there is no discount for buying in bulk.

Payment may be made up to 90 days in advance and may be made by post, phone or the Internet.

### **5.6 Detached duty into the Congestion Charge zone**

Where a Bailiff / Bailiff Manager transfers into the Congestion Charge Zone, then the charge should be treated under the normal travel & subsistence rules and will not be taxable.

### **5.7 Claiming reimbursement of the Congestion Charge**

#### **Charge subject to tax and NICs**

Where the charge would be subject to tax and National Insurance Contributions claims for reimbursement must be made on

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iExpenses. Liberata will arrange for the charge to be grossed up and the tax payment made to the Inland Revenue.

#### **Charge not subject to tax and NICs**

If the charge does not incur tax and NICs then reimbursement may be claimed on iExpenses at the same time as the mileage claim.

#### **5.8 Refunds from Transport for London (TfL)**

If the congestion charge is paid in advance (monthly or annually) then future unused days may be claimed from Transport for London (TfL). You cannot claim a refund for past unused days. The start date of the refund must be a minimum of 7 charging days from the date of receipt of your request by TfL. When requesting a refund you must provide TfL with either the original payment receipt/receipt number or an original of your registration document sent to you by the DVLA. Refunds are subject to a £10.00 administration charge.

#### **5.9 Annual / sick leave**

An individual who paid their congestion charge in advance (monthly or annually) must refund the Department for periods of absence from the office where the absence is likely to be more than 3 weeks in respect of sick leave or in excess of one week for annual leave.

#### **5.10 Leaving the Department**

If the congestion charge is paid in advance either monthly or annually and you leave the Department you must refund the remainder of the charge to the Department with effect from the last day in the office.

**PLEASE NOTE: All refunds must be repaid to the Department**

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#### **5.11 Further information on Congestion Charging**

Further information about payment outlets, exemptions and discounts and the Congestion Charge generally is available on the web site [www.ccLondon.com](http://www.ccLondon.com) or telephone 0845 900 1234.

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## **Section 6 – District Judges' liability for county court Bailiffs**

You are expected to take the circumstances of the person you are dealing with into account and exercise discretion in using the powers described in this manual. This includes where necessary, withdrawing from a particular situation and seeking advice from your Bailiff Manager or Delivery Manager.

District judge's have a legal responsibility for the 'acts and defaults' of Bailiffs. Although district judge's have this statutory responsibility for Bailiffs, you have the administrative responsibility for giving instructions in difficult situations. In all circumstances Bailiffs who have technical or procedural issues should refer the issues to their Bailiff Manager.

Where it appears necessary to refer a matter to a district judge before certain action is taken, you should always consult you Bailiff Manager first. Only where you are satisfied and there is a genuine need for a judicial decision should a matter be referred to a district judge. District judges are prepared to give informal guidance and

advice on Bailiff matters when requested.

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## **Section 7 – Keeping records**

You must keep precise records of the work you do. To help you do this you will have a Daily Record Sheet (DRS), a Bailiff's Warrant Book, and a Bailiff's Notebook. The Daily Record Sheet is used in conjunction with the Risk Assessment. The Risk Assessment is designed to provide detailed information to assist during an emergency. More information can be found in the Health & Safety section (Section 21) of this manual. The following notes give you basic information.

### **7.1 The Daily Record Sheet**

The Form EX97 – Daily Record Sheet (DRS) is designed to fulfil the essential purposes of:

- Recording and supporting the risk assessment process.
- Supporting travel and subsistence claims.

It also contributes to the record of:

- Visits you have made.
- Process you have served.
- Returns you have submitted.
- Money you have taken.
- Miles you have travelled.
- Time spent in the office or court during the date in question.

Whilst your endorsements on the actual items of process you deal with remain the official 'source' record, the DRS can be a useful additional tool for support staff when updating the computer records held in the office. It is therefore crucial that the information it contains accurately reflects what you have recorded on the process. You should ensure that you always have a supply of the DRS in your possession.

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For each day you are at work, irrespective of whether you remain in the office or go out on your area, you are required to have completed a DRS and hand it in or send an electronic copy to either the administrative clerk or your Bailiff Manager.

The Daily Record Sheet must:

- Be legible and completed in ink.
- Be submitted daily together with all cheques, postal orders and Allpay receipts for process which there is a return.
- Show the same mileage that is recorded on the travel claim.
- Correctly record all interim and final returns on warrants and process where a visit was made.
- Contain sufficient detail in the address to allow the journeys to be identified.
- List the process in the order you intend to make the visits. Any eventual deviations (e.g. backtracking to an earlier call) must be clearly marked and explained. You must also clearly define day or evening visits e.g. by ruling off the page and you must contact a Bailiff Manager or buddy before deviating your route.

- Be completed as you undertake the visits, where safe to do so, i.e. you should not save the warrants up and complete the sheet at the end of the day.
- Provide any relevant risk information and or additional information where necessary e.g. note of difficulties, explanation of deviation from route, return visits.
- Whether the risk assessment of the process is low, medium or high.

### **7.2 Bailiffs' folders**

Your Bailiff folders, in the form of two ring binders, one for home warrants and one for foreign warrants should be used to record details of all warrants received on a particular day and a record of their disposal i.e. final return. You will receive the relevant pages with the warrant. The warrants are produced by the court

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computerised warrant control system on Caseman. Check that the area details are correct; this will also include all re-issued Warrants. It is important to check that you have received a computer generated warrant page relating to the warrant you have received, as this forms evidence of work received during a calendar month.

### **7.3 Bailiff note book**

Your Bailiff's Notebook (code no CC64) is used to record all other items of process Attachment of Earning's (AE), Orders to attend, Foreign Process (FP) and D90's. Enter each item on the day you receive it and record subsequent action.

### **7.4 Security and records**

There have been incidents where a Bailiff's briefcase has been stolen and the court has been unable to identify the work missing. It is important that you only take work out of the office that is logged on the DRS or in your Bailiff note book.

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## **Section 8 – Handling money**

### **8.1 Procedures**

It is important that all Bailiffs understand and comply with cash handling procedures. They are there to protect you and your Line Manager.

A list of what you can and cannot do is as follows:

- You must not take money for court fees on applications
- You may occasionally have to give change but where possible you should avoid mixing personal and official money.
- You must never exchange personal cheques for cash you have collected.
- It is not acceptable to leave monies in an unattended vehicle at any time whatsoever.
- In the event of loss or theft of monies you have collected, the incident must be reported to your Bailiff/Delivery Manager immediately.
- All monies you receive must be paid in at a Post Office or Paypoint outlet using your Allpay card at the earliest opportunity.

- You must witness the Bailiff clerk checking your relevant cheques, receipts and warrants.
- You should see the Bailiff /Section Manager, if the Bailiff clerk has not checked your receipts and you need to leave the office.
- If you are ill or for any other reason you are unable to attend the court office, contact your Bailiff/Delivery Manager on the first day of absence, to arrange for any receipts you are holding to be collected.

You are expected to take normal security precautions when keeping cheques etc and process at home overnight or weekends. If you collect over £1000 in cash you must follow the guidelines set out in the Finance Guidance Letter 138 and complete the 'Payment Received - £1000 and over' form as necessary – see link at Forms section. This form must be faxed to HMCTS Fraud & Information Security Unit on 0870 739 5928 or sent via email to

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moneylaundering@justice.gsi.gov.uk. You should carry a few of these forms with you for completion as necessary.

### 8.2 Methods of payment

You may accept the following methods of payment:

- Cash – care should be taken not to take foreign coins or notes:- to be paid in with Allpay payment card
- Credit Cards\*
- Debit Cards\*
- Postal Orders
- Banker's or building society draft
- Giro cheque
- Cheques (including Euro cheques)
- Payable orders

\*If you receive a card payment while out on your rounds you must call the office to process this transaction. A receipt will not be issued by you as this will be dealt with by the office staff on Caseman.

### 8.3 Allpay payment cards

Bailiffs are issued with these cards for added security enabling them to deposit sums of money at Post Offices and Paypoint outlets rather than returning to their court.

Further Information: See Modernising Money Handling Programme Intranet Site and see your courts super user for relevant information.

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### 8.4 Cash

If you are taking cash protect yourself by checking banknotes etc in the presence of the person giving them to you. Be careful of counterfeit notes. The four security features that you can use to identify a genuine banknote are as follows:

- **The feel of the paper** - the note should be crisp, not limp waxy or shiny and in reasonable condition.
- **The watermark** – when the note is held up to the light, it clearly defines a portrait of the Queen, where subtle, gradual light and shade is visible.
- **The metallic thread** – all notes have a thread embedded in the paper. The notes have a series of silver dashes on the front of

them, when held up to light it appears as a bold continuous line.

- **The quality of printing** – the lines should be sharp and well defined; the colours should be clear with no hazy fringes.

Use a money tester pen if possible.

If you take a large amount of cash when you are in the office but after your money and the DRS have been handed in, you should complete a separate DRS and pay the money in to the Bailiff clerk rather than keeping it until the following day.

### **8.5 Credit & debit cards**

All Courts now accept Credit card & Debit cards payments for warrants of execution. Your court will have either EPDQ Lite or a PDQ machine.

Further Information: See PDQ terminal User Guide or Modernising Money Handling Programme Intranet Site.

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### **8.6 Postal orders, bankers/building society drafts, Giro cheques & payable orders**

These should be made payable to HMCTS or the name of the particular court.

**DO NOT ACCEPT POSTAL ORDERS/BANK DRAFTS IF MADE PAYABLE TO ANYONE ELSE.**

### **8.7 Cheques**

When you accept a cheque you should also levy and get walking possession. This is to protect you and the creditor if the cheque 'bounces'. However, you should not refuse a cheque where you cannot levy or where there are insufficient goods to levy on, as this may be the only way to satisfy the warrant.

If you have two or more warrants against a debtor you can accept one cheque in payment, as long as the payment is in full satisfaction of at least the oldest warrant. You cannot take part payment by cheque on several warrants.

When you accept an unsupported cheque remember that it will take time to clear. You should not, therefore, accept a cheque from someone you consider to be a 'bad risk' (e.g. debtors whose cheques have previously 'bounced' or who you think might remove goods even though you have levied).

Cheques, banker's drafts, and payable orders must be:

- Written in ink.
- Supported, where possible, by a cheque guarantee card. The limit of the card must not be exceeded. The card must be valid (the expiry date is shown on the card).
- Have the number of the cheque guarantee card written on the back by you and not the person making the payment.
- Signed, and any changes initialled / signed.

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- Dated correctly - within the last six months and not post dated.
- Show the same amount written in words and figures.
- Made payable to HMCTS or the particular court.
- Show the name of the bank, its number and the name of the account shown on the card.

Cheques made out to any named individual and purportedly signed



over to HMCTS must **not** be accepted. Any cheques or postal order crossed "Account Payee Only" cannot be signed over to a third party.

The back of the cheque or postal order must be endorsed with sufficient details to enable you to identify the case which it was paid e.g. case number or warrant number. Postal orders should be checked to ensure that they are not out of date as they expire after 6 months from the date of issue.

**Remember: DO NOT ACCEPT POST-DATED CHEQUES**

### **8.8 Credit notes**

There will be occasions when a debtor pays money off a warrant, not by paying direct to you, but by calling into the office or paying the claimant direct. Court staff will tell you of the payment on form N335.

You must update the warrant. It may also stop you from making any unnecessary visits to the debtor.

When you receive a credit note your court may have a local practice that you must follow to record it. However on receipt of a credit note you must:

- Note the date and amount of the payment on the appropriate warrant in the amounts received or passed through box.
- Return the warrant to the office if the credit means that the warrant is fully paid.

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You are likely to receive credit notes on a regular basis.

### **8.9 Receipt book**

You will be issued with a receipt book (FR2) on appointment and new ones as necessary. You must sign for each new book. Before you sign for a new book check that it contains 50 receipts and copies, consecutively numbered. You will be responsible for the receipt book.

Your receipt book is important and you must carry it with you at all times whilst on official duty. It will be checked regularly by the Bailiff Manager.

The receipt book enables you to issue an immediate receipt for every payment you recover on a range of different processes. It must **not** be used as a receipt for payment of fees, which you must not accept under any circumstances, or as a receipt for goods.

It is important that you hold only one receipt book at any time, if you have unused receipts in your old receipt book they must be marked as cancelled and each cancelled receipt endorsed by your Bailiff Manager or Delivery Manager. **Note:** - You may be going out on visits and you only have one receipt left. In such circumstances you must cancel the receipt and obtain a new receipt book.

**The loss of the receipt book must be reported immediately to either the Bailiff Manager or the Delivery Manager.**

### **8.10 Issuing receipts**

You must ensure that you:

- Give an official receipt for each payment you receive, whether it is cash or cheque, and whatever the amount. The exception to this will be when you phone the office to process payments

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made by credit and debit cards as the office will send the receipt to the person making the payment.

- Write clearly and write receipts in ballpoint pen. Do **not** use ink, which can be erased.
- Check the copy is clear.
- Give the receipt to the payer when you accept the payment.
- Record all payments on the DRS.

You must **never**:

- Issue a receipt on anything except an official receipt.
- Write the receipt at a later stage.

The receipt must include:

- The date.
- The name of court including the foreign court where applicable
- Case number, warrant number and local number (which you also enter on the DRS).
- The debtor's name;
- The name of the person who made the payment;
- The amount paid, in figures and in words;
- Your signature.
- The method of payment – i.e. if payment is by cheque write 'CHEQUE'.
- If payment is by cheque and the cheque is **not** supported by a cheque guarantee card write 'CHEQUE SUBJECT TO CLEARANCE'.
- If the payment is a cheque from a third party write the third party's name.

### **8.11 Receipt book checks**

Every day you attend the office you must produce your receipt book for inspection, even when you have no money to pay into the office.

You must ensure that the pages in the receipt book follow in date

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sequence, the dates and reason for any absences is recorded on the back of the last copy of receipt issued before the next receipt is drawn.

If no payments have been received, the back of the last receipt must be examined to ensure that it was endorsed with the date on the last attendance by you at the office. It must be endorsed again with the current date and initialled by the cashier.

If you fail to submit the receipt book or if previous entries are not in the book please report this to your Bailiff Manager immediately. The receipt book should be checked every day.

During planned periods of absence your receipt book must be retained in the office. You should ensure that the back of the last receipt used records the period the receipt book has been retained.

If you are ill or for any other reason you cannot attend the office. On your first morning of absence you should contact your Bailiff Manager or Delivery Manager to arrange for the money you hold, receipt book and any work to be returned to the office without delay.

The cashier will in your presence:

- Check that the details on the DRS, receipt and warrant match

up.

- Check that any payments handed over agrees with that recorded.
- Check that the total collected is shown on the DRS.
- Enter the date the payments and Allpay receipts were recorded in the office on the warrant and initial it in the space provided.
- Sign the DRS to show that the record is correct and that the payments and receipts have been handed over.
- Date and initial the face of each copy of receipt and date, initial and record the total received on the back of the last copy receipt.
- The cashier should take a copy of the receipt and give original to the Bailiff or Bailiff Manager.

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### **8.12 Cancelled receipts**

If you make an error on a receipt, however, small you must cancel the receipt and issue a fresh receipt.

You must ensure that the top copy of the receipt is lined up with the second copy, cancel the receipt by drawing two diagonal lines across the receipt and writing "Cancelled" between the lines. The top copy of the receipt should be stapled to the second copy.

The cancelled receipt should be passed to the Bailiff Manager to sign at the earliest opportunity but no later than the next working day. In the event that the Bailiff Manager is not available, the cancelled receipt should be authorised by the section or Delivery Manager.

If you later notice an error on a receipt and cannot replace it, report it to your Bailiff Manager as soon as possible.

### **8.13 Receipt alterations**

If you notice a mistake after the receipt has been handed out and cannot get it back, any alterations to the second copy must be initialled both by you and the Bailiff Manager, an explanation must be noted on the reverse of the second copy.

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## **Section 9 – Service of Documents**

### **9.1 General principles**

Service is the delivery of court documents to the named person or organisation on the papers.

The types of document you may be asked to serve are:

- Claim forms and witness summonses.
- Originating applications (mainly proceedings against squatters).
- Divorce petitions.
- Orders about attachment of earnings applications or a judgment summons hearing.

You may be asked to serve documents when:

- Previous attempts to serve by post have failed.
- The document contains a penal notice (this means the defendant could go to prison for not obeying the order).
- The process has been issued in a foreign country.
- Upon the request of a judge.

**It is important that all personal service matters are dealt with promptly.**

You can serve a document at any time of the day or night but you should try to do so at a reasonable time. You cannot serve on a Sunday, Good Friday, or Christmas Day unless a judge has given permission to do so.

You can serve a document if the person has moved from the address given on the document, but still lives or carries on business within your court's area. If you go to a new address go back to your office or contact your Bailiff Manager in the first instance. If the new address is in your area, serve the document and record the new address on the copy you return to the court office. If the new

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address is not in your area, return the document to the court marked 'Left Address', with any other information that you have.

Before serving any documents you should check that:

- You have enough copies of the document (usually one to attach to your certificate of service and one for each defendant).
- You have enough time in which to serve it, either before the hearing date or before the document expires.
- The documents are sealed.

As soon as possible after serving a document you must complete the certificate of service in ink. The certificate is usually printed on the reverse side of the document you are serving, but it can be a separate form.

There are two different types of certificate:

- Form N215 for service on an individual.
- Form N218 for service on a partner.

Both forms have a space for you to record unsuccessful attempts at service.

If you are unable to serve the document, you must complete the certificate of service with details of your unsuccessful attempts. Include any information you have which will help the claimant and enable the document to be served in the future.

If you discover an error in the document in the name, description, or address, of the person to be served (e.g. Elspeth Brown for Elisabeth Brown) you should return it to the office staff to pass this information to the claimant for clarification. Trivial errors (e.g. Elizabeth instead of Elisabeth; Ms for Mrs or Miss) should not stop you serving, although you should include a note of the error in your certificate so it can be corrected.

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## **9.2 Personal service**

When serving a document personally (i.e. handing it to the person named) you must **not** put the document in an envelope. Serve the document by handing it to the person at the address shown which may be their home or if they are the proprietors of a business, their place of business.

You must not serve a person at their place of employment, unless you have permission from a judge to do so. Try to avoid serving in a public place but if this is unavoidable be as discreet as possible.

Before you serve a document you must satisfy yourself that the person is the one described in the document. The person may conform to a description or photograph, or be known to you personally. Complete the certificate of service to show briefly how you were able to identify the person.

It is not your responsibility to identify the person to be served if they are wrongly or inadequately described in the document. For instance, if the defendant is called 'Brown' and is a 'Male' and at the address given there are two (or more) males called 'Brown' you should not serve the document unless you are satisfied you are serving the correct person e.g. the person accepts that he is the person referred to in the claim. If proof is not provided then you should not serve the document, take it back to the office.

When serving a document you should explain:

- That you are a county court Bailiff – show your ID card.
- That the document is an important court document.
- Briefly what the document is and the purpose of any hearing date.

If you have identified the person to be served and they refuse to accept the document or become aggressive, you may drop the document on the ground as near as practicable to them and say (again) what it is. You should also tell them that serving the

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document in this way is valid. It is important that when you drop the document you tell the person what it is, even if you have previously explained. It is **not** necessary for the document to touch the person. Do not try to push the document into their hand or pocket, or act in a way that gives an excuse to accuse you of assault. When completing your certificate you should include an account of what has happened.

If it has been confirmed that the defendant resides at the address then you may, for certain documents i.e. N61 and Divorce papers request substituted service. To do this you must complete an application for substituted service and swear an affidavit providing an explanation of how you were able to confirm these facts.

If granted you may put the document together with a copy of the sub serve order in a sealed envelope clearly and accurately addressed to the person to be served and put it through the letterbox at the address in the document.

### **9.3 An individual trading as a firm**

When the document describes the person to be served as trading as e.g. B Brown trading as High Street Florist, the document can be served personally on the individual, as a partner or a person being sued in the name of their firm who at the time of service has control or management of the business, at its principal place of business. To serve a document on a firm e.g. 'B Brown & Co (a firm) use one of the following methods:

- On one of the partners of the firm in the same way as on an individual.
- On any person who has, or appears to have, control or management at the firm's main place of business (e.g. a shop-

Manager) in the same way as on an individual.

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Again substituted service is acceptable for certain papers, in each case your certificate of service should say exactly what you did and why. If you served an individual, you must record their name and position in the firm.

#### **9.4 Limited companies**

A document is usually served on a limited company (including a Public Limited Company) by post. The address shown on the document should be either the company's registered office or the company's place of business.

If you are required to affect service before serving the document you should try to make an appointment with an officer of the company e.g. a director or the company secretary to meet them at the address. You can give them the document. If this is not possible, you should give the document to any person at the address who is connected with the company. In your certificate of service, explain how you served the document if you gave it to an individual, record their name and position in the company.

#### **9.5 Solicitors**

A Solicitor can accept service of a document on behalf of the person or organisation to be served. A solicitor can only accept service on another person's behalf by prior arrangement with that person.

Nobody else can be nominated or volunteer, except where a district judge has made an order for substituted service. Where a solicitor is authorised to accept service and has notified the serving party that he is prepared to accept service then service must be made on them.

Ask the solicitor to endorse the front of your copy of the document with a brief note that they accept service on behalf of the person or organisation named on the document. If the solicitor refuses to do this you need to record what has happened as it may be considered that the process has not been served. You need to talk to your

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Bailiff Manager about what has happened. Whether or not the solicitor endorses the front, complete your certificate as usual.

#### **9.6 Diplomatic immunity**

You cannot serve a document on a foreign embassy or on a person claiming diplomatic immunity. If the person you want to serve claims diplomatic immunity or other privilege, withdraw and seek guidance from your Bailiff Manager or Delivery Manager immediately.

#### **9.7 Special circumstances**

Seek specific directions from your Bailiff Manager or Delivery Manager **before** you try to serve a document on a person who appears to be:

- A minor (under 18 years old).
- Mentally incapable of managing their own affairs.
- Resident on a ship (but not a houseboat, barge, or similar floating boat).
- Resident in an institution (e.g. jail, hospital, religious establishment, hostel, nurses' home).

- A serving member of HM Forces.
- A patient in a hospital or hospice.

### **9.8 Divorce petition**

You may be asked to serve a divorce petition if the respondent or co-respondent has not replied after postal service. Your court may not have family jurisdiction the process having come from another court. The following guidance applies to both respondents and correspondents.

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You will receive the following documents:

- Request for Bailiff service
- Endorsement of service/non service to petition (Form D90)
- Bailiffs affidavit in support of application for substituted service (Form D91)
- Divorce petition.
- Acknowledgement of service.
- Statement of arrangements for children, if any (for respondent only).
- Certificate of service.

When you complete form D90 you must record how you identified the respondent or co-respondent. You can identify them in the following ways:

- By getting the respondent's signature on the D90 when you serve the document (the petitioner will later confirm that it is the respondent's signature).
- By the respondent producing identification to confirm that s/he is the person named in the petition e.g. a driving licence or travel pass.
- By your personal knowledge of the respondent.
- The description supplied by the petitioner in form D89 or a photograph accompanying it.

You should not normally rely on getting the respondent's signature alone, but try to prove the respondent's identity in one of the other ways mentioned.

In every case ask the respondent or co-respondent to sign the D90. If they refuse, note this on the D90.

If the respondent (or co-respondent) refuses to accept service and if you are unable to serve the petition, the procedures for substituted service of other documents applies. Use form D91 for an application for substituted service of a petition.

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### **9.9 Possession actions**

A possession claim may be to recover possession of a house or flat, vehicle, a room, garage, caravan, houseboat, or a piece of land.

The claim may also include a claim for money e.g. arrears of rent or mortgage.

A possession claim, other than proceedings against squatters, is served in the same way as other documents such as a money claim.

### **9.10 Vacant premises**

If the premises appear to be empty, consult your Bailiff Manager about serving the claim by fixing a copy to the front door or other

conspicuous part of the building. Where you think the defendant still lives at the premises but you have been unable to serve claims personally, you can serve it by fixing a copy to the front door or other conspicuous part of the building.

### **9.11 Trespassers (squatters / travellers)**

To serve a Part 8 application against squatters or travellers you need the following copies:

- One for each named respondent (defendant).
- One to post through the letter-box (if available).
- One to fix to the front door.
- One to attach to your certificate of service.

For you to serve documents on a piece of open land, the Claimant should give you a plan of the area, with the land in question outlined in red.

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The copies displayed must be in transparent envelopes. You can fix the notices to a stake, tree, gateposts or some other conspicuous part of the property, so long as they are clear and visible.

In all possession claims under CPR 55.5(2) against trespassers (squatters), the defendant(s) must be served with the Form N54 **not less than 24 hours before** the eviction.

In all other possession claims the defendant(s) must be served with the Form N54 **not less than 7 days before** the eviction date.

### **9.12 Foreign Process**

Occasionally you will have to serve process from outside England & Wales. Foreign documents must be served promptly and any delay or difficulties should be reported to your Bailiff Manager.

#### **9.12.1 The Royal Courts of Justice Foreign Process Section**

The Royal Courts of Justice (RCJ) Foreign Process Section works according to procedures laid down in EU Regulation 1393/2007 and The Hague Convention 1965, service of judicial documents. The Foreign Process Section also deals with service from non convention and bi-lateral countries.

#### **9.12.2 The Senior Master**

The Senior Master of the Queen's Bench Division also holds the ancient judicial post of King's Remembrancer (Queen's Remembrancer when the monarch is female), and is also the Registrar of Election petitions and Foreign judgments as well as being the designated authority for the Hague Service Convention and Hague Evidence Convention and receiving agency under the EU Service Regulation - Council Regulation (EC) No. 1393/2007 and EU Taking of Evidence Regulation - Council Regulation (EC) No. 1206/2001.

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The Senior Master is assisted in this role as Central Authority by the Foreign Process Section of the Queen's Bench Action Department at the Royal Courts of Justice.

#### **9.12.3 Translation of documents**

##### **European Union (EU):**

It is not necessary to have an English translation of the documents, as there will be an "Annex II" attached to the documents. Bailiffs are



required to serve the defendant, who will then send the Annex II directly to the RCJ Foreign Process Section. Bailiffs therefore cannot accept from the defendant that they refuse the documents on the basis that there is no translation.

**The Hague:**

All documents must be translated.

**Non-Convention/Bi-Lateral:**

All documents must be translated.

**9.12.4 Serving documents**

The EU Service Regulation has specified that process is to be served **within one month of receipt** of the papers by the Foreign Process Section of the Royal Courts of Justice. This also applies to all process served under The Hague Convention 1965 and for non convention and bi-lateral countries.

The Foreign Process Section will send you an EX680 and possibly a translation depending on the country of origin being party to one of the regulations (see translation of documents).

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**9.12.5 Personal service**

Upon receipt of the documents you will have a time limit of three weeks to attempt to serve the process by making at least three visits to the address at different times/days. **The EX680 clearly states the next action date; therefore you must serve and post the documents back to the Foreign Process Section within the specified time.**

**9.12.6 Unable to serve personally**

If you are unable to serve personally, service of documents must be executed via the Senior Master's direction:

- **Individual:** If you are unable to serve the defendant personally, either after the required number of visits or after being told that the defendant is not known/has left address given, leave the documents in the letterbox or if there is none, or no access, affix documents in a sealed envelope (in a plastic cover) to the premises. (CPR 6.3 (1) (c))
- **Deceased:** If you are told the person is deceased then evidence (death certificate) is required. Otherwise serve as stated above.
- **Property derelict/demolished:** Documents are to be either put through the letterbox (in a sealed envelope) or left at the site (in a sealed envelope in a clear plastic cover).
- **Gated property/unable to gain access:** Send the documents back to the Foreign Process Section for permission to serve via 1<sup>st</sup> class post. The Foreign Process Section will then serve the documents via post.
- **Occupant gives you a forwarding address:** Send the documents back to the Foreign Process Section for permission to serve at the alternative address. The Foreign Process Section will send to the relevant court for service.
- **Company at its registered address:** This is the registered address of the company. If no one in a senior position will take the documents, please serve by leaving the documents at the address. If you cannot gain access and there is no letterbox,

affix the documents in a sealed envelope (in a plastic cover) to  
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the premises. (S1139 Companies Act 2006) **NOTE: It is irrelevant that the company is not at the address for any reason as by statute this is the relevant office.**

· **Company (not registered address) or Corporation:** This is the place of business of the company. If no one in a senior position will take the documents, please serve by leaving the documents at the address. If you cannot gain access and there is no letterbox, affix the documents in a sealed envelope (in a plastic cover) to the premises. (CPR 6.3 (1) (c))

· **LLP:** This is the place of business of the limited partnership. If no one in a senior position will take the documents, please serve by leaving the documents at the address. If you cannot gain access and there is no letterbox, affix the documents in a sealed envelope (in a plastic cover) to the premises. (CPR 6.3 (1) (c))

**It must be made clear that the following reasons for non service are not valid reasons:**

- Defendant not know at the address given
- Defendant has left the address given
- Unable to meet defendant

Should the Foreign Process Section have documents returned for any of these reasons, or other scenario dealt with by directions given by the Senior Master, the Foreign Process Section will return the documents back with no new return date.

There are two situations whereby service will not legitimately be effected and documents are returned back to the FPS. These are:

- If you find an alternative address for service and endorse the EX680 with the new address.
- You are unable to gain access to the building.

In these cases bailiffs are to return the documents back to the Foreign Process Section. The Foreign Process Section will then seek permission from the Senior Master to serve at an alternative address or serve via 1<sup>st</sup> class post.

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#### **9.12.7 Returning the documents back to the RCJ**

Bailiffs should ensure that all documents returned back to the Foreign Process Section are either stapled, or have an elastic band wrapped round the documents to ensure all documents remain together.

#### **9.12.8 Outstanding report**

At the beginning of each month, the Team Leader of the Foreign Process Section will compile a report of all outstanding cases that have gone beyond the three week return date. This report is by no means a “name and shame” list, but rather to indicate those cases for which the Foreign Process Section has not received any confirmation of service. Courts involved are to either:

- Notify the Foreign Process Section if the documents were returned back to the Foreign Process Section. **Or**
- To serve the documents as a matter of urgency and notify the Foreign Process Section confirmation of service.

This deadline derives from the fact that the UK, as an EU member state, has to attempt service of documents within one month of receipt.

#### **9.12.9 Contact details**

Bailiff's can contact the RCJ Foreign Process Section via the details below:

**Address:**

Foreign Process Section  
Room E16  
Royal Courts of Justice  
Strand  
London WC2A 2LL  
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**Telephone:**

020 7947 6691/7786/6488/6327/1741

**Email:**

foreignprocess.rcj@hmcts.gsi.gov.uk

#### **9.13 Admiralty Marshal**

The Admiralty Marshal is an Officer of the High Court who is responsible for the detention of ships and other navigable craft in England and Wales, which are the subject of proceedings in the Admiralty Division of the High Court.

The Admiralty Marshal has an agreement with HM Revenue and Customs where their Officers in the main seaports affect his arrest countrywide, except in the London and Thames areas, which are covered by the Tipstaff from the RCJ.

County Court Bailiffs may act on behalf of the Marshal in effecting the arrest and release of ships and other crafts in the Admiralty Court proceedings and serving the claim form in the proceedings. The claims brought before the Court are based on shipping and related business, for example:

- Crew wages.
- Collision damage.
- Cargo damage.
- Port expenses.
- Any contractual work in relations to a ship.

For Health & Safety on Admiralty Marshal please refer to the Health & Safety section (Section 21) of this Manual.

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#### **9.14 Order to attend for questioning**

Service of an order that the debtor attends court for questioning (N39) is an order to be served **personally**. The order requiring the debtor to attend court for a hearing contains a penal notice that warns the debtor that if he fails to attend he may be sent to prison. A judge cannot make a committal order unless he is satisfied that the debtor was served properly and personally. The return you make after service will provide that proof.

The Form N39 must be served on the debtor **not less than 14 clear days** before the date the questioning is to take place. If you are unable to serve it within that time, you must endorse the back of one copy of the form and return both copies to the court office. You must

do this **not less than 7 days before the hearing** to enable court staff to cancel the appointment, set a new date and inform the creditor.

The hearing must take place at the court for the area where the debtor resides or carries on business.

If the debtor fails to attend the hearing set out in the N39, the court officer will refer the matter to a Circuit Judge, to make a committal order. If one is made it may be suspended (Suspended Committal Order) it will contain a further hearing date and will warn the debtor that if they do not attend the hearing, a warrant of arrest will be issued stating a time period of committal. As with the Form N39, that you served the suspended committal order must be served **personally** by you and within the same time period.

The warrant is drawn on a Form N40A (Warrant of Arrest) and will instruct you to arrest the debtor and bring him before a judge to decide whether or not to discharge the committal order. The judge will give the debtor the option of being questioned by a court officer there and then. If the questioning is successfully completed the judge will discharge the committal order. If the debtor refuses to be questioned, a committal warrant will be issued immediately and the debtor can be taken to prison.

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#### **9.15 Payment under enforcement process**

You should only accept payment under an enforcement process, where an order to attend for questioning is to take place, or in certain circumstances when serving a claim form or judgment summons.

When serving a claim form or a judgment summons you may accept payment of the full amount claimed if:

- The claim form states the full amount.
- The person offering payment appears to be over 16 years old.

If you accept payment you must still serve the claim form, if possible. If the Claim form is a possession claim you must tell the person that payment will not automatically settle the court case. The defendant should attend the hearing unless told otherwise by the court or by the landlord/agent or solicitor.

When serving documents (e.g. charging order) the debtor may offer to pay less than the amount shown. Accept the amount offered but tell the debtor that only payment of the full amount will stop the court considering making the order which is being sought.

#### **9.16 Protocol for Process Servers: Non-molestation Orders**

This is to set out clearly an agreed protocol for the service of nonmolestation orders and injunctions made by the courts to protect people from violence and harassment. Without these orders being correctly served on the person against whom they are made, and proper proof of that service, the courts cannot enforce the orders or punish any breach or the breaking of any term of the order. All process servers and court Bailiffs/officers must ensure that the rules of service are followed carefully or the order served will not be enforceable; orders that are not enforceable do not protect. These

are the steps which should be taken with orders from both the  
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Family Proceedings Courts (Magistrates Court) and the County Court to put them in force.

#### **9.16.1 Service on the respondent against whom the order was made**

When the court makes a non molestation order and/ or any other order/s to which a power of arrest is attached the orders are to be set out in form FL406 or form FL404a. That form (and any other order of the court made at the same time including facts and reasons if the order made in the magistrates court) must be served directly and personally on the respondent (or he must have been present when the order was made or be told by telephone or told directly in some other way). The respondent does not need to take the form or orders in his hand but some attempt must be made to hand them to him and tell him of their contents.

#### **9.16.2 Statement or proof of service**

As soon as the respondent has been handed the forms or orders (or told of the details of the order/s and power of arrest by telephone or otherwise) the process server (or person who has told him of the details of the order) must prepare a statement of service which will be served on the relevant police station. This statement will be used as proof that the respondent knew that there were orders made by the court that he had to obey. This statement should be made under oath or affirmation so that it can be relied on in the civil and the criminal courts.

#### **9.16.2 Statement requirement for the Criminal Courts**

In addition, so as to comply with legal requirements in the Criminal Courts, all statements must include the following words at the beginning:-

*“Criminal Justice Act 1967, s9; Magistrates Courts Act 1908ss5A93 (a) &5B; Magistrates Courts Rules 1981 Rule 70.*

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This statement consisting of \_ pages each signed by me, is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true. Signed .....

This should avoid the need for attendance at the criminal courts as statements in this form can be accepted as evidence: without these words they cannot. Therefore, all statements should start with these words. Proof of service means that orders can be enforced.

#### **9.16.3 Identification**

The statement must include details of how the respondent was identified as the person to be served. Identification is important and how it took place must be clearly set out in the sworn statement. Ideally, identification should be from a photograph given to the process server but it can be from a description given to the process server by someone who knows the respondent well.

The respondent admitting his identity is not enough on its own, but can be part of the identification. Identification can also be because

he was identified by someone-else. The statement must contain a description of the respondent, as seen by the process server and a detailed description of service or the attempt at service on him.

#### **9.16.4 Service on the Police**

Without delay, the Form FL404a or FL406, and a copy of the statement showing that the respondent has been served with a copy of the order and/or informed of its terms, must be delivered to the officer in charge at that time at the police station for the applicant's address or the police station which has been named (or specified) by the court.

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### **Section 10 – Warrants of execution**

There is a Lean Standard Operating Procedure (SOPs) in place setting out the detailed steps for warrants of execution and you should follow the process as set out in the SOP which is available on the HMCTS intranet. SOPs may change if they are updated under the continuous improvement process so you should ensure you are following the most up to date version.

For detailed information on the Warrant of Execution SOP please follow the link below:

<http://libra.lcd.gsi.gov.uk/HMCTS/projects-andinitiatives/lean/sops/14065.htm>

Alternatively via the HMCTS Intranet follow the below route to access the PDF detailing the SOP:

HMCTS Intranet Homepage > Projects & Initiatives > LEAN > Standard Operating Procedures > County Court SOPS > Warrant of Execution

The information below gives more detail about warrants of execution and your role in the process.

#### **10.1 When a warrant is issued**

A warrant of execution can only be issued by the court at the creditors request. A warrant may be issued for the full amount of the judgement debt and costs, or the outstanding balance, plus the costs of issuing the warrant. A warrant may also be issued for only part of the amount outstanding; this is called a part-warrant.

On issue of the warrant the debtor will be informed by the N326 form (notice of issue of warrant of execution) that they have not made payment under the judgement and the claimant has asked for a warrant to be issued for their goods to be seized and removed.

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The warrant is issued by the office clerk and passed to you by your Bailiff Manager along with the N326 form. In some courts the office staff may send out the N326 form and pass only the warrant to the Bailiff Manager. Bailiff Managers should check that the warrant is passed to the Bailiff, if not this should be discussed with the office staff.

You must ensure that the N326 form is sent out as soon as possible after the issue of a warrant and that the date mentioned on the N326 form is marked on the warrant and the warrant is passed to you as soon as possible after being issued. If this is not the case

check the date and discuss the matter with you Bailiff Manager. You must ensure that the N326 form contains a date for payment 7 days ahead. You must visit the defendant within 15 working days of receiving the warrant, this means within 25 days of the warrant being issued.

If for any reason the N326 has not previously been sent to the debtor, the issue date on the reverse of the warrant will indicate to you that a levy cannot be made until 7 days thereafter. However, this will not prevent you from visiting the debtor and collecting the payment within that 7 day period.

Every warrant you receive including a foreign warrant (i.e. a warrant from another county court) must be:

- Sealed by the court which issued it. (foreign process).
- Sealed by your court. (local process).
- Have on it your court's local number.

Check that a re-issued warrant (a warrant that has not been executed by the Bailiff) still has the levy slip attached and if not attach one.

A warrant is live for 12 months from the date of issue. A district judge can extend the time if asked to do so by the creditor. A reissued warrant's time runs from the date it was originally issued, not the date it was re-issued. Check the issue dates of all your warrants

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periodically and act quickly on any that are nearing expiry. If this is not possible refer the matter to your Bailiff Manager immediately.

A warrant must be executed as soon as possible after you receive it. You can execute the warrant any time of the day or night, but you need to be reasonable (usually between the hours of 06:00 and 21:00). You must not execute a warrant on a Sunday, Good Friday or Christmas Day.

You should try to recover the total amount shown on the warrant. If you cannot recover the total amount on the first visit you must levy (take into custody the debtors goods – See Section 14), when levying ensure the value of the goods will settle the warrant and cover the costs of the removal of the goods and the sale of the goods.

If you are executing a part-warrant and the debtor offers you more than the amount of the warrant, you may accept any amount up to the full amount of the outstanding judgement debt and costs.

A warrant of execution for a sum up to £600 (excluding the fee) must be executed by a county court Bailiff. If the sum is from £600 to £4,999.99 the claimant may choose whether to ask a county court Bailiff or an enforcement officer of the High Court to execute it, if the sum of the warrant is £5,000 or above this must be executed by the High Court.

**Please note** – If the debt is for Consumer Credit there is no limit and it can only be enforced in the County Court.

### **10.2 Order of priority**

If you receive more than one warrant against a debtor, the warrants take their priority from the date and time of issue, satisfying the oldest warrants first. If two warrants are issued on the same day, the

warrant numbers will indicate which was issued first. A foreign warrant takes its priority from the date and time it was received at your court.

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A warrant where the Crown is the claimant takes priority over all other warrants issued against the same defendant.<sup>1</sup>

If a warrant is suspended at the request of the creditor and subsequently re-issued, it takes its priority from the date it is reissued. If a warrant is suspended by the court and subsequently reissued, it retains its original priority i.e. the original date on the warrant.

If the life of a warrant is extended before the 12 months is up, its priority is not affected. If you are uncertain about the priority of a warrant you should refer it to your Bailiff Manager who then may need to seek directions from a district judge.

A defendant may have an order against the claimant and has issued a warrant. Check that you are executing the warrant against the correct person. The office staff should have endorsed the warrant 'Judgement for the Defendant'.

### **10.3 Priority of re-issued warrants**

A live warrant of execution has priority over warrants of execution issued subsequently against the same debtor.

If the warrant is subsequently re-issued the warrant takes priority from the date which the warrant was issued. However, if a warrant is suspended at the creditors request or as a result of an agreement between the creditor and the debtor (i.e. without a court order) then is subsequently re-issued, the warrant only takes priority from the date of re-issue.

<sup>1</sup> Civil Court Practice 2008 volume 2 CCA section 85{83.3}

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### **10.4 Executing the warrant – your first visit**

The first time you visit you must either:

- Get payment in full to satisfy the warrant or;
- Take a part payment and/or set up a payment arrangement. If this is the case you must attempt to make a levy to secure the balance of payment and/or the payment arrangement.

You must also levy on goods:

- If the debtor claims to have paid the outstanding debt.
- If the debtor pays the outstanding debt by cheque.
- If the debtor claims that another Bailiff or sheriff's officer has already levied on goods you must establish the details
- If someone else claims the goods belong to them but cannot prove it.
- Where the debtor claims to have made an application to suspend or an application to set aside judgement.

### **10.5 Right of entry**

Before you have levied you may enter the debtors address given on the warrant in the following circumstances:

- Where you are invited in by the debtor or another responsible person (not a child).
- Where a door is already open or ajar.



- Where a door is closed but not locked (i.e. you can open the door by lifting a latch, turning a handle or gently pushing the door).

- Through an open window.

- By releasing a catch on a window which is already open.

You may also enter a building not connected to the debtors address (e.g. a shed, garage, barn or summerhouse).

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Once you have entered the debtors address given on the warrant to levy you may use force to break open internal doors and cupboards, but try to cause the least damage possible. Although this is technically legal, this should never take place without the authority of the Bailiff Manager or Delivery Manager to avoid complaints, costs etc.

You may be able to gain peaceful access to a flat or room via the common entrance to the building, if you are able to gain access by someone letting you in then that is acceptable. However, allowance can be revoked at any time by a person authorised to do so (i.e. one of the tenants, a security guard or a member of staff). This means that if someone gives their name and appears to have authority to ask you to leave, you must do so. You cannot push past someone who has the authority to ask you to leave.

The person you are visiting may give you an express right to use the common entrance, which cannot be revoked by a third party. For instance, if you have spoken to the person you are visiting over an entry phone and they invite you in, a third party cannot ask you to leave. You also have an express right to use the common entrance under the terms of a walking possession agreement.

A walking possession agreement is a request from the defendant not to remove the goods listed by the Bailiff. By signing the warrant, they are agreeing A) not to remove or damage the listed goods B) show the walking possession agreement to anyone who attempts to enforce any other form of enforcement and C) allow the Bailiff to reenter the premises at any time to see the goods and/or execution the warrant.

The Bailiff, on the defendant signing the warrant, agrees not to remove the goods listed there and then enters into an agreement on the successful outcome of the warrant i.e. payment by a set date, application to be lodged by a set date etc.

If an application to suspend a warrant has been made by the debtor, you must still make every effort to levy and obtain walking

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possession before the judge deals with the application. This will secure the goods if the application to suspend is not granted.

**If you fail to levy at the first opportunity the creditor can issue a claim against you under section 124 of the county courts act 1984.** If it is proved that you did not levy when you should have done and as a consequence the creditor suffered loss, you could be considered liable.

Even if there are no goods on which to levy, you should make further visits to try to get full or part payment of the warrant (unless it

is obvious that there is no prospect of payment). Make the visits on different days of the week and at different times of the day as set out in the SOP, this increases the chances of you meeting the debtor.

If on your first visit you are unable to meet the debtor or levy, leave a calling card as stated in the Warrant of Execution SOP. The card must have on it your name, phone number/s and the times you will be available on these number/s. Note on the warrant the date and time you made the visit and what letter you have left at the address. Make some discreet local enquiries if possible to find out if the debtor is still living or doing business at the address given on the warrant. Make a note in the warrant of any information you have gathered.

If more visits are required to execute the warrant, vary the days and times that you visit to attempt to meet the debtor. If after three visits the warrant has still not been executed, refer the warrant to your Bailiff Manager and discuss the situation with them. All code 120 final returns (unable to meet) must be authorised by the Bailiff Manager.

If a warrant is treated as unenforceable a Bailiffs report form N317 (which will be generated automatically by Caseman) must be sent to the creditor. The form should contain the dates and times of the visits made.

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It is not sufficient to note 'household goods' or 'two cars' as a levy. The levy must specifically identify the goods with any identification numbers available and the make and model of the item you are levying on. This may be particularly important if the goods are rescued, claimed by a third party or removed for sale.

When a sale takes place and the proceeds are received from the auctioneers the Bailiff/Delivery Manager is responsible for confirming that all of the goods levied and seized are accounted for. The warrant should be suitably endorsed.

#### **10.6 Peaceful entry refused**

If the debtor refuses to allow you in peacefully, note the date, time, and result of your visit on the warrant. Refer the warrant to your Bailiff Manager who will verify the return. You should make as full a report as possible on what took place so that the creditor can understand the circumstances.

You may not:

- Push past the occupant if they refuse to let you in.
- Try to open a door which is locked, barred, or bolted.
- Unfasten a closed window (even if it is not locked).

#### **10.7 Application to suspend the warrant or to set aside judgment**

An application from the debtor to suspend the warrant, set aside judgment (Form N244) or pay in instalments (Form N245) does not prevent you executing the warrant. If you have not levied, you should try to do so as soon as possible to safeguard the goods. If possible get a walking possession agreement. If you have already levied, refer the warrant to your Bailiff Manager for directions.

There are no grounds for court staff to refuse to process applications or arrange a hearing date until after you have levied on  
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the debtors goods or made a final return that there are no goods on which to levy. Administrative staff have a duty to process all applications promptly.

If you attend a property and the person wishes to make an application, tell the debtor to contact or go to the court office. You must not carry the form with you for the debtor to make the application. There are no circumstances in which an exception should be made.

The debtor should be encouraged to make a payment to demonstrate good faith to the creditor if making an application to pay by instalments (Form N245).

#### **10.8 Arrangements to pay**

You may come to a limited arrangement with the debtor about payment of the warrant (e.g. payment to be made to the court within 7 days) but you should levy. You can accept part payments. If the debtor fails to keep to the arrangement, you should send a form. EX98 warns that the warrant will be executed if payment is not received within 7 days.

#### **10.9 Money**

To satisfy the warrant you may seize cash, including foreign currency, bills of exchange, promissory notes, bonds, specialities and securities (these terms are explained in the Glossary). You cannot remove money belonging to another member of the family, whatever their age. Do not seize insurance policies because you cannot surrender them. Do not seize pawn tickets, as you will have to pay to redeem the goods.

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#### **10.10 Execution of a warrant whilst bankruptcy proceedings and winding up orders are pending or in place**

Bankruptcy provisions relating to the execution of warrants are complex. This makes it difficult to give clear guidance about the powers you have when bankruptcy proceedings are pending and after a bankruptcy order has been made.

A bankrupt's estate is made up of all property belonging to the bankrupt on the day the bankruptcy order is made. No person, who is a creditor once a bankruptcy order has been made, can take other enforcement against the property of the bankrupt for that debt. If you find that a petition for bankruptcy has been issued, or that the debtor is bankrupt, check with your Bailiff Manager or Delivery Manager the action to take.

You may make a report on the warrant that a defendant is bankrupt or the defendant's company is in liquidation or receivership. The information you obtain should be endorsed on the warrant so that the claimant can be informed. It is important that wherever possible, as much information that is available about the defendant or defendant's company and the receiver concerned is included on your return.

You must levy even when told that a certificated Bailiff has already

levied. Try to obtain the details of the certificated Bailiff so that they can be contacted and the priority of the warrants established. If the certificated Bailiff's warrant (or authority) has priority, he should be told that he must enforce the warrant or withdraw. There is no basis in law for any Bailiff to hold up the enforcement. The debtor should be told to apply to the court or contact the creditor.

If the certificated Bailiff removes the goods without establishing priority, it will be for the Bailiff Manager to liaise with the Delivery Manager to ask advice of the District Judge.

If the certificated Bailiff does not wish to enforce his warrant, he should withdraw his levy and allow the county court Bailiff to proceed. If the certificated Bailiff refuses to withdraw the matter you

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should consult the District Judge or Delivery Manager about appropriate action.

### **10.11 Assets Debenture**

A debtor may have borrowed money and the lender, usually a company or governmental agency, may require the borrower to sign an all assets debenture (fixed interest usually on an unsecured loan), as security for the borrowings. The debenture (depending upon its terms) may create fixed charges and floating charges over the assets of the borrower. This does not transfer title of the goods to the lender but gives the lender first call on the assets to the value of the amount set out in the (separate) loan document.

In practical terms where you have a warrant you have to execute you must do what you can for the judgment creditor, as you could be liable for neglect under s 124 of the County Court Act. On the other hand you must be careful not to seize goods which have been proved to be goods of someone else (e.g. subject to a fixed charge). There could be a claim against the court service for seizing goods known not to belong to the debtor. If faced by a debtor with an all assets debenture, you should get the debtor to prove it actually applies to him and that it is current.

You should see what assets there are to seize. If the warrant can be satisfied by items which are not likely to have floating charges such as vehicles, stock and office equipment and then these should be seized. If not, you will have to consider plant and equipment.

Because of the complexity of debentures you should ask advice of your Bailiff Manager or Delivery Manager in dealing with the execution.

### **10.12 Warrant Returns**

It is important that creditors are kept informed of the progress being made on their warrant. To do this you must ensure that you provide full information following any visits made by you on the warrant e.g.

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if the person is not known at the address, state the source of the information.

A bailiff should typically conduct three visits, to the judgment debtor, on different days and at different times as set out in the SOP. Out of hours visits that could maximise the prospect of meeting the judgment debtor and securing payment / levying goods, should be

considered in line with any risk assessment.

If after three attempts the Judgement debtor has not been met, the bailiff must liaise with their Bailiff Manager to consider the prospect of meeting the judgement debtor on further visits.

Please note that when a warrant becomes four weeks old the judgment creditor will expect a payment or an interim return to explain activity taken place so far.

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## **Section 11 – Warrants of delivery**

A warrant of delivery requires you to seize goods specified in the warrant and return them to the Claimant. There are two main types of warrant of delivery:

- Where you seize the goods specified unless the debtor pays the unpaid balance (this is called specific delivery).
- Where you cannot for any reason seize the specified goods you must levy on goods to the assessed value of the specified goods.

The amount of the unpaid balance or the assessed value will be on the warrant form. With both types of warrant the debtor may also have to pay additional amounts for debt, damages and costs, so read them carefully.

Where a warrant of delivery specifies goods which are exempt from levy under section 15 of the Courts and Legal Services Act 1990 you can remove the specified goods.

### **11.1 Notice of appointment**

Use Caseman to produce forms to tell both parties of the date and time of the appointment. The form requests the claimant to tell you or your Bailiff Manager if any particular difficulties are likely to arise when you execute the warrant. It is good practice to hand deliver the defendant's letter and give a minimum of 7 calendar days notice of the appointment. Where possible it is best practice that at least 21 days notice is given.

### **11.2 Bailiff's powers**

When executing a warrant of delivery you have the same powers as for a warrant of execution; the same rights of entry and the same responsibility to refer to your Bailiff Manager before acting in certain

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circumstances. You have the same authority to levy and are bound by the same rules. When the claimant or a representative accompanies you, do not be persuaded to exceed your powers. If necessary request police assistance, they will consider the request on the basis of preventing a breach of the peace while you execute the warrant.

### **11.3 Identification and removal of goods**

Although both forms of delivery warrant instruct you to seize and deliver to the claimant the goods listed, it is not your duty to either identify or physically remove the goods. A delivery warrant is similar to a possession warrant you set a date and time for collection of the goods. The claimant or agent should provide suitable transport for removal of the goods

Be careful when looking for serial numbers or other identifying details, which are in an inaccessible position. To avoid damaging the goods, ask the claimant or their representative to do it.

#### **11.4 Claimant's acknowledgement**

The claimant or representative must sign the warrant to acknowledge receipt of the goods. If any goods listed on the warrant are not removed, record them on the warrant with a note of the reason and ask the claimant or representative to sign the note.

#### **11.5 Caravans and houseboats**

If a warrant of delivery is issued for a caravan or houseboat, you can assume that the court has decided that it is not a residence and can be treated as personal goods. If however, when you arrive to execute the warrant, the debtor has taken up residence in the caravan or houseboat and will not leave, you must refer the matter to your Manager who will then consult with the Judge.

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## **Section 12 – Warrants of possession**

A warrant of possession authorises you to take possession of land or property.

There are two different forms of possession warrant, both of which may instruct you to levy for the payment of rent, mortgage or squatter's arrears or costs. The exact address you are to take possession of is shown inside the warrant. It might be different to the address shown on the outside. Read the form carefully. If you have any difficulties with the correct address contact your office.

Checks to be made upon receipt of possession warrant:

- The warrant has been sealed.
- The address is within your Courts jurisdiction.
- The warrant has not expired – 12 month lifespan.

#### **12.1 Notice of appointment**

Use form EX96 to tell the claimant of the date and time of the appointment to repossess the premises or land. The form requests the claimant to tell you if they expect the eviction will be difficult, but you should make a preliminary visit to check the situation for yourself. The EX96 has a tear-off slip for the claimant to confirm the appointment. The form makes it clear that the appointment must be confirmed by completing and returning the tear off slip, to arrive at the court at least 3 working days before the appointment date otherwise the appointment will be cancelled.

It is the landlord's responsibility to arrange for a locksmith to attend the eviction to secure the premises against re-entry after the eviction has taken place.

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#### **12.2 Preliminary visit**

You must make a preliminary visit to the property or discuss with your Bailiff Manager your reasons for not doing so.

Advantages for visiting are:

- To see the situation for yourself.
- To enable you to carry out the eviction more smoothly and therefore benefit you.

- To find out if there are any tenants in the property.
- To assist with the risk assessment.

You must give the occupants the Notice of Eviction (N54) personally or leave it at the address in an envelope addressed to the occupants by name and “any other occupiers”. This gives them the date and time of the impending eviction; this will also inform them of their rights.

Note – If you visit an eviction address and find problems, withdraw and report back to your Bailiff Manager.

### **12.3 The eviction**

The Notice of Eviction will warn the occupier of the issue of the warrant and your intention to evict – this must be delivered in every case.

Inform your Bailiff Manager if you or the claimant thinks there might be violence or other difficulties when you evict. Your Bailiff Manager may arrange for other Bailiffs to go with you and if necessary, for the police to stand by to prevent a breach of the peace.

The Bailiff will enter the property first. The eviction will have been carried out when all persons have been ejected. The possession warrant covers everyone on the premises.

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You have the authority to evict everyone on the premises. If you find an occupant who would suffer undue hardship if evicted, contact your Bailiff Manager or Delivery Manager for instructions.

You do not have to remove furniture or personal belongings from the property (although you have the authority to do so if you wish).

This is the responsibility of the claimant. The claimant may allow the defendant to remain a short while to clear out personal belongings.

That is the claimant’s decision and you should not wait until that is done before the claimant signs the warrant to acknowledge receipt of the property.

When taking possession of open land you do not need to remove caravans, camping equipment or personal belongings (although you have the authority to do so). This is the responsibility of the claimant. Similarly in the case of livestock or animals their continuous care becomes the responsibility of the claimant.

If you have levied, remove the goods at the eviction.

### **12.4 Use of force by Bailiffs**

A possession warrant gives you the legal right to enter the property and tell the occupants to leave but a possession warrant does NOT give you the legal right to remove occupiers by force or the legal right to break into the property, this entitlement comes from the claimant. But after a Bailiff with a possession warrant has entered a property then the claimant (or their agent) can use reasonable force to remove any occupier who refuses to leave AND the claimant (or their agent) can authorise other people, including Bailiffs and the police, to help if necessary. So if the claimant / claimant’s agent asks you / the police to help remove an occupier then you / the police can use reasonable force to do so on behalf of the claimant. If an occupier refuses to leave when told to do so by a Bailiff with a

possession warrant then that occupier is disobeying a court order and may be committing a criminal offence. This will depend on the circumstances. If an occupant refuses to leave you may use the  
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minimum force necessary to remove them. If you have to use force, have a witness present and do all you can to avoid an allegation of assault. If possible, withdraw and call the police who will stand by to prevent a breach of the peace.

**Do not use or threaten force unless in your judgement you need to do so.** Make sure the claimant / claimant's agent agrees – because you would need their authority to use force. Force is only needed in a minority of evictions. Always encourage the occupier to leave voluntarily. But if in your judgement you need to warn an occupier that they can be physically removed, under the claimant's authority, with the help of the police if necessary and then you are entitled to give that warning.

***If an occupier uses or threatens violence against you, withdraw immediately and get help from the police*** even if that means that an eviction has to be postponed. If there is a known risk of violence or obstruction by an occupier then the claimants should have warned the Delivery Manager or Bailiff Manager, or you may have found out during a preliminary visit. In that case the police should have been asked to attend. The police are better equipped than Bailiffs to deal with the disturbances. They have a legal duty to prevent breaches of the peace. They have the legal power to arrest for criminal offences (such as assault or criminal damage). Like you they are legally entitled to help the landlord use reasonable force to remove an occupier, at the claimant / claimant's agent's request – even if there is no breach of the peace and no criminal offence. But remember that you have no right to tell the police what to do or how they should do it (and nor has the claimant).

It is important that good liaison between Bailiffs, the police, the landlords and local authorities is encouraged and improved to help ensure that evictions are carried out effectively and safely.

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### **12.5 Attendance by the claimant**

The confirmation slip that the claimants return to the court includes this paragraph:

*'I confirm that, I or my agent will attend the appointment(s) on the date shown. Any agent attending on my behalf will have my authority to authorise you (and the police, if necessary) to use reasonable force to carry out the eviction'*

The claimant or their representative must sign the warrant to acknowledge receipt of the premises. If they refuse, note the reason on the warrant and refer it to your Bailiff Manager when you return to the office.

### **12.6 Refusal to leave**

If an occupier refuses to leave when told to do so by a Bailiff with a possession warrant, then that occupier is disobeying a court order and may be committing a criminal offence. This will depend on the circumstances.



If there is aggressive resistance then withdraw and liaise with the police.

If there is passive resistance the Bailiff may use reasonable force when requested by the Claimant, to evict the defendant if the warrant is in form N49.

If the warrant is issued under Order 24 procedure, form N52 or N51 if the defendant resists or obstructs the Bailiff, the Bailiff can arrest the squatter under Section 10 of the Criminal Law Act. A further option for the Claimant is to apply for a committal order.

**Caution** – Have assistance where possible (other Bailiffs or police to prevent breach of the peace only) to avoid allegation of assault.

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### **12.7 Belongings**

The defendant may be allowed a short time to remove valuables, belongings etc. After that it will be the claimant's responsibility.

### **12.8 Securing the premises**

The locksmith should secure the premises. The possession will be carried out when all persons have been evicted.

Proceed to get the warrant signed by the claimant / agent.

The eviction is completed if the persons are ejected. Make a note on the warrant if the claimant refuses to sign.

The Bailiff is the person who executes the warrant. If you are unhappy about a situation at an eviction you have the discretion to withdraw to seek guidance immediately from your Bailiff Manager in the first instance, then the judge. However, it is vital that you inform the claimant of the circumstances. The language you use is essential. You would be deferring / postponing the eviction, NOT suspending it. You have no power to suspend eviction for the claimant – this must be by order of the court.

### **12.9 Common entrance to flats**

The common entrance to flats is similar to the pathway of a house. If you gain peaceful access, you have an implied right to use the common entrance.

Your implied right to use the common entrance can be revoked at any time by a person authorised to do so e.g. one of the tenants, a security guard or a member of staff. This means that if someone appears to have authority to ask you to leave, you must do so.

You cannot break into a common area or push past someone who has authority to ask you to leave.

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The person you are visiting may give you an express right to use the common entrance, which cannot be revoked by a third party. For instance, if you have spoken to the person you are visiting over an entry phone and they invite you in, a third person cannot ask you to leave. You also have an express right to use the common entrance under the terms of a walking possession agreement.

### **12.10 Squatters – Order 24 County Court Rules 1981**

It is technically not illegal to occupy a property until a warrant has been issued.

There may be extra problems with eviction if:

- There are a large numbers of squatters.
- The squatters are well organised.
- The possession warrant covers several buildings.

On receipt of a warrant you should make the checks as previously described.

Squatters are trespassers, a minimum of 24 hours notice must be provided before taking possession of the property.

In all possession claims under CPR 55.5(2) against trespassers (squatters), the defendant(s) must be served with the Form N54 not less than 24 hours before the eviction date.

In all other possession claims the defendant(s) must be served with the Form N54 not less than 7 days before the eviction date.

Where permission to issue a Warrant of Restitution is granted, the defendant(s) must be served with the Form N54 not less than 24 hours before the eviction date.

Do try to gather as much information as possible about squatters; this may involve a discreet visit. Sometimes a preliminary visit is an

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ideal opportunity to talk to the people involved and come to an agreement about leaving.

#### **12.11 Warrant of restitution**

Warrants of restitution are issued when an evicted person re-enters the property. Claimants are required to support the request for the warrant with an affidavit.

Warrants of restitution are issued on form:

- N50 – if the previous warrant was an N49;
- N51 – Squatters if the previous warrant was an N52.

The same rules apply as possession warrants but now trespassers must be given a minimum of 24 hours notice before re-taking possession of the property.

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## **Section 13 – Arrest and warrants of arrest and committal**

Your powers of arrest are limited. This section outlines the circumstances as to when you can make an arrest and what to do.

### **13.1 Arrest for assault and rescue**

Under sections 14 and 92 of the County Court Act 1984 you may arrest, with or without a warrant, any person whom:

- Assaults you whilst carrying out your duties.
- Assaults any officer of the court in the course of their duties such as a Judge, juror or witness.
- Recovers or tries to recover goods you have levied on.

The previous situations give rise to offences that can be dealt with in both the Civil and Criminal Courts and are also covered in section 34 of the County Court Rules.

Arrests of this nature should be used as a last resort response to the situation.

If you arrest someone you must call a Bailiff Manager or CEO to assist you in transporting them to court using a secure cell vehicle (SCV), refer to section 21.15.

If you arrest someone you must take him/her to the court immediately to be taken before a Judge. If you are unable to arrest the person, or if no Judge is available within a reasonable distance, withdraw and report to your Bailiff/Delivery Manager. The person concerned can be summonsed to appear before a Judge at your court or the matter can be reported to the police for criminal charges to be brought. As soon as possible after the incident make a detailed written note of what happened for use at any subsequent hearing and reference to other paperwork.

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### **13.2 Trespassers**

You may arrest a person who deliberately obstructs or resists you while executing a warrant of possession in trespassers' proceedings. This power should be used sparingly and only to prevent a further offence. You should rely on tact and diplomacy, to avoid having to do this. If the police are present, let them make the arrest.

If you do arrest someone in these circumstances you must call another Bailiff or CEO to assist you in transporting them to the nearest police station where statements will be taken. All transportation of prisoners must be undertaken using a secure cell vehicle (SCV)

### **13.3 Committal warrants**

Your job description as a Bailiff includes a responsibility for executing committal warrants, which may entail you arresting an individual and bringing them before a Judge to purge their contempt. You will be present in the court during such hearings and you are required to remain there in the event that the Judge does decide to commit the individual to prison.

A warrant of committal may be issued when a person ignores a court order (e.g. when a debtor repeatedly fails to attend an Order to Attend Court or Attachment of Earnings hearing, or fails to comply with a Judgment Summons). In all of these instances, if the debtor offers to pay the entire debt you should explain that you can accept payment but you must still make the arrest. You should not accept payment of the debt **instead** of making the arrest.

A warrant of committal does not expire after a certain period, like a warrant of execution, which has a life of 1 year.

The committal only expires after the warrant has been executed. It is recommended that after a period of two years the warrant is referred back to the judge to review its appropriateness. At any point

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the order may be referred back to a judge by the Bailiff Manager with a request to consider revoking the order.

Prior to executing a warrant of committal the details must be entered on the DRS and a risk assessment undertaken.

### **13.4 Arrest order (Attachment of Earnings)**

Under section 23 of the Attachment of Earnings Act 1971, if a debtor fails to attend a hearing the Judge may make an arrest order. There are two types of arrest order:

- Where the debtor is to be imprisoned for a maximum of 14 days.

- Where the debtor is to be arrested and taken before a Judge (the order may specify a date and time when this is to be done). When executing an arrest order you should follow the same general procedure as for a committal warrant but there are two differences:
- Under an arrest order you have no power to force entry to premises. If the order specifies a date and time when the debtor is to be taken before a Judge you must conform to this as closely as possible and tell the Judge of any delay.
- Warrants for arrest or committal issue automatically but only in so far as the judge's order provides. Special provisions must be observed in respect to suspended committal orders. For example, (attachment of earnings – maintenance) where committal is suspended by a Judge so long as the debtor attends at a time and place specified, a certificate by the proper officer as to the debtor's failure is sufficient authority for issue of the committal warrant without the judges order. The Bailiff/Manager must satisfy the criteria that the defendant has actually been served personally at any stage of the proceedings. When arresting the defendant, there must be a minimum of two Bailiffs, using a SCV (Secure Cell Vehicle). You must serve the suspended Committal Order on the Defendant which they previously would have been served with.

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**Please Note: most Judges will want to see the Defendant prior to going to prison – check how the Judge would like it done. Ask the Bailiff Manager, the Delivery Manager and Nominated Officer.**

### **13.5 High Court warrants of arrest**

Under section 27 of the Courts Act 1971, a county court Bailiff can act as a deputy to the High Court Tipstaff. A High Court warrant of arrest is executed in the same way as a county court committal warrant.

High Court warrants issued in the Family Division which involve children are called 'find and return orders'. They are dealt with personally by the Tipstaff but you may be asked to help.

### **13.6 Making an arrest**

It is recommended that where possible arrangements should be made with the person for them to attend court voluntarily where they can be arrested by the Bailiff.

If this is not possible then before leaving the office to make an arrest, you must follow the risk assessment procedures and:

- Check the warrant has not been satisfied; if it has refer it to your Bailiff Manager.
- Check you have at least 3 sealed copies of the warrant (one for you, one for the prisoner, and one for the prison).
- Each copy must have an original signature on it from the issuing Judge (**a photocopy of the original signature is not sufficient**), many prisons will not accept a prisoner without a copy of the warrant.

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- Check with your Bailiff Manager, Delivery Manager, or other

senior officer whether the person is to be brought to court before going to prison.

- If the person is not to be brought to court first, check whether you are to take the person direct to prison or make use of existing local arrangements for delivery to the Prison Escort Service, then telephone accordingly to make the appropriate arrangements. There is no contract between the Court Service and the Prison Escort Service to deliver prisoners in civil proceedings; however, arrangements have been made locally by individual courts. Liaise with your Bailiff Manager.

- Another Bailiff must accompany you.

- Use appropriate body armour.

You can arrest a person anywhere within the jurisdiction of your court, but you should try to make the arrest at the address on the warrant. You can arrest a person at any time of the day or night. You cannot arrest a person on a Sunday, Christmas Day or Good Friday unless you have previously got permission from a Judge. Arresting a person at night has its own risks and should be taken into consideration when making a risk assessment.

Before you make an arrest explain clearly to the person who you are and show them your identity card. Tell them why you are arresting them: show them the warrant and explain what it means. Serve the committal order if this has not already been done.

For an arrest to be valid you **must** touch the person to be arrested and say. 'You are under arrest' (or similar words). You do not have to hold on to the person, it is enough for you to touch the person with your fingertips.

*"Arrest consists in the seizure or touching of a person's body with a view to his restraint; words may however amount to an arrest if, in the circumstances of the case, they are calculated to bring, and do bring, to a person's notice that he is under compulsion and he thereafter submits to that compulsion – Alderson v Booth (1962)"*

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You are **not** entitled to carry handcuffs or a truncheon, or any other weapon for your protection. Even if you are attacked you could still be found to have committed an offence if you have any object which could be used as a weapon.

If practicable it is good practice for a Bailiff of the same sex as the prisoner to conduct the arrest.

If the person claims to have paid the judgment debt, still make the arrest. You will have checked for payment before you left the office, and in any event you have no authority not to enforce the warrant. If the person claims to have complied with an order for something other than payment, please exercise caution. If possible, telephone the court office to check the claim before continuing with the arrest. In certain circumstances you may be able to check with the Claimant direct, if you do, note on the warrant the name of the person you spoke to. If in doubt make the arrest.

When you make an arrest you have no power to search the person. You should request the person to turn out their pockets, but you

cannot insist. If you suspect that the person may be armed you should withdraw and seek police assistance to make the arrest. If the person refuses to go with you, try to persuade them. You have the authority to use reasonable force but it is preferable to withdraw and get help from the police.

If the person refuses to go with you because they have to look after children, sick or elderly people, or animals, contact your Bailiff Manager or Delivery Manager for instructions (unless you have previously been instructed to make the arrest in any event). You should try to ensure that a third party knows the whereabouts of the person you have arrested. When you arrive at the court allow the person to make a telephone call or write a note if there is someone who should know his or her whereabouts. If you take the person straight to prison, tell the prison officer that the person has not been able to tell anyone about their arrest and should be

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allowed to make a telephone call. Note the person's name/number and record that you have told the prison officer (you should follow the same procedure if delivering to the Prison Escort Service under any existing local arrangements and should liaise with your Bailiff Manager accordingly).

If at all possible a warrant of arrest should be executed during court hours, as this allows you to bring the prisoner to court immediately if this is the type of order made. You should discuss with the Delivery Manager what, if any, arrangements can be made for the debtor if any early morning arrest is made.

If someone does not understand you or does not speak the language you must contact an interpreter at the earliest opportunity. You must find out if the person already has a solicitor, or if they need to contact one. They must have the opportunity to speak to a solicitor before they see the judge.

If you arrest without a warrant/order, give the reason for arrest and explain that written confirmation will be given at court.

Each situation must then be evaluated and risk assessed on its own individual merits. In cases of uncertainty Bailiff Managers are recommended to seek guidance from a Judge if this is practical. The safety of the individuals and Bailiffs involved is of the utmost priority when making these decisions.

### **13.7 Transportation of person arrested**

Following the introduction of secure cell vehicles (SCVs) by HMCTS all arrest and transportation of prisoners must be undertaken using these vehicles. You **must** only transport a prisoner in a SCV. When a prisoner of the opposite sex to the driver is being transported on a journey expected to exceed one hour the driver should be accompanied by a colleague of the same sex as the prisoner wherever practicable. Prisoners must only ever be conveyed using a

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minimum of two Bailiffs/Civil Enforcement Officers (CEOs) or a combination of both.

To arrange the use of an SCV you should contact the CEO supervisor at your local Magistrates Court.

### 13.8 At the court

A Circuit Judge or District Judge needs to be available, as must a court officer who is able to conduct the questioning. It is vital therefore, that when you are preparing to make an arrest you check with the office. If a judge/staff are not available, then you need to decide when the arrest can be made. Make sure you let the court know that you are attempting to make an arrest and when you expect to be back at the office. The Judge can then be given advance notice and time allocated in his list if he wishes to see the debtor.

If the debtor refuses to be questioned, the court staff will be asked to draw up a committal warrant immediately. The debtor should be detained while the committal warrant is prepared and arrangements made for transport to prison.

When making an arrest you should always prepare a risk assessment and adhere to the health and safety instructions

### 13.9 Escaped prisoners

If whilst in your custody a prisoner resists or runs away, you are not expected to pursue and detain them. In these circumstances your Bailiff Manager must be informed and the police notified as the prisoner is unlawfully at large.

If a person you have arrested escapes (either through the use or threat of violence, or because you were distracted or were unable to detain them for any reason) you do have a legal right to force entry to private premises to recover the prisoner. This right **must only be**

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**used** after a District Judge has given permission, however, forcing entry in these circumstances is not recommended.

Remember to follow the guidelines for arrest in the previous section. In particular make sure you have another Bailiff with you.

### 13.10 Transfer of defendant committed to prison

It would be beneficial to check the name and address of the Prison that deals with the jurisdiction of your Court, for both male and female defendants, in case of any change that may have occurred that you have not been informed about; especially if there has been a substantial amount of time passed since the last arrest and detention in Prison. Your local Area Business Manager will have the relevant up to date information.

If you have arrested a defendant/respondent and they have subsequently been committed to Prison the courts is required to have a safe and secure system in place to transfer them to the prison.

You must ensure that your court has a system set up with your Local Prison Escort Agency. They are duty bound to provide the transport for a prisoner committed in the County Court to Prison. If you are situated in a Combined Court, the system will be relatively easy to set up with the supervising Manager in the cells. If you are situated in a stand alone County Court, then the nearest and most suitable Magistrates Court (i.e. a Court with cells attached) will suffice.

You must obtain the telephone number for the Prison Escort's

control room. This number will be provided for you by the supervising Manager of the Prison Escort Agency. Whilst you are waiting for the Warrant to be typed up you must contact the control room and inform them that you have a prisoner to be couriered to the Prison.

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The Control room will arrange with you, where the Prisoner should be taken to. If the committal is late and the cells at the nearest Magistrates Courts are closed, they may direct you to the nearest, appropriate Police Station but the Control room will ensure your arrival is booked in.

If transportation of the Prisoner is needed i.e. from the County Court to a Magistrates Court/Police Station, you must ensure that a secure cell vehicle (SCV) is used at all times and the prisoner is held in the contained cell. **It is unacceptable to allow the prisoner to sit in the back seat of the SCV.** Please refer to the relevant section in the Operational Guidance Manual.

If you have any difficulties with co-operation from the Prison Escort Agency, please report this to your Delivery Manager. There is a valid contract in operation that ensures the transportation of Prisoners committed in a County Court to Prison.

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## **Section 14 – Levy**

### **14.1 Levy**

To levy is to take into custody the debtor's goods to satisfy an order or a judgment debt. This does not mean you have to take the goods away immediately, but you should have walking possession wherever possible. To levy you must enter the premises where the goods are kept, unless the goods are brought out to you. You cannot levy by looking at an item from the doorstep or through a window.

### **14.2 Levy process**

#### **First visit**

The warrant is levied – Bailiff keeps the levy notice with the warrant. Failure to levy at the first successful opportunity may result in a complaint being lodged with the resident District Judge of the court that neglect, connivance or omission has aggrieved the party making the complaint. If the District Judge upholds the complaint they shall order the person responsible, namely the Bailiff, to pay such damages not exceeding the sum of the Warrant (County Court Act 121 Section 124).

#### **Second visit**

The Bailiff chases the payment and checks that the levied goods are still there.

#### **Third visit**

The Bailiff delivers the final notice, requests payment, warns of the impending collection of the goods and informs the debtor of the approximate amount of costs that maybe added if further action is required. The Bailiff should now discuss with the Bailiff Manager on transportation issues regarding the levied goods, if necessary.



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Authorisation must be given by the Bailiff Manager for any transportation. You need to consider whether the removal cost will exceed the likely net proceeds of sale. It is imperative as well as good customer service to inform the Claimant of the possibility that the sale will not cover the costs of removal. This option must not be used in order to avoid removing goods and getting permission from the Claimant to withdraw the Warrant, thus saving a No Goods return.

If there is no realistic prospect of any removed assets covering costs then there is no requirement to remove or likewise no requirement whatsoever to contact the Claimant i.e. a defendant has no assets of any value and the Bailiff has no option other than to return the warrant No Goods – code 119. The claimant is not required by law to provide an indemnity. If you are unsure of the value and costs incurred by removal, you should contact the auctioneer for a value of the goods and an estimate of costs. If it is unlikely to cover all costs, then the warrant should be classed as no effects.

### **14.3 Value of goods**

You should familiarise yourself with current auction room values by making visits so that you can establish the amount an article is likely to realise if sold. Most courts will have their own list of auctioneers (see your Bailiff Manager).

You should be aware of the type and quality of goods which are exempt and the special requirements for electrical goods (e.g. all electrical goods will be subject to a Portable Appliance Test (P.A.T) prior to going on sale.).

You must not levy on goods which are worth more than the value of the warrant required and the costs of removal unless they are the only goods available or visible. If the defendant objects to the levy under these conditions, invite them to provide suitable assets for levying. If they are unable to do so, continue with the levy.

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If you are unable to estimate the value of certain items (e.g. works of art, specialist equipment), levy and immediately tell your Bailiff Manager. Your Bailiff Manager will arrange for a professional appraisal.

Once you have levied, the goods are in the custody of the court and the debtor may not dispose of them. It is important that you explain this to the debtor (or whoever is present when you levy).

You must leave a levy slip with the debtor or a responsible person on the premises. In the absence of the debtor or a responsible person, leave the levy notice displayed prominently inside the premises. It is unacceptable to write "household goods" on the levy slip. The goods must be described on the levy slip and very importantly dated.

### **14.4 Walking possession**

Walking possession is an alternative to close possession, the practice of leaving a person on the debtor's premises to look after the goods. It is one way in which the debtor acknowledges that you

have made a valid levy, which continues to be in force. The agreement does not affect the validity of the levy but it is the simplest method of ensuring that the debtor is aware of the levy and its effect. If a debtor refuses to sign an agreement, you should immediately notify your Bailiff Manager to consider whether urgent arrangements are to be made to remove the goods.

A walking possession agreement must be signed after you have levied on goods but it does not have to be signed at the same time as the levy. The walking possession agreement must identify the goods it covers: it is not sufficient to put 'all the good levied on', 'all the goods on the premises' or any other non-specific description. The agreement must be dated.

Where there is no alternative, it is possible for you to leave a walking possession form with the debtor or the debtor's representative for completion and return later: however, the  
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circumstances in which this happens will be very rare. When this is done you should contact the debtor regularly to remind them of the levy and to ensure the agreement reached i.e. payment plans are adhered to and in order. If you fail to do this it may not be possible to establish that the levy continues to be in force.

#### **14.5 Goods subject to prior levy**

Goods subject to a prior levy by either private and/or certificated Bailiffs does not bar those goods identified for removal. If the Bailiff is satisfied the charge has not crystallised i.e. the creditor (private Bailiff) is not in the process of removing but is holding the goods and accepting payment of their debt, then the Bailiff can remove the levied goods.

#### **14.6 Rescue of goods**

Anybody who rescues (takes) or tries to rescue goods on which you have levied is liable to a fine or imprisonment (or both).

If you catch somebody in the act of rescuing goods you may arrest them and immediately take them before a judge. Your authority to do this is contained in section 92 of the County Courts Act 1984.

Remember: the Health & Safety (See Section 21) recommendations as you may be on your own and unable to get immediate support.

If you do not witness the rescue, or if no judge is available within a reasonable distance, do not arrest the person. Report the matter immediately to your Bailiff Manager or Delivery Manager who may wish to bring the matter to the District Judge's attention. Make sure that whether or not you see the rescue, make a full report of what has taken place.

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#### **14.7 Powers of entry to remove goods**

Bailiffs do have the power to force entry to properties but:

- **You must get permission from a District Judge** to break into business premises if the debtor's goods are inside and providing no living accommodation is attached.

- **You must get permission from a District Judge** to break into the home of a third party if you have proof that the debtor's goods are there.

· After you have levied you may break into the premises to remove the goods, if the debtor is not at the premises, **but you must first get permission from a District Judge.**

Before forced entry is used you must obtain authorisation from your Bailiff Manager who will seek specific directions from a District Judge. It is of paramount importance that an Order giving permission to the Bailiff to force entry is obtained. Although the County Courts Act (CCA 87.2) states that the Bailiff may be allowed to re-enter at any time with force if necessary, (CCA 87.3) states that the Bailiff must prove deliberate intention to exclude a Bailiff from entering lawfully before entry can be forced.

There are several criteria that the Bailiff will need to ensure is reached. Firstly it is essential to establish that the levy is still valid and has not been abandoned or allowed to lapse. Usually a properly completed and signed walking possession agreement, arrangements should have been made to inspect the goods at frequent intervals, daily if possible. The Warrant must be updated with dates and times of calls and of any subsequent agreements with the defendant as this will form the evidence of regular visits. If this is not done and legal action follows (either against the debtor for rescue or against the court for damages), a court may find that the levy has been abandoned. This could lead to a compensation claim. Secondly the Bailiff must ensure the owner of the levied goods is aware of the walking possession agreement and the intention to remove the goods.

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Caution must be used when forcing entry and it should only be done as a last resort. The amount of force has to be kept to the minimum and unnecessary damage must be avoided. As with evictions, a professional locksmith should be present. The Court should arrange this as part of the process of removing the goods and ensure the cost of the locksmith is factored into the overall removal process. If there is someone inside the premises, it may be preferable to call the police before forcing entry so they can stand by to prevent a breach of peace.

You must make sure that the premises are secure before you leave and that a full list (inventory) of the goods removed is left on the premises.

Once you have entered a debtor's home or business premises to levy you may use force to break open internal doors and cupboards, but try to cause the least possible damage.

#### **14.8 Exemption from levy**

Under section 15 of the Court and Legal Services Act 1990 you cannot levy on:

- Tools, books, vehicles and other items of equipment as are necessary to the debtor for use personally in a job or business;
- Clothing, bedding, furniture, household equipment and provisions as are necessary to satisfy the basic domestic needs of the debtor and the debtor's family.

The National Standards for Enforcement Agents also states that:

- Enforcement agents should not remove anything clearly

identifiable as an item belonging to, or for the exclusive use of a child (person under the age of 16).

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The definition is worded in broad terms, without any monetary limit. It allows you to exercise your discretion to ensure a proper balance between the interests of the debtor and the debtor's family, and the interests of the creditor.

The following descriptions will help you to decide if items should be levied on:

- Consider an item necessary if it is so essential that without it there would be no way for the debtor to continue an existing job or business. Put simply, you cannot effectively close down a debtor's business;
- to allow the debtor to keep a motor vehicle as a necessary item should be the exception, not the rule. The debtor must satisfy you that it is necessary in order to continue an existing job or business. It is not exempt just because it is needed to travel to and from work; you must be satisfied that no reasonable alternative is available;
- you should not consider items such as; stereo equipment, video / DVD player, microwave oven (where there is also a conventional cooker) to be essential.

If the debtor disputes your decision, levy and refer the matter to your Bailiff Manager. Your Bailiff Manager may consult the Delivery Manager or District Judge, if necessary.

Limited Companies are not exempt from assets that cannot be levied upon, save for those assets specifically named in a debenture or subject to Hire Purchase or Lease agreements.

#### **14.9 Claims to goods - interpleader proceedings**

A debtor may claim you have levied on goods that are exempt, or a third party may claim to own the goods. A written claim must be made at the court where the warrant is being executed immediately. These claims are called interpleader proceedings. The claim does not have to be worded in a particular way, but it must state precisely which goods are claimed and why.

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If the goods have not been sold, the sale may be postponed until after the claim has been heard. If they are being kept at a salesroom they will be incurring storage charges. Tell your Bailiff Manager immediately.

It may take some time before a claim is heard by a district judge. Where the goods have not already been removed, make periodic checks that they are being kept safely by the debtor. If they have been removed but not sold, check they are stored safely.

If another member of the debtor's family, or anybody else, claims to own the goods on which you are levying, ask for proof of ownership. If you are not satisfied the goods do not belong to the debtor, levy and explain to the other person how to make a written claim. Try to get a walking possession agreement; if you cannot you should tell your Bailiff Manager.

The debtor may claim the goods belong to somebody else, but not

tell you whom. You must levy and explain that it is the debtor's responsibility to tell the alleged owner of the goods, and of the need to make a written claim urgently. Try to get a walking possession agreement. If you cannot you should tell your Bailiff Manager who may wish to arrange for the goods to be removed quickly.

If the debtor claims the goods have already been sold before you levy, or are the subject of a Deed of Arrangement, Bill of Sale or Insolvency Proceedings, ask for proof. Unless you see proof, levy and suggest that the debtor make a written claim and tell your Bailiff Manager.

You may levy on goods jointly owned by the debtor and another person. You should ask the joint owner to make a written claim if he is to hand the claim should say what percentage of the goods is claimed and the basis for the claim.

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If you get a written claim for the goods:

- Note on it the date and the time you received it.
- Note details of the claim on the warrant and Daily Record Sheet;
- Pass the claim to the office staff with the Daily Record Sheet.

#### **14.10 Credit agreements and hired goods**

You cannot levy on goods that the debtor is hiring or renting from another person. You cannot levy on goods that the debtor has hired or rented to another person. Ask for proof of ownership and if in doubt, levy and invite the debtor to make a written claim. You can levy on goods, which have been purchased with any of the following:

- Personal loans (e.g. bank loan, finance company loan).
- Credit cards (e.g. MasterCard or Visa).
- Mail order accounts.
- Budget or option accounts (e.g. Storecards).

If you are told that goods are on 'HP' it does not necessarily mean they have been brought under a traditional hire purchase agreement. There are several types of credit purchase agreements, which are as follows:

- Hire purchase agreements - an agreement under which the items can be seized and sold where their auction value after deduction of sale, storage and transport costs exceeds the value owed under the agreement and that the court settles the agreement from the proceeds of sale before allocating payment against a warrant;
- conditional sale agreement - an agreement where the purchase price of goods (or land) is payable by instalments. The items can be seized and sold where their auction value after deduction of sale, storage and transport costs exceeds the value owed under the agreement and that the court settles the agreement from the proceeds of sale before allocating payment against a warrant;

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- credit sale agreement - an agreement under which the purchase price (or part) is payable by instalments. The purchaser owns the goods as soon as the agreement is signed. You can levy on these goods.

HP Information plc (HPI) keeps information on goods purchased on hire purchase and similar credit schemes. At the first opportunity you must levy on goods, but check with HPI before trying to remove the following items:

- Motor vehicles;
- agricultural machinery;
- caravans;
- public works plant;
- aircraft;
- motor boats;
- houseboats.

HPI cannot trace details of tractors, agricultural machinery, caravans etc without the serial or chassis number

An enquiry to HPI is made by telephone (number given below). You can make an online enquiry which is cheaper (link below), but, to remove a car a DVLA check via Shercar and then a finance check is required. Before making the enquiry familiarise yourself with your court's code number and password and have to hand the chart giving the 'call signs' to be used when reading over registration numbers. You should not carry a written note of the code and password. These are confidential.

HPI does not keep a record of the type of credit agreement but they will give you the name and telephone number of the credit company and the agreement number. Make a written note on the warrant of each enquiry, including the date, the registration or serial number, and the result of the enquiry. Initial each record.

Each week HPI will send to the court confirmation of all enquiries made that week.

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HPI enquiry line: 01722 412 888

User ID and password to access the information via computer is required. Please discuss how to use the link with your Bailiff Manager or Delivery Manager. [www.hpi.co.uk/tradeweb/](http://www.hpi.co.uk/tradeweb/)

#### **14.11 Claim for rent**

Under section 102 of the County Courts Act 1984, a landlord is entitled to claim arrears of rent for a property where you have levied. The landlord must make the claim within 5 days of the levy, or at any time before you remove the goods. The claim must be in writing and state:

- The amount of arrears.
- The period over which the arrears have accrued.

If you receive a claim refer it to your Bailiff Manager immediately.

You should then make an additional levy from the amount of arrears. You cannot remove the goods for 5 days after the hearing date.

#### **14.12 A fixed charge/floating charge**

A charge secures one person's legal interest in other persons goods. It is usually security against a loan. There are two types of charge:

- A fixed charge;
- a floating charge.

A fixed charge is against specific goods and a floating charge is against goods that the owner can sell on condition they are replaced (e.g. stock kept in a shop or factory).

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Ask for proof of the charge and note the warrant with the details (including the name and address of the person who holds the charge). You must levy on the goods if you do not see any proof, or if you have any doubts about the validity of the charge invite the debtor to make a written claim. In all cases refer the warrant to your Bailiff Manager. Do not remove the goods without prior discussion and agreement of a District Judge.

If you remove goods because the debtor has failed to make a written claim, you should notify the person who is said to have the charge, giving them an opportunity to make a written claim.

If the charge is 'discharged' (cancelled), the goods may be removed and sold in the normal way. You should, therefore, periodically check with the debtor that the charge is still in force.

#### **14.13 Motor vehicles**

Before removing a motor vehicle you must confirm its registered keeper with the Driver Vehicle Licensing Authority (DVLA).

Remember that the registered keeper may not be the true owner.

Remember also, the debtor may claim to own the vehicle and be content for you to remove it, but it may only be loaned or leased.

You should levy at the first opportunity on motor vehicles including tractors, agricultural machinery, and caravans, as well as cars, vans motor cycles, etc. Do not clamp the vehicle. Before removal, telephone HP Information plc (HPI) to check if the vehicle is subject to a credit agreement.

To obtaining information on who is the registered keeper with the DVLA please use [www.shercar.net](http://www.shercar.net) to provide you with electronic access to the DVLA database of registered vehicle keeper. The information to be provided is restricted to vehicle records and is provided to County Court Bailiffs and Magistrates Courts Fines Officers for the following purposes:

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· Where a County Court Bailiff or Magistrates Courts Approved Enforcement agent has seized the vehicle by the powers of the Court or.

· By order of the court; and where the information requested for those purposes is necessary to execute legal proceedings on command of the Courts for the recovery of money by seizure and sale of goods.

You will need to quote your Court username and password. It is important to note that the supplier takes all reasonable steps to ensure the security, privacy and safety of any subscriber data held as part of the contract and appropriate safeguards are in place. Every check must have the relevant process number included i.e. Warrant or Claim Number. Furthermore we cannot use this system to sweep for a defendant's vehicle in a car park where there are multiple vehicles etc.

Alternatively where the information is not available via Shercar you

can write to the DVLA using form VQ4 (Non-fee paying enquires) and they carry out the search and write back to you.

Try to get the registration document and keys from the debtor or a responsible person. When you remove a vehicle, have a witness to check with you the items inside the vehicle and either levy on them or return them. You must only use companies who are properly qualified and insured to remove vehicles. The removal, storage and sale of a motor vehicle can be expensive so be sure this cost will be covered in addition to the warrant before you act.

You can remove a vehicle without the logbook V5 or keys. The auction rooms will accept the vehicle to be sold without the logbook. You should not levy on an imported vehicle, as you may not be able to establish who the registered owner is. Unless the registered owner's details can be traced via DVLA or some sort of check carried out from the chassis number, no levy should take place especially if the vehicle is not worth removing.

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The Department is not registered under the Private Security Industry Act 2001 to enable the use of Wheel Clamps.

#### **14.14 Animals**

When levying on animals ensure that they are the property of the debtor and in a fit state for sale. The Bailiff Manager or Delivery Manager must be told so that satisfactory arrangements can be made in advance for their safekeeping between removal and sale. Check whether the movement of livestock in your area is restricted for any reason. Avoid farm premises during outbreaks of Anthrax, Foot and Mouth Disease, or Swine Fever. Seek advice from the local police, from the DEFRA website.

#### **14.15 Crops**

Crops may be secured against a loan and you should check this possibility with the debtor. After levying, tell your Bailiff Manager who may wish to ensure that a sale takes place within 5 days if the crops are perishable.

#### **14.16 Caravans**

You cannot levy on caravans, which are used as a permanent home. If you are in doubt contact the Bailiff Manager for guidance. You may also levy and invite the debtor to make a written claim that it is his/her place of residence.

If the caravan is occasionally used as a home (e.g. during holidays) you cannot levy on it while somebody is living there. If it is used for storage you can levy on it as you would any other goods.

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#### **14.17 Computers**

A computer has little value unless all the operating systems, cables, and instruction books are with it. You may need to get the licence for the software from the debtor; you should try to do this. You must be satisfied that the computer levied on is not 'necessary to the business' i.e. "tools of the trade" and therefore exempt from levy. Computers that belong to a limited company or corporation are not exempt from levy not even if they are tools of the trade.

Before you seize the computer, the debtor should be invited to save



any information that is on the hard drive before the goods are removed. This relates to information, not the programmes by which the computer operates. The debtor should delete all information before the goods are removed.

You should tell the debtor what you are going to do, including information on the costs. If the debtor will not assist, a specialist computer firm should be asked to take the necessary action. The cost of work will be the debtors but you must first consider whether the cost will outweigh the value of the goods.

#### **14.18 Firearms**

If you are offered or locate firearms which the debtor is entitled to have you can remove them **IF IT IS SAFE FOR YOU TO DO SO**. If you discover firearms that you think may be illegal, do not move them but immediately call the police. Some firearms can be legally held if the owner has a current firearms certificate, but others cannot be owned under any circumstances e.g. heavy armaments such as machine-guns and some shotguns.

Report to the police any ammunition you find, unless there is a good reason for it being there.

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#### **14.19 Gaming machines**

You can levy on gaming machines but before you remove them you should confirm the auctioneer holds a certificate or permit issued by the Gaming Board allowing them to be sold.

#### **14.20 Alcohol**

You may levy on alcohol but first check that it is of a suitable purity and standard for sale (e.g. not home-brewed). Before removing it confirm the auctioneer has a licence to sell alcohol.

#### **14.21 Body search**

You may levy on personal items, which the debtor is carrying or wearing (e.g. jewellery). You have no legal rights to search the debtor for any items of value.

#### **14.22 High Court Enforcement Officer in possession**

If you learn that a High Court Enforcement Officer or other debt enforcement officer has already levied on the debtor's goods you must:

- Levy (to protect the creditor's interest).
- Report to your Bailiff Manager.

As soon as possible, you or your manager should telephone the under sheriff or sheriff's officer to give notice of the county court warrant and find out who holds the prior warrant by checking the date of issue. The priority of a sheriff's warrant is decided by the date and time the Writ of Fi Fa is received by the under sheriff. If the county court warrant has priority, and the sheriff's officer has not removed the goods, you should continue to enforce the warrant.

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If the county court warrant has priority but the sheriff's officer has removed the goods, you need to discuss with your Bailiff Manager to consider referring it to the District Judge.

Where the sheriff's officer holds the prior warrant, the county court warrant and any correspondence about it should be sent to the

under sheriff with form EX95. Keep a copy of the warrant and correspondence in case of any enquiries, and to check that a reply is received from the under sheriff. The sheriff's officer will try to execute the county court warrant.

Whoever holds the prior warrant should either remove the goods, or withdraw. They should not delay the execution by accepting payment by instalments. It is for the debtor to make an application to the courts involved, or come to an agreement with the creditors.

If you are asked to show the warrant you hold you must show it: this is required under section 104 of the County Courts Act 1984.

Equally you should check the warrant held by the Sheriff / Enforcement Officer, record the information you discover on your warrant.

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## **Section 15 – Removal of goods**

### **15.1 Removal of goods for sale**

When you have levied on goods you will need to make arrangements to have the goods removed from the premises. If the goods cannot safely fit in the boot of your car arrangements will need to be made with a van company for a van. Each court should have their own list of van companies that they use regularly.

Before you remove goods this should be agreed between you and your Bailiff Manager and if you are carrying out the removal of goods yourself you should be aware of the risks involved with lifting the removed goods and the storage of the removed goods.

When you have removed the goods, the goods will be sold at auction. Each court should have a list of auction rooms that are used regularly.

Remember: goods should only be removed if you have no chance of or have difficulty obtaining cash from the debtor.

### **15.2 Preparation**

Those warrants that are identified fit for removal of goods should be kept separate and entered on the van run sheet. Each van run sheet should be numbered sequentially by the Bailiff Manager and initially retained by him/her.

There is no recommendation as to the number of warrants that can be taken out on a run, but it is advisable to be sure, as to which warrants will ultimately produce goods of saleable value. The priority must be to ascertain those that will provide a positive result.

Once a number of warrants appear on the van run sheet, the Bailiff Manager will ensure in each case that a final notice of removal is sent to each debtor in advance of a removal visit. It is recommended

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that one weeks notice be given to each debtor in advance of each van run job.

Following the dispatch of the final notice, the Bailiff Manager will by the seventh day have determined which warrants will form the final list for the van run and which will have dropped out. Those left will be warrants that will be effective, that is warrants that will produce

payment at the doorstep or access to goods for removal to auction. This will be further individually checked by the office staff to ensure that there are no outstanding applications. The van will have been booked for use after the seventh day.

### **15.3 Removal – van run procedure**

The calls in respect of each warrant should produce any one of the following:

- Payment of warrant sum and a proportion of the van hire charge.
- Goods removed and taken to auction.
- No payment and no goods removed this can be avoided with proper pre-van run checks.
- Any other return that does not produce either goods or payment, such as no there being no assets worthy of removal, or assets with little to no value in any event and peaceful entry refused. If goods that have been levied on have been removed this is an offence and should be brought to the attention of your Bailiff Manager.

Following completion of the van run, all warrants should be returned to the court office and handed immediately with the van sheet to the cash section Manager together with:

- All Allpay receipts or other payments e.g. cheques in respect of each warrant.
- All details of any goods removed in respect of each warrant by way of copy inventory as handed to auctioneers.

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- A record of what took place.
  - Time spent on each warrant rounded to the nearest half hour.
- The office will then check the warrants against the van run sheet to ensure that the necessary paperwork is to hand. The warrants will be retained until conclusion of dispersal of monies.

### **15.4 Removal of goods**

When you remove goods, list every item on an inventory (you will need an original and 4 copies) using form N332. Attach the inventory to the warrant and give a copy to the debtor or responsible person present. If nobody is present, display a copy in a prominent place inside the premises. Give three copies of the inventory to the haulier: one for their own records, one to attach to their invoice, and one to pass to the auctioneer.

### **15.5 Removal from business premises**

When removing goods from business premises, try to find out the VAT number and note it on the inventory. This will enable the goods to be advertised as either inclusive or exclusive of VAT.

In instances where this has not been investigated there is a real danger that the debtor will ask the court to repay the VAT element.

### **15.6 Transportation of goods**

When you remove goods you are responsible for keeping them safe. If you use your own car and have to leave it unattended, you must ensure the goods are not in easy reach. It is not appropriate to leave them in the car passenger area even if they are concealed in some way. Put them in the boot and ensure all locks are activated.

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### **15.7 Storage of goods**

Goods seized must be kept in a safe place until sale. Often this will be with an auctioneer, but it can be in any place or with any person the district judge considers suitable. Your Bailiff Manager will ensure that the auctioneer has adequate insurance for the transportation and storage of the goods removed.

### **15.8 Sale of goods**

Goods are normally sold at a public auction. When you have levied on a specialist item (e.g. a work of art), tell your Bailiff Manager who will arrange for the item to be sold in an appropriate auction if applicable.

A District Judge can authorise the private sale of goods, or sale by tender, where they are of limited interest or specific importance to certain people (e.g. specialist equipment – cameras etc).

With the debtor's permission, a district judge can authorise the sale of goods at the debtor's premises if it is not practical to remove them to the sale room. This will avoid the cost of removal and so reduce the amount to be recovered under the warrant.

Goods (except perishable goods) should not normally be sold within 6 days of their removal since the debtor must be given at least 4 days notice of the sale. The debtor can make a written request to the court for goods to be sold more quickly, by making an application to a judge.

### **15.9 Removal firms and auctioneers**

The County Courts Act 1984 Sections 90, 94 & 95 sets out a requirement for the removal firms and auctioneers to be appointed by the District Judge and such appointments to be reviewed from time to time.

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These firms can apply to the court supplying details of their charges and current insurance so that a decision can be made as to who will be appointed. The decision on which firm to use should be formally made by a panel of managers based upon the details and charges provided.

Following appointment, a list will be displayed in the court office detailing the names and addresses of appointed firms. The list will be reviewed annually and certainly prior to expiry of any insurance certificates.

It should be the intention of each Delivery Manager in consultation with the Bailiff Manager to rotate the providers. However it is accepted that this will not always be feasible due to a lack of firms who can carry out this work in a cost-effective manner and who can be relied upon in terms of flexibility and professionalism. If it is the intention of courts to use a firm on a regular basis over any length of time then certain ground rules should apply:

- The Bailiffs who undertake the van runs should be rotated on a regular basis so that there is some resemblance of separation of duties to protect them and the firm from any over familiarity.
- There should be prompt production of charges sent by the firm following each job in accordance with the suggested timetable set out in the best practice document, i.e. within days of

transport usually within 28 days of auction.

Under no circumstances are payments to be made from any proceeds on the doorstep as a result of portage undertaken by the firms used. The official invoice will detail all work that has been undertaken to be settled by the Cash Section Band D.

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## **Section 16 – Warrants against organisations**

### **16.1 Businesses**

When a warrant is against a person described as trading under a name other than their own (e.g. 'B' Brown trading as High Street Florists') you may levy on any of the debtor's personal or business goods at the address or addresses in the warrant. Under section 15 of the Courts and Legal Services Act 1990 you cannot levy to the extent that you will prevent the debtor from carrying on their business or remove certain assets that are covered by section 15 at the home address.

### **16.2 Firms**

When a warrant is issued against a firm (e.g. 'Brown & Co (a firm)') you may levy on any property of that firm, even if one of the partners is a minor. If the address falls within the jurisdiction of the Court you may attend that address.

### **16.3 Limited companies**

You can levy on all goods owned by a limited company (including a public limited company) at any place of business within the jurisdiction of the court. **No goods owned by a company are exempt from levy.**

A Limited Company cannot trade if they are insolvent, therefore you can remove any asset that the Bailiff feels will pay the Warrant and the costs of doing so. It is irrelevant if this forces the Limited Company to cease trading, or the Managing Director complains that the removal of an asset will render the business helpless. This includes the company's vehicles, machinery, stock, goods, and fittings.

You cannot levy against goods owned personally by the directors, officers, or employees. You cannot levy on goods owned by another

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company at the same address (this is especially important if the address on the warrant is the registered office, which is a solicitor or accountant's office).

When attending the trading address of a Limited Company, it would be beneficial to check the company's public liability insurance certificate that MUST be readily on display in a public area. This will aid the Bailiff in providing information on which Limited Company is trading at that address and the complete, accurate title of the Company. This is important if the Claimant has not sued the correct Company or supplied the Bailiff with a wrongly titled Company on the Warrant as the Bailiff will be unable to proceed.

It is vitally important that a levy is made during the first visit as most claims arising out of Section 124 of the County Court Act 1984

involves Limited Companies.

By contacting the judgment debtor prior to attending the property you may be able to secure payment without travelling to the property, resulting in significant cost savings for HMCTS and saving the judgment debtor the embarrassment of a visit from a Court Bailiff. Securing early payment via the telephone also ensures a reduction in the volume of administrative tasks completed by the Bailiff.

If you cannot obtain such details from the judgment creditor you can use search engines such as the online BT Phonebook and Companies House Records.

Search Engines: BT Phonebook Online and Companies House

Search Engines can be accessed via the links below:

<http://www.companieshouse.gov.uk/>

<http://www.thephonebook.bt.com/publisha.content/en/search/residential/search.publisha>

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#### **16.4 Corporations**

If a warrant is issued against a corporation or a local authority you can levy on any goods owned by the organisation.

#### **16.5 Clubs**

There are three basic types of clubs (including working men's clubs):

- Members' clubs: - where the property and funds of the club belongs to all the members in equal shares.
- Proprietary clubs, where the property and funds belong to the proprietor clubs which are a limited company.
- A club, which is a limited company, should be treated as any other limited company.

Before trying to levy, you should establish which type of club it is. If someone objects to your levy at a member's club, note the nature of the objection and the name of the person objecting on the warrant, then withdraw. Refer the warrant to your Bailiff Manager immediately to get advice. It may be that a District Judge needs to be consulted. If someone objects at a proprietary club, levy and invite the proprietor (or whoever objected) to make a written claim.

#### **16.6 Farms**

Farm stock, crops, etc, may be security against a bank or other loan. Before you execute a warrant against a farmer refer the matter to your Bailiff Manager to get advice.

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### **Section 17 – Other types of debt enforcement officer**

There are four other types of debt enforcement officers or Bailiffs as they are also often called. This section gives a brief description of each in case you meet them in the course of your duties.

#### **17.1 High Court Enforcement Officers**

High Court Enforcement Officers (HCEOs) are appointed on behalf of the Lord Chancellor and are responsible for enforcing High Court

orders and those county court orders that have been transferred to the High Court. They are instructed by creditors in the same way as you are. Complaints from the public concerning HCEOs should be to the firm the enforcement officer works for or to the High Court Enforcement Officers Association to which all HCEOs must belong. More details can be found at [www.hceo.org.uk](http://www.hceo.org.uk)

### **17.2 Certificated Bailiffs**

Certificated Bailiffs (sometimes called 'certified Bailiffs') hold a certificate issued by a circuit judge authorising them to levy distress for rent. Each county court must display on a public notice board a list of all the certificated Bailiffs who have certificates issued by that court. A central Register of Certificated Bailiffs and High Court Enforcement Officers are kept by the Enforcement Team in HMCTS centre and are available on line at:

<http://certificatedBailiffs.justice.gov.uk/CertificatedBailiffs/>

A complaint about a certificated Bailiff should be made to a circuit judge at the county court where the certificate was issued. The judge may order the certificated Bailiff to appear in court and give an account of their actions; the judge can cancel the certificate if they consider the Bailiff unfit to hold it.

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### **17.3 Government Debt Enforcement Officers**

Government debt enforcement officers are employed by among others, HM Revenue and Customs. In certain circumstances they can levy and remove goods. Complaints about them are made to their employers.

### **17.4 'Private' Bailiffs**

Private Bailiffs are hired or employed by the creditor and complaints about them should be addressed to the creditor.

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## **Section 18 – The Human Rights Act – information to support civil committal process**

### **18.1 The Human Rights Act**

Within the Human Rights Act there are eight Articles that affect the role of the Bailiff, Tipstaff and Civil Enforcement Officers.

- Article 3 – Freedom from torture or degrading treatment
- Article 5 – Right to Liberty
- Article 6 – Right to a fair trial
- Article 7 – No Punishment without Law
- Article 8 – Right to respect for private and family life
- Article 9 – Freedom of thought, conscience and religion
- Article 14 – Prohibition of Discrimination
- First Protocol – Article 1 – Protection of Property.

### **18.2 Article 3 – Freedom from torture or degrading treatment**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### **18.3 Article 5 – Right to liberty and security**

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- The lawful detention of a person after conviction by a competent court.
- The lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law.
- The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on a reasonable suspicion of having committed an offence or

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when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

- The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority.
- The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound minds, alcoholics or drug addicts or vagrants.
- The lawful arrest and detention of a person to prevent his affecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a Judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

#### **18.4 Article 6 – Right to fair trial**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and

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impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed



innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

- To be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him.
- To have adequate time and facilities for the preparation of his defence.
- To defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.
- To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.
- To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### **18.5 Article 7 – No punishment without law**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one

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that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person or any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

#### **18.6 Article 8 – Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### **18.7 Article 9 – Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

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### **18.8 Article 14 – Prohibition of discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

### **18.9 First Protocol – Article 1 – Protection of property**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. Every Bailiff and Tipstaff has a duty not to contravene each Act.

### **18.10 Possible contraventions of the Act**

- Article 3 – Someone arrested may feel that treatment received whilst being detained infringes this right.
- Article 5 – Fails to carry out a valid arrest in accordance with requirements. Actions may compromise proceedings. (See section (2) under “Arrest Procedure)
- Article 6 – Fails to ask defendant if they require legal assistance. Interpreter if they cannot understand / speak the language.
- Article 7 – Invalid warrant.
- Article 8 – Releasing unnecessary information about your business to someone not involved. Possible breach of confidentiality.
- Article 9 – Removing items relating to a persons religion.
- Article 14 – NO ACTION contravening this Article.

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- First Protocol – Invalid Levy. Levies but debt is paid. Removes goods knowing they do not belong to the debtor.

A defendant can complain if:

- The Bailiff has levied illegally – They have levied on goods which cannot be seized;
- the Bailiff has levied irregularly – The correct goods have been seized, but the procedures followed were not correct e.g. the Bailiff sells your goods after the defendant had paid the debt;
- the Bailiffs behaviour has been unduly aggressive rude/threatening.

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## **Section 19 - Data Protection Act 1998**

All HMCTS employees have to complete mandatory training on Information assurance. This section gives a brief overview of the Data Protection Act in support of the training received.

HMCTS handles personal information entrusted to us by witnesses, claimants, defendants, offenders, the public, other government departments, our partners and our own staff.

Organisations that handle personal data are obliged to comply with

the eight principles of the Data Protection Act 1998. These state that information must be:

- Fairly and lawfully processed.
- Processed for limited purposes.
- Adequate, relevant and not excessive.
- Accurate.
- Kept no longer than necessary.
- Processed in accordance with individuals' rights.
- Kept secure.
- Not transferred to countries outside the European Economic Area without adequate protection.

The Act also gives individuals the right to access the information we hold about them. This is called the right to "subject access" and requests are known as "subject-access requests" or SARs.

The Data Protection Act relates purely to personal information about living individuals who can be identified from information that is either in the possession of, or likely to come into the possession of, a "data controller". In most cases this will be HMCTS but some arms-length bodies may be data controllers in their own right.

It covers not only factual information about an individual, such as their name, address and date of birth, but also expressions of opinion about or intention towards them.

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The processing of personal data includes obtaining, recording, holding or carrying out any operation on the data.

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## **Section 20 – Procedural guidance for Bailiff Managers**

This section brings together guidance and responsibilities of Bailiff Managers. It does not cover every aspect of your job or the many issues that you and your Bailiff encounter regularly. It does however give guidance on the important matters of checking receipt books, car accidents etc.

Many day to day events need common sense applied but if there is anything of concern you should first consult your Line Manager or Delivery Manager.

It is very important that every Bailiff should have a copy of the Bailiff Manual.

### **20.1 Receipt books**

The receipt book is the most important item Bailiffs carry and they should have it with them at all times when they are on official business.

Collection of cash and the issue of receipts are areas of high risk and Bailiff Managers should ensure that Bailiffs are aware of their responsibilities for the completion and issue of receipts and handling monies collected. Bailiffs should also be aware of the possible consequences if basic operating procedures are not complied with.

By maintaining close control over receipt books Bailiff Managers can reduce the risk of loss or theft or false allegations. They can also help to ensure that the quality of completion of receipts is

maintained at a standard that will satisfy examination by Internal Audit.

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Each week you should examine the receipt book held by each of your Bailiffs to ensure receipts are correctly completed and contain the following:

- The court name.
- The case number.
- The warrant number.
- If issued by a foreign court the court name and local warrant number.
- The named Claimant on the warrant.
- The debtors name (regardless of who has made the payment).
- The name of the person who made the payment.
- The amount paid in words and figures.
- The date.
- The Bailiff's signature.

The method of payment should be stated i.e. cash, postal order or cheque where payment is made by cheque the receipt should be endorsed 'subject to cheque clearance'.

Check every receipt issued since the last check for cancellations, alterations, prompt paying in of monies received and evidence that all receipt books have been handed in for inspection each working day.

There should be no alterations to receipts or carbon copies. Where a Bailiff has noticed a mistake after the receipt has been handed out and cannot get it back, any alteration to the copy must be initialled by you and an explanation noted on the reverse.

***The use of correcting fluid is absolutely forbidden.***

The reverse of the last receipt issued should be dated and initialled by the Bailiff's clerk. Allpay receipts are used to record cash payments with warrants.

If you discover there has been a delay in money being paid in, make enquiries with the Bailiff to ascertain the reason for the delay and if

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there is cause for concern report the matter to your Line Manager immediately.

Where no receipts have been collected the reverse of the last receipt issued should be dated and initialled by the Bailiff's clerk.

During periods of absence receipt books must be retained in the office, and the back of the last receipt used should record the period the receipt book has been retained.

If a Bailiff cannot attend the office for any reason then he/she should contact either you or the Delivery Manager to arrange for their receipt book and any payments made using Allpay cards be returned to the office at the earliest opportunity. If for any reason the Bailiff cannot produce the receipt book or any payments you should report this to the Delivery Manager immediately.

## **20.2 Cancelled receipts**

When it is necessary for a receipt to be cancelled, the cancelled receipt should be brought to your attention at the earliest

opportunity, but no later than the next available working day. If during the course of your usual checking you find cancelled receipts that have not been referred to you, you should ask the Bailiff concerned for an explanation.

You should check to ensure that cancelled receipts have two lines drawn across them with the word 'cancelled' inserted between the lines and that the copies have been stapled together. Both copies of the receipt should be endorsed CC8 dated and signed by you.

If there is no top copy receipt, the matter should be investigated by cross-checking the warrant to the appropriate daily record sheet (DRS), asking the Bailiff for an explanation and making a visit to the defendant's address. If the receipt is not obtained or a satisfactory outcome achieved the matter should be reported to your line Manager. A consistently high number of cancelled receipts may indicate a training need.

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### **20.3 Daily record sheet**

The daily record sheets (DRS) are your main source of information regarding work completed by the Bailiffs. Every Bailiff is required to complete one each day he/she works irrespective of whether they remain in the office or go out on their area. The information contained is of assistance to you, colleagues in the general office and is essential to the management of Health & Safety of the Bailiffs. The completed original DRS should be retained by the court as these are financial records. The Bailiff Manager may keep the DRS until quarter end to facilitate compliance checks, but beyond that the original sheets should be transferred to the financial record archive at the court.

The following must be entered on each DRS:

- Name, area number and date.
- Time in Court on hearings/meetings etc.
- Time in office.
- Total official mileage.
- Planned end of shift time.
- Process number.
- Name of defendant.
- Full address.
- Type of process.
- Confirmation of risk assessment.
- Any payment received.
- Type of return and return code.

When Bailiff's hand the payment and Allpay receipt in to the cashier the cashier will keep a copy of the DRS.

The DRS is also designed for Health & Safety purposes for Bailiffs and Bailiff Managers. It is used in conjunction with the Risk Assessment to identify and record whether a visit is assessed as high, medium or low risk. Your Bailiffs must discuss with you to identify the risk and agree arrangements or actions for their safety to

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satisfy you that the risk is reduced to low. (See Section 21 – Health & Safety.

**The Bailiff conducting the visit is the final arbiter of risk and you do not have the authority to order him/her to make a visit where they consider that the risk has not been sufficiently lowered.** If you are unable to reach agreement on what measures need to be taken the Bailiff should still not execute the warrant if they feel it is unsafe to do so. As Bailiff Manager you would have to decide how to proceed in accordance with MOJ/HMCTS management/disciplinary protocols.

Bailiffs must complete the DRS each day they are working, in advance of any visits being made, to record itinerary, process to be dealt with and risk assessment. Once completed the Bailiff must hand or fax a copy of the DRS to you for approval and a signature. You must be aware of the time each of your Bailiffs intends to end their shift and that the Bailiff's are aware of the need to visit their calls in the exact order stated on the DRS.

There is a summary which must be completed accurately giving a breakdown of the payments received by cash (which the Bailiff will pay in using their Allpay card), cheques, payable orders etc.

The DRS must be signed daily giving sufficient consideration to the wording regarding working equipment, risk assessment and the procedure for withdrawing in the event of a problem arising.

You are required to check the DRS at least weekly of every Bailiff under your management or if the need requires further more indepth checking if the risk is deemed to be greater. However if the following checks are made on a daily basis problems can be identified at an early stage and appropriate follow up action taken.

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Points to check for each DRS are as follows:

- Cross check official mileage entered to appropriate entry on iExpenses claim form to ensure figures agree. The iExpenses approver must ensure the mileage travelled is correct and tallies with the entry on the DRS.
- Check that journeys appear to have been economically planned.
- Check that the option to provide additional information is being used.
- For any returns made in the office, check 'office' is recorded in the additional information column. This will enable you to verify the accuracy of details recorded relating to mileage and hours worked.
- Cross check warrants with final returns to DRS to ensure information is correctly recorded on both, checking back to warrant returns screen on CaseMan. The latter will ensure the correct return has been sent to the claimant.
- Ensure the payments recovered column agrees with the cash summary and that there is evidence of cashiers signature on the DRS. If there is no signature investigate further.
- Check the DRS to ensure that any large payments that were collected in the office i.e. over £100 are paid in before the Bailiffs leave the office.

The DRS will help you to identify warrant returns. You should, as a minimum:

- Verify, by visit if necessary, all code 20 returns and ensure that the address has been visited on three occasions. Some visits should be made out of hours to maximise the prospect of meeting the judgment debtor and securing payment / levying goods. This should be considered in line with any risk assessment and local discretion after discussion with the Bailiff and their manager.
- Verify, by visit if necessary, all code 23 and 49 returns. Frequent use of code 49 (unenforceable free text) rather than a more appropriate code e.g. 'no effects' may affect the targets;

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- Dependant on local factors i.e. size of court and workload, monthly check on the number of interim S returns back to warrant to ensure information is correctly recorded and the same principles with regards to final returns. Your Line Manager may have a local arrangement in place to determine the amount and level of your checks i.e. 10% of all Bailiff returns checked and verified, with an agreed amount of visits to be taken in order to obtain the verification. The percentage check will depend on the perceived level of risk/ data quality to the business i.e. a new Bailiff as opposed to an experienced Bailiff.
- Weekly re-perform at least one Bailiff's route preferably from the previous day verifying all final returns and any interim's where contact has been made with a defendant, where possible verifying the time of the visit. It is expected that your checks are consistent with every Bailiff under your management i.e. the amount. Compare the time you and the Bailiff take to complete the route, the time spent at individual visits, mileage incurred. Check how well the route was planned. Ensure all visits are in visit order and the Bailiff has indicated on the DRS if he/she has returned home or to the office during the day. If a Bailiff returns to an address more than once on the same day all visits should be recorded.

At least some of the warrant returns you verify should be on warrants selected for you by either the Delivery Manager or someone else in the office. If this is done you cannot be accused of selecting or ignoring certain types of return or Bailiff areas. You should agree with local management the arrangements for selection of these warrants.

#### **20.4 Unscheduled visits or deviation from planned route**

These must be avoided if possible but an unscheduled visit must only be made on low risk process. The DRS must be clearly marked with details of the visit and the forms must show where it fits in with the days planned visit. If the deviation involves a planned visit being missed out, this also must be shown clearly on the form by drawing

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a line through the entry and putting an appropriate remark (visit not made) in the 'additional information' column.

#### **20.5 Out of office hours visits**

Your Bailiffs should plan early morning, evening and weekend work in advance and agree this with you. This is to ensure that

reasonable arrangements can be put in hand for you or the Nominated Officer 'Buddy' to be contacted if the Bailiff has a problem and for start / end of shift call ins.

**Please note** – Time spent on related duties, such as end of shift calls, count as working hours.

### **20.6 Health and safety**

See the Health and Safety (Section 21) for full details but remember, at all times your Bailiffs and your own health and safety is paramount. You must discuss all high risk process with the Bailiff with the aim of identifying and agreeing the actions necessary in each case to reduce the risk to an acceptable level. These might include:

- A visit involving 2 or more Bailiffs.
- Liaison with the Police, e.g. possible police attendance to prevent a breach of the peace.

There may be some instances, hopefully few, where the risk is such that no visit is justified. In such cases a full report should be made to the Delivery Manager and the Claimant.

You or the designated officer will be first point of contact during an emergency, via Argyle, your telephone number must be made available to your Bailiffs and your Line Manager.

You must complete your own DRS for your 'out of office' work. Your own 'nominated officer' or 'buddy' must have a copy.

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### **20.7 Claims for mileage**

All mileage claims must be entered on iExpenses and approved by a person with appropriate authority and access. The Bailiff Manager needs to make the person authorising the claim aware of the mileage to be claimed.

### **20.8 Credit notes**

An N335 or credit note is produced when a payment is made to the court office rather than the Bailiff and entered on the Caseman system, or when the claimant informs the court that a payment has been made direct to them, this too is entered onto the Caseman system.

The credit note and a credit summary sheet are passed to the Bailiff for the information to be recorded on the warrant and the credit note to be attached to the warrant. If the credit notes are not passed to the Bailiff or the Bailiff fails to record the information correctly this may result in unnecessary visits made to the address of a debtor.

Your office will have a series of checks in place to ensure the required information is accurately recorded. By making the following checks you will reduce the risk of payments being overlooked:

- On a daily basis ensure the credit notes have been produced and given to the Bailiffs.
- Ensure the Bailiff has initialled the credit summary sheet for the credit notes on their area.
- The date and the amount of the payment has been recorded in the amounts received box on the warrant also writing whether the payment was made by cheque or cash.

If the warrant is paid in full ensure that all credit notes are attached



and return to the office to be either filed away or returned to the home court.

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## 20.9 Management information

The Caseman system provides reports, which should be produced at least monthly but may be produced at any time and for any given period. They are as follows:

- **Outstanding Warrant List** - This is a list of all warrants without a final return on a selected day of the month. Its purpose is to ensure that warrants are being dealt with efficiently and effectively.

- **List of Returns by Return Code** - This report provides a list of warrants with a selected return code during a specified period, broken down into Bailiff areas. This information will highlight, for example, all “enforceable free text” returns which, if used incorrectly will deflate the amount of enforceable warrants and increase the pence in the pound collected. The report also lists all ‘unable to meet’ and free text returns which you must check for accuracy.

- **Bailiff Effectiveness Report** - This report sets out the number of enforceable and unenforceable returns made per Bailiff within a selected period broken down into:

- § No goods.

- § Refused peaceful entry;

- § 3 visits.

- § Enforceable free text.

- § Other returns.

- § Total disposed of.

Also provided are details of the number of warrants over one month old both with the Bailiff and in the office, the percentage of enforceable warrants fully paid and the number of outstanding warrants as a percentage of those disposed of.

It is used to monitor the number of warrants disposed of per Bailiff and the types of returns being made, which will assist in the monitoring of any local targets in relation to number of disposals or level of outstanding warrants.

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As with the list of returns by return code this report will highlight where a high number of unenforceable returns are being made identifying where further investigations should be made i.e. checking warrant return by re-visiting the address.

- **Summary of Bailiff Effectiveness** – This report combines all the information from the Bailiff effectiveness report, showing performance for the court;

- **Executed Warrant Report** – This provides information relating to the targets of the pence in the pound collected and the percentage of warrants executed within six calendar weeks. In addition to locally produced reports national statistics are produced and distributed monthly giving a wider view of the use of return codes from Caseman.

## 20.10 Outstanding warrant list

The outstanding warrant list is a list of all warrants that have not had a final return at the time the report is printed. Its purpose is to enable you to ensure Bailiffs are dealing effectively and promptly with warrants. The outstanding warrant list is produced, dependent on local procedures, either by you or office staff via the Caseman system. Your Delivery Manager will inform you of your responsibilities with regard to printing the outstanding warrant list. Under SUPS the Outstanding Warrant List (OSWL) can be found by entering the **Warrant maintenance screen** then selecting **Warrant report** then **Warrant maintenance report** and then **Outstanding Warrant list**.

When printing the list there are certain options available but you should ensure that you see a list of **all outstanding warrants**. Where the option of 'warrants issued before.....' is given any date may be selected, but entering a date one month prior to the 14 2

end of the stats month will assist in forward planning as it will indicate which warrants will be one month old and therefore require attention by the end of the period i.e. produce a report for all warrants issued before 1<sup>st</sup> day of the month previously.

Once the report has been produced the Bailiff should check it for accuracy ensuring that no returns have been missed and that all payments are accounted for correctly. Once it has been checked and completed with the date of the last visit it should be updated on Caseman by the Bailiff.

The office 'area' i.e. the warrants designated after an interim return has been entered including no such address etc. must also be completed. The Bailiff Manager must liaise with the Office Manager or their Line Manager to ensure this is completed and updated appropriately i.e. any hearings on applications to set judgment aside are updated and the warrants returned to the Bailiffs promptly if the application is dismissed.

Under the Courts charter, this needs to be completed and signed off by the Bailiff Manager and their Line Manager and reports sent off to the Claimants within the first 10 working days of the month.

Furthermore the report needs to be stored for a period of twelve months

A thoroughly up to date and rigorously checked OSWL is the best tool for a Bailiff Manager to oversee the performance regarding warrants of execution. Checking the OSWL gives the Bailiff Manager an opportunity to agree a plan of action with the Bailiff to help increase warrant performance, effectiveness and efficiency. Once the updated lists have been returned you should make the following checks:

- The level of outstanding warrants and the reasons they are outstanding. You should agree with your Delivery Manager the optimum number of warrants more than one month old each Bailiff may hold. A figure in excess of the optimum may indicate

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that the Bailiff is having difficulties disposing of warrants and if so

the problem can be addressed.

- The date of the Bailiff's last visit, so that you can check the warrant is receiving the appropriate attention and the delay is not caused by lack of timely visits.
  - The Bailiffs should bring the Warrants noted on the OSWL for inspection. Note on the warrants concerned the next course of action i.e. the amount of further visits required, the quality of the visits needed i.e. evening, early morning or weekend calls, if Additional Information Forms (A.I.F's) need sending.
  - You should ensure the first visit has been made appropriately i.e. within 15 working days or sooner of receipt.
  - You should check for opportunities to levy i.e. 'deft seen, to pay next week' but no levy made or attempted.
  - You should check all past visits made and ensure they are not all at the same time and day for example.
  - The number of possession warrants and the dates fixed for their execution. Appointments should be made within a month of issue except where the Bailiff is due to be absent.
  - Thereafter, ensure a return is produced monthly updating the claimant of the stage of enforcement reached.
- Regularly and without prior notice you should cross check from the outstanding warrants list to the warrant books to ensure all warrants are accounted for.

#### **20.11 Other information**

##### **High Court Warrants of Arrest**

Under section 27 of the Courts Act 1971, a county court Bailiff can act as a deputy to the High Court Tipstaff. A High Court warrant of arrest is executed in the same way as a county court committal warrant.

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High Court warrants issued in the Family Division which involve children are called 'find and return orders'. They are dealt with personally by the Tipstaff but you may be asked to help.

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## **Section 21 – Health and Safety Guidance**

### **21.1 Lone worker alarm system**

In addition to the existing end of shift call in procedure all Bailiffs are now issued with a lone worker alarm device. The following procedures are put in place to complement any local practices/policies in each HM Courts and Tribunals (HMCTS) area. HMCTS has a duty to ensure the health, safety and welfare of its employees. As part of its commitment to fulfil this obligation, HMCTS identified the need to provide staff with a nationally consistent system for ensuring their safety whilst working alone. This device has been supplied to staff as personal protective equipment and therefore **MUST** be utilised by all enforcement staff when carrying out their duties.

#### **Bailiffs must log on to the system during working hours.**

Argyle are authorised to disclose data of your location only in case of an emergency, i.e. where you have activated a duress call or if

you have gone missing.

### 21.1.1 Overview

The device is designed to be straightforward to use and to compliment the comprehensive guidance issued with the device and also contained within the rest of this manual. Training is provided to Bailiff Managers to cascade to all users to ensure lone workers are familiar with and comfortable using the devices.

In the event of the lone worker pressing the 'Duress Alert' button an alert will be sent to the Alarm Receiving Centre (ARC). A voice channel will be opened allowing an ARC operative to listen in to ascertain the severity of the situation. **The operative is trained to listen in and not to speak to you unless you speak to them first.**

Audio recordings obtained throughout the entire incident are  
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captured on digital voice recording equipment within the receiving centre and may be used in Court as evidence Operatives at the ARC will then execute a defined incident management procedure (escalation procedure) as agreed with HMCTS. This involves alerting a designated contact Manager and/or the emergency services if required.

### 21.1.2 Sign on and sign off procedures

Each user is required to 'sign on' using their lone worker device when they are about to start door stepping activities. This procedure indicates that the worker is on duty and may need assistance at any time during the working day.

Each user is also required to 'sign off' using their lone worker device at the end of every working day once they have finished door stepping activities for that day. However a user may 'sign on' and 'sign off' multiple times during a working day depending on their working patterns. Each time you 'sign on' or 'sign off' a confirmation text message will be sent to your mobile phone. This 'sign on' and 'sign off' process is referred to as the Green Alert.

It is extremely important that each user 'signs off' at the end of every working day. The Lone worker alarm is set at a default of eight hours if you fail to 'sign off' within this time it will result in the ARC initially sending you two text message reminders at intervals of 5 minutes each. A failure to respond to these reminders will indicate to the ARC that you may be in need of help and the appropriate escalation procedures will be initiated.

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### 21.1.3 Alert levels

HMCTS lone workers will use the devices' four distinct levels of functionality relating to varying levels of risk.

#### **Green alert**

The Green Alert function will be applicable to every working day and requires that:

- You 'sign on' at the start of your door stepping activities each working day, to alert the ARC that you are commencing your working day and could need assistance.
- At the end of your door stepping activities for the day, you 'sign off' thereby standing down from the Green Alert.

You should be aware that if you fail to 'sign off' within the set time, a series of reminders will be issued. If you do not respond the agreed escalation procedures will be put into effect to confirm your safety.

You **must** therefore 'sign off' the Green Alert at the end of every working day to avoid reminders being sent and the onset of escalation and emergency procedures being unnecessarily initiated.

### **Amber alert**

The lone worker device is a GPS/GSM device and its accuracy in precisely locating you is limited within multi-storey buildings or clusters of buildings. The quality of the information you provide when using the Amber Alert function will be beneficial in accurately locating you in these circumstances.

The device allows you to leave a voice recording detailing your exact location or address before entering a building. This information is digitally recorded and stored at the ARC. In case of a Duress Alert being raised, an ARC operative can listen to the voice  
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message to establish your location in addition to using the GPS/GSM location technology on the device.

The Amber Alert should only be used in situations where an activity previously considered to be a low risk etc on a risk assessment has the potential to be raised to a higher risk level following a dynamic risk assessment. You may however wish to use the Amber Alert function and record your location etc when you are visiting an address which is within a multi-storey building etc

The Amber Alert function allows each user (if required):

- To leave a voice message of up to 30 seconds detailing your location before entering an address. This message will be digitally stored on the ARC system and could be used in the event of an emergency. The information could include: landmarks, address, expected duration of visit, or anything out of the ordinary. Example: arrived at location, large white brick house at the end of King Street, number 76, postcode is W6 4PU. An operative at the ARC can then listen to the message in the case of a Duress Alert being raised for help. This will further assist in locating you.

- To leave a number of Amber Alerts throughout the day. The latest Amber Alert voice recording will over-write any previous recordings made.

### **Red alert**

A Red Alert will be triggered whenever you fail to indicate your safety at the end of your working time, i.e. where you have 'signed on' at the start of door stepping activities, have failed to 'sign off' after the set time and failed to respond to the text reminders sent from the ARC. When this happens, the agreed escalation procedures will be initiated. The agreed escalation procedures can be obtained via your local areas data manager. Your Bailiff Manager will advise you of their contact details.

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### **Duress alert**

HMCTS policy is that you should never knowingly place yourself in a dangerous situation and instead should withdraw and seek assistance, however if you are being threatened or feel under threat you can discreetly summon assistance from the ARC by pressing the Duress Alert button on the device.

On activation of the Duress Alert button an ARC operative will continually monitor your situation via a voice channel until your safety is secured. Dependent upon the situation the ARC may trigger the escalation procedures which will alert HMCTS management and/or the emergency services as required.

#### **21.1.4 Personal information**

You will be asked to provide certain details to the alarm provider which will assist the police or other emergency services in the event of a serious incident occurring.

#### **21.1.5 Lone worker alarms – further information**

When you receive your Lone worker device you will be provided with an instruction booklet. You will also be provided with further guidance and instruction on how to use the device and the lone worker service by your Bailiff Manager.

#### **21.1.6 The end of shift call in**

Following the introduction of the lone worker alarm system it is now no longer a mandatory requirement to use the end of shift call in procedure but you may still find that this system is used in your area to compliment the use of lone worker alarms. The process is set out below.

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The purpose of the Bailiffs end of shift 'call in' is to confirm and record that Bailiffs have finished their work safely and to prevent any 'emergency procedure' being instigated unnecessarily.

Whilst the Bailiff Manager is the most obvious person to be designated to receive a 'call in', this will not always be possible or reasonable. Whilst Bailiffs Managers, like Bailiffs, are 'all hours worked', they too are not expected to work more hours per week on average than office staff, nor can they be expected to be available at all times. Therefore a local system must be agreed with all involved that will provide for 'call in' to be made to either, or a combination of:

- The Bailiff Manager.
- A nominated officer.
- A 'Buddy'.
- A lone worker alarm system.

This flexibility is to allow the best possible system to be devised depending on the local circumstances (for example, a 'call in' during office hours might be made to a Nominated Officer and evenings to the Bailiff Manger).

Bailiff Managers must notify the Delivery Manager, Deputy Delivery Manager or Lead Delivery Manager what call in system has been agreed.

The Bailiff Manager is also responsible for ensuring that the system is working effectively. This includes ensuring that:

- Bailiffs and all involved are aware of who the designated

person/s is at all times, and the relevant contact details.

- Any Buddy/nominated officer has access to the relevant completed Emergency Sheet (annex A) so that s/he has all the necessary information required should there be a failure to call in.

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Some HMCTS areas have a stand down procedure using the SMS messages. When the lone worker has stood down the green status and received their confirmation SMS, they send this SMS onto their Manager as evidence that they have completed their day. The Manager can then be sure that all their on duty officers have finished for the day.

#### **21.1.7 Procedure for end of shift call in**

The person designated to receive end of shift call in must have access to a copy of the relevant daily record sheet (DRS) for that day/period, and be made aware of any deviations/unscheduled calls. Evening/weekend calls must have been pre-planned.

Call in to the designated officer, a call in must be made immediately following the last visit.

A record of the call with the time must be made by the designated officer either on the DRS or a separate call log etc.

When using a Lone Worker Alarm system logging off must be done in accordance with operating instructions.

If you know that you are going to be working late or overrunning on an agreed call in time then you must contact your Bailiff Manager, Nominated Officer or Buddy to inform them of this and arrange a new call in time.

**NOTE:** Failure to call in and log off of the lone worker alarm system will trigger emergency procedures.

#### **21.1.8 What to do when a Bailiff fails to phone in**

This should be a rare occurrence. However, it could happen and it is important that the person designated to receive the end of shift call in deals with the problem promptly.

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#### **When is a call late?**

If the Bailiff knows beforehand that there is a specific reason that will delay the call, perhaps most notably 'no mobile phone reception' in the area of his/her last job, s/he must bring that to the designated person's attention in advance.

In general, some latitude can be allowed for the 'call in'. If a Bailiff has given his/her end of shift call in time as 8.30pm and by 8.50pm the call has not come in, the Manager / Nominated Officer / Buddy will need to start taking steps to ascertain that the Bailiff is safe. The person responsible must not wait more than 30 minutes before taking action.

#### **What steps should be taken when no call is received?**

- Try to contact the Bailiff on their mobile phone. (If voicemail is activated leave a message).
- Check the DRS for the location of the last call, and the emergency sheet for other contact numbers. Estimate what is a reasonable time period for travelling home from the last call.

Whilst waiting for the Bailiff to travel home keep ringing the mobile phone, and then their home phone to see if s/he has arrived home safely.

- If the Bailiff has not arrived home, you might speak to a family member. Obviously tact will be required, but they may be able to give you useful additional information. Make sure that you ascertain what time s/he is expecting the Bailiff to be home, and where else s/he might have gone. Get as much information as possible and follow up any information e.g. alternative numbers provided by the family.
- If these steps fail, then contact the Bailiff Manager (if this is not the 'designated person'), who will contact the police. If the Bailiff Manager is not available, then the 'designated person' should take this responsibility.

**If all checks fail the police should be contacted.**

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When to phone the police will be a matter of judgement based on the amount of information available. The person responsible will need to use the DRS to ascertain where the police should start looking and in what order, e.g. s/he may be aware from previous phone calls that the Bailiff had reached a certain point on his/her list of visits.

### **When phoning the police**

It is important that you make it clear to the police that the Bailiff is an Officer of the Court, carrying out work on behalf of the Court, serving Court orders and could be in possession of a large amount of money. You will also need to:

- Give details of the call in system (See Lone Worker Alarm).
- Confirm that he/she has a mobile phone.
- Stress that s/he is very overdue in phoning in and/or returning home.
- Give a full description of the Bailiff/Bailiff Manager and his/her vehicle, including registration number, for it to be circulated.
- Explain about the emergency sheet on which personal details are kept on all Bailiffs.
- Ask them if they require a copy.
- Ask them to create an incident and record the number.

The police work on a system of priorities and giving this information, the fact that s/he was carrying out court duties and in possession of money should draw immediate attention. If failure to call in continues, ring the police on a regular basis (say every 30 minutes to an hour) to ensure that the police treat it as a priority.

**Any problems with obtaining police assistance must be referred to your Bailiff Manager at the earliest opportunity.**

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## **21.2 Personal protective equipment at work regulations**

### **21.2.1 Personal protective equipment**

HMCTS has a duty to ensure the health, safety and welfare of its employees. As part of its commitment to fulfil this obligation, HMCTS has identified Personal Protective Equipment (PPE) which is provided to all staff to safeguard their health & safety. The



contents of the PPE list have been agreed with the DTUS. In most circumstances it is your responsibility to decide which equipment if any is appropriate to use in a specific situation, however you must consider the following:

- Whether the equipment fits you correctly, making adjustments where necessary.
- Whether the equipment will be practicable and effective to prevent or adequately control the risk or risks involved with a task.
- Any risk involved without increasing overall risks.
- Any risks which the equipment itself may create.
- The outcome of the risk assessment which has been carried out on the process to be served.

**However, in certain circumstances you may be instructed to use certain equipment by your Bailiff Manager**

For the PPE to be suitable it should:

- Identify if the member of staff has any underlying health issues that could be aggravated due to the wearing of said items.
- Be appropriate to the needs of the job and demands it places on the wearer, e.g. the length of time the personal equipment needs to be worn / carried, the physical effort required to do the job, and the requirements for visibility and communication.

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It is important that the equipment is properly stored, either:

- Returned to the accommodation provided for it after use, this could be at a particular court if the items are a central resource, or the Court office if it is a local shared resource or.
- Kept safe and secure by the individual to whom it is allocated for individual personal use (this can be in the boot of your car if no other suitable place is available).

All PPE issued and available must be maintained in accordance with the instructions provided with the equipment and kept in good working order. This includes personal issue equipment and equipment held in each area.

Each HMCTS Area should have a maintenance system in place, supported by suitable records which can be inspected by the local TUS H&S Representative. PPE must meet the relevant safety/matrix standards (BSI or other relevant to the PPE in question). Any questions regarding PPE should be directed to your Area Health & Safety Officer.

### **21.2.2 PPE use**

Appropriate and adequate information and familiarisation must be provided to all users of PPE. This information will be provided by the Bailiff Manager and is in addition to any guidance provided centrally as part of the Bailiff training course. Bailiff Managers need to be satisfied that suitable instruction and training has been provided to all users of PPE.

The information and familiarisation provided should include the following:

- An explanation of the risks present and why PPE is needed.
- The operation of the equipment, performance and its limitations.

- Instructions on the selection, use and storage of PPE.

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- Factors that can affect the protection provided by the PPE such as other protective equipment, personal factors, working conditions, inadequate fitting and defects, damage and wear.

- Recognising defects in PPE and arrangements for reporting loss or defects.

- Practice in putting on, wearing and removing the equipment.

- Practice and instructions in inspection and testing of the PPE before use.

- Practice and instruction in the maintenance which can be done such as cleaning and replacement of components.

Standard mandatory issue PPE equipment has now been agreed at a national level following the implementation of the recommendations contained in the 'Risk Report', 'Supporting Our "Doorstep" Teams – Our Civilian Enforcement Officers and Bailiffs'.

**The following tables show the equipment that must be made available to all staff:**

**TABLE 1 – Personal issue to every Bailiff must include**  
**Item Type Description (where appropriate)**

Body Armour Personal Issue HMO-003 / Hawk 65-11  
specification body

armour to protect against ballistic and knife  
attack.

Men's Black Safety Boot c/w Steel

Midsole; or Women's Black Safety

Boot c/w Steel Midsole

Personal Issue Protection of feet, specifically when entering  
property to levy/retrieve goods or execute  
warrants. In derelict houses etc to prevent the  
danger of injury through falling debris and sharp  
objects or equipment on the ground. Protective  
toe caps provide protection when removing large  
items from property

Safety Helmet Personal Issue To be worn when attending  
building sites, areas

where people are working overhead or where  
there is a likelihood of a falling object.

Safety Wellington c/w Midsole Personal  
Issue (as

required)

For use when serving process at farms,  
repossession of land and eviction of itinerants.

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Spectacles / Eye shield Personal Issue For use in building  
sites, manufacturing premises  
or other areas where there is a potential  
likelihood of injuries to the eyes.

Protective Coverall Personal Issue For the protection of  
clothing in dirty  
environments such as empty properties.

Disposable Powder Free Gloves

Personal Issue For use when removing goods from properties.

Rubber 2D Torch

Personal Issue For use in poorly lit areas, such as derelict or  
empty properties

Kit Bag Personal Issue To carry and transport supplied  
equipment

Dust/Mist Respirators

Personal Issue For use in dirty and dusty environments

Instant FOAM Hand Sanitiser

Personal Issue For the cleaning of hands after working in  
unclean properties

1 x Band & Brace Hi-Vis

Waistcoat

Personal Issue For use at the roadside when participating in  
joint

operations with the police and other criminal  
justice agencies

Foul weather gloves

Personal Issue For use during inclement weather

Wet weather over trousers

Personal Issue For use during inclement weather

Wet weather jacket & fleece

Personal Issue For use during inclement weather

In addition to the above equipment which is personal issue the

following equipment is also available as detailed

## **TABLE 2 – Non-personal equipment to be held for each HMCTS area**

### **Item Type Description (where appropriate)**

First Aid Kit Located in

Secure Cell

Vehicle

Kept and stored in each secure cell vehicle (SCV) and Bailiff vehicle, for self treatment only.

Belt Lifejacket Central

Store

For use when serving execution warrants on boats.

Sharps Box – 0.6L version Located in

Secure Cell

Vehicle

Kept and stored in each secure cell vehicle (SCV), to be used for the safe disposal of sharps and needles etc.

Alcohol Free Wipes Central

Store

For use when cleaning communal items.

#### **21.2.3 Ordering of equipment**

All of the above equipment is available to be ordered locally and in the first instance you must agree your individual requirements with your local Bailiff Manager. The purchase of any items must be agreed and authorised by the Budget Holder in accordance with the ordering instructions and processes issued to each area.

#### **21.3 HMCTS identity badges**

HMCTS provides all Bailiffs and Bailiff Managers with official identity badges to enable them to validate their identity and role when undertaking official duties. These identify badges **must** only be used when undertaking official HMCTS duties and their loss must be reported immediately to your line Manager and local security officer.

#### **21.4 The Admiralty Marshal – health & safety**

Please refer to Section 7.13 earlier in this manual.

Bailiffs must make sure that however urgent the process is, the Bailiff Manager (and or the Delivery Manager, if possible) is fully aware of your Risk Assessment in accordance with the current guidelines.

The Marshal is not obliged to arrest or serve documents on a vessel that is at sea and will not do so unless it can be done in absolute safety.

Boarding a ship which is alongside a quay or a small craft tied to a pontoon can also be hazardous to the unwary and **Bailiffs should be**

**alert at all times and not undertake any action that could present a risk to their safety.** In many circumstances you should be equipped with the appropriate safety clothing/equipment, for example, safety helmet, day-glow jacket, non-slip footwear. You should have access to a buoyancy aid. You will need to consider the overall risk of executing the warrant/serving the process and make a judgement as to if there is a greater need for the use of body armour or life jacket. If the risk assessment indicates that it is necessary to wear body armour this should take precedent and the vessel should only be boarded if you can do safely without the use of a life jacket.

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## **21.5 Mobile phone & in-car satellite navigation user guidelines**

### **21.5.1 Mobile phone guidelines**

From the 1<sup>st</sup> December 2003, anyone driving whilst using a handheld mobile phone will be committing an offence. Even 'hands free' car setups and Bluetooth headsets can be a serious distraction and may be considered by the police in some situations to be an indicator of driving with undue care and attention. **Therefore when driving you must not use or answer your mobile phone.**

When making calls or picking up any voice mail/text messages that have been left whilst driving you **must** find a safe and legal place to park and your engine **must** be switched off.

Only use your mobile phone when there is no other sensible option. Do not use it to make calls from the office. If you get a call there on your mobile, phone back on the office phone.

It is your decision alone whether or not to divulge your mobile phone number to customers (creditor or debtor). Under no circumstances should office staff divulge your number without your prior consent. Administrative staff in the office will deal with most customer enquiries and will leave messages for you should they be unable to deal with a particular enquiry or question. If an urgent enquiry or important information needs to be passed to you then the office staff will contact you directly.

It is at the Bailiffs discretion whether to switch off your mobile phone after you are officially off duty.

You must not make private calls on your mobile. However, if you wish to call home to warn of a delay in your planned return home this is acceptable.

Finally you should keep your mobile phone on your person whilst working, keep it secure at all times and do use a PIN number. Keep it charged in case you need it in an emergency.

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### **21.5.2 In-car satellite navigations systems**

When using an in-car satellite navigation system (sat nav) the following instructions must be followed at all times.

- You must only operate the device, i.e. programme a route etc, when your engine is switched off and your vehicle is legally and safely parked.
- The use of your satellite navigation system must not detract you from paying full attention to your driving. Wherever possible, whilst driving, you must refrain from looking at the screen and instead rely

on the verbal instructions and directions provided by the system.

- If, once programmed, you need to amend your route or operate the device via the touch screen you must find a safe and legal place to stop your vehicle and switch your engine off before using the device.

### **Health & safety advice**

When using the satellite navigations system you should:

- Always position the device safely, clear of any airbags and without obstructing the driver's vision.
- Whilst driving do not take your eyes off the road to look at the sat nav display but instead listen to the spoken instructions. If you need to look at the display to check the map being displayed then find a safe and legal place to stop your vehicle and switch the engine off.

### **Security**

Satellite navigation systems are highly desirable items for thieves and as such your device must always be securely stored when your vehicle is left unattended, even for a short time.

The following instructions **must** be followed at all times and failure to adhere to the specific instruction regarding the removal of the sat nav when the vehicle is left unattended may result in disciplinary action:

- When using the device in your vehicle you must ensure that it is removed and stored securely, out of sight, when the vehicle is left

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unattended. **At no point should the device be left on display in the vehicle when it is unattended.**

- When the sat nav is not in use you must always remove the suction mounted fitting from the windscreen and store it securely out of sight i.e. in the boot of the vehicle or in a pocket or bag etc.

- Please consider that the suction mounted fitting used to affix the sat nav to the windscreen sometimes leaves a small ring on the glass when it is removed from the windscreen. It is good practice to wipe it away as thieves may look for this mark as an indication that you have a sat nav device.

- The satellite navigation system stores a list of the most recently visited addresses and as such it is covered by the same data restrictions and HMCTS guidelines that apply to the general storage of any personal data. You **must** therefore on a weekly basis delete the list of recent destinations stored on the device. You can do this by selecting 'Navigate to...' from the main menu of the device, 'Recent destination' and then pressing the 'Delete' option.

### **Useful advice**

- The sat nav utilises a touch screen display, to protect this display always store the device in the soft case provided when it is not in use.

- If you have nothing of value in the glove compartment of your vehicle leave it open to demonstrate to potential thieves that nothing of value has been left in the vehicle.

- If you do not need to use your sat nav on a particular day, i.e. because you are attending a training course etc, then rather than taking the sat nav with you leave it stored in your office.

- If you need to take your sat nav home with you because you are not returning to the office then take it out of the vehicle and store it

overnight at home, as this is likely to be more secure.

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### **21.6 Safe Lifting and carrying procedures**

Bailiffs are not officially required themselves to physically remove goods. It is recognised however, that Bailiffs may occasionally decide that in some circumstances this is preferable to employing van hire, e.g. where the goods levied on are small, light and easily handled, and to avoid further delay. If you choose to move/lift items please refer to the handling and lifting guidance at section 21.7 NB - HMCTS is not insured against any damage caused to goods whilst you are removing them, nor are you insured in the event of any injury sustained. All decision on whether a bailiff should manually handle goods is at the discretion of the bailiff.

Nevertheless you should be aware of the following general guidance on safe lifting and carrying procedures.

Strain injuries caused by manual handling activities, and the transporting or supporting of loads by hand or bodily force, account for more than a quarter of the accidents reported per year. The Manual Handling Regulations 1992 introduced guidance for practical measures designed to reduce the risk of injury. The measures specifically address the task, the load and the environment. Manual handling sometimes cannot be avoided. It is important that you take all the practical steps to avoid injury. HMCTS does not encourage manual lifting of any item where you consider there could be any danger to yourself.

Below is a checklist designed to assist in carrying out manual handling activities.

#### **Handling & Lifting – Practical steps to avoid injury**

##### **TASK:**

- Keep the load at waist height.
- Use your body more efficiently: Hold the load closer to you.

##### **LOAD:**

- Do not lift loads from the floor while seated.
- Make loads lighter, smaller and easier to grasp, where possible make loads more stable and less damaging to hold.

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##### **ENVIRONMENT:**

- Ensure there is sufficient space to carry out the manoeuvre.
- Ensure floors are clear of spillage, or grease etc
- Ensure there is sufficient light to see what you are doing.

##### **TECHNIQUE:**

- Plan the lift
- Place your feet apart for a balanced and stable lifting base.
- Bend your knees and keep your back straight.
- Get a firm grip, carry out the lift smoothly
- Keep your arms within the boundary formed by your legs
- Move your feet, not your torso, when turning
- Keep the load close to your body, to avoid lower back strain.

#### **The Manual Handling Checklist**

##### **THE TASK:**

**Q Is the load held or manipulated at a distance from the trunk?**

**A** As the load is moved away from the trunk, stress on the lower back

increases.

**Q Does the task involves twisting the trunk or stooping?**

**A** both increase stress on the lower back.

**Q Does the task involves reaching upwards?**

**A** This places stress on the arms and back.

**Q Does the task combine twisting with stopping or stretching?**

**A** These combinations should be avoided wherever possible.

**Q Does the task involve carrying over long distances or excessive lowering or lifting distances?**

**A** These increase injury risks, especially where lengthy vertical lifts or put-downs require changing the grip midway.

**Q Does the task involves excessive pulling or pushing of the load?**

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**A** Pushing or pulling with the hands above shoulder height increases injury risk.

**Q Does the task involve a sudden movement of the load?**

**A** A modest load becomes a risk if handled frequently.

**Q Does the task involve sufficient rest and recovery periods?**

**A** Fatigue increases risk and reduces output.

**Q Does the task involve handling while seated?**

**A** When seated, the risk of injury to the weaker arm and trunk muscles is increased.

**THE LOAD:**

**Q Is the load heavy?**

**A** You should not attempt to move it, unless it can be broken down.

**Q Is the load sharp or hot?**

**A** Sharp edges or hot or cold surfaces might impair the grip and encourage bad posture as well as direct injury.

**THE ENVIRONMENT:**

**Q Are there uneven or slippery floors?**

**A** These can result in slips, trips or falls.

**Q Are there variations in floor levels?**

**A** Carrying loads up or down steps increases the risk of injury.

**Q Are there extremes of temperature or ventilation problems?**

**A** High temperatures and inadequate ventilation can cause fatigue.

**Q Are there poor lighting conditions?**

**A** Poor lighting can aggravate tripping hazards.

N.B It is the Bailiff Managers responsibility in conjunction with the training department to ensure that Bailiffs are fully trained in the above as appropriate.

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## **21.7 Health and Safety on Drugs**

### **21.7.1 Contact with Drugs**

It is important that you follow the risk assessment guidelines in order to protect yourself from unforeseen situations that may arise during your duties. When attending a property where drugs are being taken this could increase the risk of you being attacked.

As some drugs may look the same it is hard to tell which is which and they can also affect people in different ways. It is important that you observe the different types of behaviour that may occur and act



cautiously for your own safety and protection. In particular you should be exceptionally careful at all times of the possible risk of injury and infection from needles.

### 21.7.2 What signs to look for?

This section outlines a sample of some of the different drugs that are around, what effect they have and what signs you should look for.

At the address, look for needles, wraps, cling film, clear plastic bags and note the appearance and demeanour of the defendant if they appear agitated or lethargic it may lead you to consider drug abuse

- **Cannabis** (a.k.a. grass, blow, weed, spliff, ganja, dope, hash) - Usually looks like small brown lumps. The leaves, stalks and seeds of the cannabis plant look like green / brown tobacco. It is made into a 'joint', which looks a bit like a cigarette. It can be smoked on its own, in a special pipe, cooked or used as a drink. Cannabis can make people imagine that everyone around is talking about them and making fun of them. It can make people feel very panicky and anxious. People get confused and are more likely to have accidents. After a 'joint' they tend to feel relaxed, friendlier, giggle and wish to talk more.

- **LSD** (a.k.a. trips, acid, tabs, microdots) - Very small paper squares with a picture on them. They can be sucked or swallowed. The effects of LSD are known as a 'trip'. Once a 'trip' has started it cannot be stopped, people will feel hot, sick or dizzy. A bad 'trip' can last for hours and can make people feel really panicky and

afraid. People using LSD can have 'flashbacks', they suddenly see and hear things from a previous trip. This drug can make people hallucinate, seeing and hearing things that are not really there.

- **Heroin** (a.k.a. H, smack, skag, horse, junk, brown) - An off-white, brown powder, usually wrapped in small packets of paper. It can be injected, smoked or snorted through the nose. It slows people down and makes them feel drowsy and separate from the world. There is a real risk of overdose leading to coma and possible death.

- **Cocaine** (a.k.a. coke, snow, Charlie, crack) - A white powder, wrapped in small packets of paper or cling film. It is snorted through the nose or injected. It makes people feel confident, energetic, uptight and panicky.

- **Crack cocaine** (a.k.a rocks, crack) - Small off white coloured rocks, made up of cocaine powder, smoked in a pipe or joint. It produces a quick feeling of euphoria which lasts approximately five minutes. It makes the person more alert and confident, can make them aggressive and less rational. It produces strong cravings to take more.

- **Amphetamine** (a.k.a. Speed, whiz, Billy whiz, Billy) - An off white powder, usually contained in a plastic bag or cling film. It tends to speed the body up and makes the person hyperactive with increased energy. It also produces a rush or buzz which makes the person excitable.

- **Ecstasy** (a.k.a tabs, Garys, pills) - Off white tablets about the size of an aspirin often with imprinted designs on the tablet e.g. doves. It has a similar effect to amphetamine making the person more active

and alert. It also increases awareness and perception

It is not always easy to describe what happens to people when they take drugs. It also depends on what mood they are in at the time, who they are with, where they are and the atmosphere around them.

It is important that you are alert, vigilant and assess the situation at all times, on every new occasion.

If you attend a property and find any drugs you should call the police and your Bailiff Manager.

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## **21.8 Diseases to be aware of**

### **21.8.1 Hepatitis B**

The Hepatitis B virus is transmitted largely through blood, although exposure can come from other bodily fluids. The virus can remain infectious for up to a week when outside the body, so contact with dried body fluids, perhaps on soiled linen, can infect you.

Whilst your risk of contracting the disease is low you may face the danger of infections in the course of attendance at premises, either if attacked or if coming into accidental contact with items of soiled clothing or discarded hypodermic needles. To minimise any risks of contracting this disease you should always ensure that any open wounds are covered to prevent contamination. If you are entering premises where you are aware in advance that an occupant has hepatitis B then, before proceeding with the visit, you must seek further advice from your local health & safety officer regarding putting in place appropriate control measures.

Whilst HMCTS does not provide inoculations against this disease, as the dangers of contracting the infection are low. If you have any concerns then you are advised to seek further advice from your local GP. The payment for a Hepatitis B inoculation will be at the discretion and approval of your local budget holder.

### **21.8.2 Tuberculosis (TB)**

Most people will have been vaccinated against TB during their time at school. If you cannot remember or are unsure if you have been vaccinated, a visit to your doctor and a simple skin sensitivity test will show if you are protected or not. If for any reason you are not protected your doctor can arrange for you to be vaccinated. There is no charge for this service on the NHS and Managers will be flexible in allowing time for such visits to your doctor during the working day.

Although there has been an increase in the number of cases of TB in the UK over past years the risk of catching TB in this country remains relatively low in most areas and even direct conversational contact with a carrier does not mean that you will become infected. TB is usually

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passed from one person to another through prolonged close contact although it is, in theory, possible to pass the infection by coughing in the face of another person. Members of staff whose immune system may be compromised by another condition such as diabetes, alcoholism, HIV or those taking steroids or other immune suppressive therapy should be especially vigilant.

If you are concerned that, in the course of your job you are at risk of exposure to TB, talk to your Bailiff Manager and take the precautions

described above.

### **21.8.3 Communicable Diseases**

You may come into contact with people who have a communicable disease, e.g. mumps, rubella, measles, chicken pox. Should you be aware of this, you must inform the Bailiff Manager immediately because of the possible effects on other staff (notably, pregnant women).

### **21.8.4 Pandemic Diseases**

In the event of a pandemic disease becoming widespread special instructions will be issued by HMCTS and the Ministry of Justice.

### **21.9 Dangerous Dogs**

Dogs that are not under the effective control of an adult are a risk. You should be aware of external signs that a dog may be present on premises e.g. chewed toys in the garden, claw marks on door fence etc. neither the size nor behaviour of a dog should be taken as indications of the risk it presents as both these can be misrepresentations of the nature of the animal.

#### **21.9.1 Procedure for dealing with dogs**

If at any time you are confronted by a dog of an unknown or unsound temperament the first things to do are as follows:

Scan – Observe and evaluate the situation before taking any action

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- Stand still.
- Calm yourself and others around you – do not panic.
- Assess the situation.
- Never put yourself at risk – do not rush in without thinking.

In the event an aggressive dog appears unexpectedly:

- Take refuge in any available shelter.
- Use any articles that may be in hand to protect yourself; or place your hands around your neck to protect your throat and with your elbows tucked into your sides make your way from the garden, taking care not to stumble and fall, if possible securing the gate behind you.

**Any injuries or concerns relating to the points raised in section 21.7 or 21.8 should be reported to your Bailiff Manager and an accident form completed where necessary.**

### **21.10 Trespassers**

Trespass cases should receive special care and consideration during the risk assessment process (See Section 22). Even preliminary visits might require two Bailiffs in attendance, for example, and the need for police assistance should always be assessed. Where problems are anticipated, the Bailiff Manager will co-ordinate appropriate action and liaison with any other agencies involved.

### **21.11 Squatters**

Care should be taken when evicting Squatters, as the risk of physical injury may be higher. Make a preliminary visit to deliver the Notice of Eviction and to obtain information that may assist you on the date of the eviction. Give the occupier at least 24 hours notice of the date. Deliver the Notice of Eviction personally to any occupant, post a copy through the letterbox (if there is one) in an envelope addressed to 'The Occupier' and affix a copy to the main door. If, having made the preliminary visit, you feel police assistance may be required; you should

consult your Bailiff Manager. At least two Bailiffs must attend the  
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eviction. The Eviction of Squatters would normally fall into the HIGH RISK category and body armour must be worn.

### **21.12 Itinerants (travellers/no fixed abode)**

As with Squatters, make a preliminary visit to deliver the Notice of Eviction and gather information. Deliver the Notice of Eviction personally on anyone you can find but, preferably, to someone who appears to be a 'leader'. Fix a copy of the Notice of Eviction to a prominent part of the property, for example a gate, fence, post or tree. Give the occupiers at least 24 hours notice of the date of the eviction. If you feel police assistance is required you should consult with your Bailiff Manager.

### **21.13 Caravans and Houseboats**

If the warrant is for possession of a caravan or houseboat you have the same rights of entry as for a house or flat. The procedures for a preliminary visit and eviction are the same as for a house or flat. The caravan or houseboat may not have its own letterbox. In these circumstances, if the Notice of Eviction cannot be delivered personally, you may pin or tape the notice to the main door.

If the warrant is for possession of a houseboat, you must consider the overall risk of executing the warrant and make a judgement as to if there is a greater need for the use of body armour or life jacket. If the risk assessment indicates that it is necessary to wear body armour this should take precedent and the vessel should only be boarded if you can do safely without the use of a life jacket.

If the warrant is for possession of land and the occupants lock themselves into a caravan on the land, you must review your risk assessment and change the level of risk as appropriate. You may use reasonable force to remove them provided you have given them an opportunity to leave voluntarily. If you feel police assistance is necessary, withdraw temporarily and consult with your Bailiff Manager. It is undesirable to move an occupied caravan but it can be moved if:

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- The occupant is given the opportunity to leave peacefully.
- The occupant is not prevented from leaving at any time.
- Care is taken to prevent injury (e.g. the caravan is moved slowly).
- The caravan is stopped occasionally and the occupant given the opportunity to leave peacefully.
- The caravan is moved to a place where the occupant is not imprisoned.

#### **It is an offence to tow an occupied caravan on a public road.**

The caravan should be moved to a place beside the road. Take care, though, that the caravan is not causing an obstruction and that no part of it is on the road.

When an occupied caravan is to be moved the police should attend to observe and prevent a breach of the peace and the Bailiff Manger informed.

### **21.14 Warrant of Restitution**

Occasionally, a person evicted from a property or land will return. The Claimant may file an application for restitution with a supporting

affidavit.

The occupier may have damaged the property or fortified it against further entry. There may, therefore, be a higher risk involved and you should consult with your Bailiff Manager as to whether police assistance is desirable.

#### **21.15 Transportation of prisoners**

Following the introduction of secure cell vehicles (SCVs) by HMCTS all arrest and transportation of prisoners **must** be undertaken by two Bailiffs or a combination of a Bailiff and a CEO using these vehicles. To arrange the use of an SCV you should contact the CEO supervisor at your local Magistrates Court.

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The SCV cell is completely secure and prisoners cannot release themselves or make physical contact with people in the cabin area. Should a prisoner display aggression or become abusive, staff should attempt to resolve the situation by reasoning with the individual and using their skills to promote compliance. Under no circumstances should a member of HMCTS staff force a prisoner into the containment cell.

Where a prisoner becomes aggressive or violent and refuses to exit the containment cell, and it is not possible for staff to promote compliance, then they should either request assistance from the police or proceed to the nearest police station. Once at this destination the prisoner can be removed from the vehicle in a safe and controlled manner whilst remaining in custody.

For further operational and policy information, relating to the use of these vehicles, please refer to the HMCTS 'SCV Operational Guidance' document.

#### **21.16 Providing court room security**

Bailiffs must not be used to provide court room security and any requests from a Judge to carry out this role must be referred to a court security officer.

#### **21.17 Police**

You may request police assistance if you experience difficulties with any job or if you expect violence. The help that the police can offer a Bailiff will depend on the circumstances. In any situation where you expect violence, or where you have previously had to withdraw because of a threat of violence, you should ask the police to accompany you.

If the police do accompany you, explain to the person you are visiting the purpose of the visit whilst the police are present. It is sufficient for the police to stand by to prevent a breach of peace whilst you execute a possession warrant. The Bailiff Manager must be informed of any requests for police assistance.

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#### **21.18 Incidents and assaults**

HMCTS recognises that violence and aggression are ways in which people may sometimes express their feelings. Court staff, including Bailiffs, may encounter this expression in the form of verbal aggression, threatening behaviour, or actual physical assault. The purpose of these guidelines is to make you aware of how to respond positively appropriately in such circumstances.

This section:

- Gives advice on avoiding violence.
- Sets out steps to take when confronted with violence.
- Explains the procedure for reporting an assault.

Violence is not just a physical attack. It is any incident in which a person is abused or threatened. Any form of violence must be reported quickly so that the necessary steps can be taken straight away.

### 21.18.1 Avoiding violence

The risk of violence can be reduced by following four important principles:

- **AVOID** potential risks by taking sensible cautionary measures.
- **TALK** and **ACT** in ways, which will not provoke.
- **WALK** away from danger as quickly as possible.

Complete the *Bailiff Risk Assessment* (See Section 22) in conjunction with the Ex97 (Bailiffs Daily Record Sheet) **before** leaving the office.

Familiarise yourself with the immediate area where you are working so that you know your potential escape routes. **Remember**, “high risk” areas/premises should be treated with caution even at quiet times

You must be aware of your surroundings and potential hazards. Avoid meeting defendants in potentially dangerous places, such as the top of stairs or confined, dead - end spaces. During interviews try to keep yourself between the other person and an escape route.

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When visiting homes or meeting people, immediately introduce yourself as an officer of the court and explain the purpose of your visit. Show your identity card and any document of authority (e.g. the warrant).

### 21.18.2 Confronting violence

When faced with the threat of violence the following approaches may be useful, depending on the circumstances:

- Stay calm and do not argue.
- Offer to talk about the problem.
- Do not touch anyone threatening you, especially the person you are visiting.
- Keep your distance and avoid prolonged eye contact – this can be considered as threatening.
- Ask for any weapon to be put down (not handed over).
- Do not remain alone with a threatening person, **withdraw**.
- Avoid turning your back on an aggressor, when you are withdrawing.

Your instincts are a good indicator of something threatening. If you feel you are in danger, withdraw and get help immediately. You will not be criticised for this. The most important thing is your own safety.

If you are unable to withdraw immediately, protect yourself, and try to get help by:

- Activate your loan worker alarm.
- Shouting/screaming ‘fire’ or ‘police’.
- Attracting the attention of neighbours or passers-by.
- Telephone as quickly as you can for assistance.

### 21.18.2 Lone worker alarms

At the first sign of violence activate your Lone Worker alarm in accordance with the guidance issued to you.

### 21.18.3 Violent incidents

If you feel you have been assaulted, report it **immediately** to your Bailiff/Delivery Manager, or another senior officer.

Enter Details on the item of process.

### 21.18.4 Witnesses

If anybody helps you or sees any incident you are involved in, record their name and address. Try to get a statement, as you may be able to call them as witnesses in subsequent proceedings.

### 21.18.5 Evidence

If the police are called to an incident, do not interfere with evidence unless there is a safety hazard. Objects used in an attack should be left where they are. If you do have to move evidence, label each item clearly. Handle the evidence carefully and as little as possible.

### 21.19 Violence at work

The Health and Safety Executive definition of violence at work is 'any incidents in which an employee is abused, threatened or assaulted in circumstances arising out of the course of his or her employment'.

HMCTS takes all incidents very seriously and is of the view that action should always be taken against perpetrators of 'violence at work' on officers of the court. It is a matter for the Delivery Manager to make a decision how to proceed, depending on the type of incident.

If you experience such an incident whilst in the execution of your duties, it must be **reported immediately** to your Bailiff Manager/Nominated Officer or Delivery Manager.

As soon as possible thereafter you must complete the 'General Security and Safety Incident Report Form' which can be found on the HMCTS Intranet. You can find it by going to Safety & Security > Safe and

Secure > Appendices > Appendix 27. The form should then be passed to the Delivery Manager for recording and action. For further information relating to the reporting of incidents or assaults please refer to the 'Safe and Secure' section on the HMCTS intranet.

In some instances the completion of a full 'General Security and Safety Incident Report Form' may not be the most appropriate method of capturing minor instances of verbal abuse. Instead the 'Minor Verbal Abuse Report Form' should be used in the following circumstances:

- **Minor verbal abuse** - classified as language used to manipulate, control, ridicule, insult, humiliate, belittle, vilify or show disrespect and disdain to the member of HMCTS staff.
- **Personal abuse** - classified as inappropriate, hurtful, malicious or severe language that is directed to an individual. Comments used on one person's specific appearance may also be deemed as personal abuse.

Please note that the following incidents of verbal abuse they **must** be reported on the General Security and Safety Incident and Accident Report Form and investigated thoroughly:

- Racial, religious, homophobic or any other abuse which centers on gender or disability.
- Any episodes of sustained abuse, namely more than a single comment or sentence.

Any abuse which involves threats of harm to individuals, their family, friends or other person associated with them. This will include actual threats with weapons (which should be reported separately in any event) or verbal threats of violence.

**You should report all incidents in the Accident Book.**

### **21.20 Serious incidents**

There are two commonly used remedies that set out the procedure under the County Court Act 1984, section 14 and County Court Rules 1981, Order 34. This involves issuing and serving a summons  
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*(Summons for Assaulting an Officer of the Court or Rescuing Goods)* and bringing the matter before a Circuit Judge for consideration as to hearing dates etc. The second is to seek a police prosecution. The Delivery Manager will consider whether to obtain legal representation for the court (Bailiff). The legal representation is recommended but it is a matter for the Delivery Manager whether a Solicitor or Barrister is appointed.

Bailiffs and Delivery Managers have the option of reporting the assault to the police – it would then be the police and Crown Prosecution Service who would decide whether to proceed with the prosecution.

### **21.21 Workplace support**

Workplace Support Advisers are based at locations throughout England and Wales and provide a Helpline. Access to the service is via the Workplace Support Helpline which is available 24 hours a day, 7 days a week, 365 days a year on 0800 0198988.

HMCTS staff may speak to a Workplace Support Advisor in confidence and there is no requirement to inform a line Manager.

For further information please refer to the relevant section within the HR pages of the Ministry of Justice intranet site.

### **21.22 MoJ Wellbeing Service**

Atos Healthcare provides a free and confidential service to MoJ staff. It offers advice and information on non work-related issues such as: stress/anxiety and depression, addiction/ dependency, bereavement, relationship issues; legal issues; financial; gay/lesbian/gender issues; and eating disorders.

Through the service you can access:

- e-counselling - where you type in your queries/ concerns and the counsellor responds onscreen
- On request, telephone or face-to-face counselling (usually up to 2 sessions).

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## **Section 22 – Risk assessment guidelines**

### **22.1 Introduction**

These revised risk assessment guidelines replace all previous guidelines contained within the Bailiff Manual and have been developed following endorsement, by the HMCTS Directors Board, of the risk assessment recommendations contained within Peter Risk's report, 'Supporting Our Doorstep Teams – Our Civilian Enforcement Officers & Bailiffs'.

### **22.2 What is a risk assessment?**



A risk assessment in this instance is the formal procedure required of each Bailiff in order to identify the possible risk to you whilst conducting your duties. It is designed to help you identify and highlight the source of those risks. It will give Bailiffs and Bailiff Managers the basis for, and opportunity to make, pre-visit decisions so as to improve your safety. HMCTS is also required to conduct a Risk Assessment of all the duties performed by its staff and in the area of Bailiffs visits. This is referred to as the Annual Risk Assessment (ARA) and this has normally been delegated to the Bailiff Manager. The Risk Assessment performed by the Bailiff Manager is to assess what can be done to minimise a risk and reduce what has been identified by the Bailiff as a High or Medium risk, so that the intended visit can proceed and the process be executed.

### **22.3 Why do I have to do a risk assessment?**

It is a requirement of the Ministry of Justice and HMCTS that a risk assessment is conducted on all process and it is especially important because of the possible risks associated with your work and the need to minimise those risks.

HMCTS views your personal safety as the most important element of the risk assessment process. If at any time during a visit you feel that your personal safety is or may be compromised then you **must** withdraw and inform your Bailiff Manager immediately.

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### **22.4 The emergency sheet**

This form is designed to provide the Bailiff Manager, Delivery Manager, fellow Bailiffs and if necessary the Police, with all relevant details during a possible emergency, e.g. if you fail to call in. It includes important details such as your personal appearance, your vehicle and relevant telephone numbers. All Bailiff Managers and Bailiffs must complete this form **and** update it when any changes occur. The Bailiff Manager and Delivery Manager will hold copies of the completed form.

The details relating to description, vehicles details and contact phone numbers contained on this form **must** be consistent with the details provided to the alarm-receiving centre (ARC) responsible for managing your lone worker alarm device. If any of these details change you **must** complete a new emergency sheet. Your Bailiff Manager is responsible for informing your local data manager who will update your personal details held by the ARC.

### **22.5 The annual risk assessment (ARA)**

Bailiff Managers are required to complete this form **at least** once a year and when there has been a significant incident or change in the process. Bailiff Managers may decide it should be completed more frequently. The form has one of two functions:

- It is a tool to identify control measures that are required to be implemented to adequately control the risks Bailiffs may encounter.
- It provides an assurance that all the necessary control measures are already being implemented.

**The Bailiff Manager must retain a copy of all completed Annual Risk Assessments for at least 3 years. These may be inspected by a local TUS H&S Representative.**

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## 22.6 Overview of the risk assessment system

A risk assessment is required to be undertaken for all process executed by Bailiffs when direct contact with a named individual is due to take place i.e. when a doorstep visit is planned. The level of risk assigned to the process can be low, medium or high.

The system for obtaining risk assessment information varies slightly, depending upon the type of process which is to be executed; however the way in which this information is assessed and the level of risk calculated is the same for all process.

There are essentially three stages to undertaking a risk assessment:

- **Stage One** – Obtaining risk assessment information from the claimant.
- **Stage Two** – Applying local information & knowledge.
- **Stage Three** – Assessing all available information and scoring the risk.

There is no set period of validity for a risk assessment; however, if after the initial risk assessment has taken place any process remains unexecuted for a significant period of time, e.g. more than three months, then you **must consider** whether the original information used to undertake the risk assessment remains valid or whether this information requires updating:

- You must risk assess all items of process before you make your intended visits.
- This involves gathering relevant information from claimants and third parties and any other information available to you locally. The details of how this must be done are contained in this document.
- You must then assess this information, evaluating any potential hazards, the likelihood of these hazards occurring and assess whether any countermeasures can be put in place which will lower the potential risk.
- Finally you must then score the level of risk, following the guidelines in this document, to calculate whether the process is a low, medium or high risk. The level of risk will dictate how the process should be executed.

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## 22.7 Stage One – Obtaining information from the claimant

### 22.7.1 Claimant or 3<sup>rd</sup> party information

Any information provided by the claimant, which indicates that a potential risk exists, **must** be checked and verified with the claimant to ensure that the full details and reasons for providing this information are obtained. In the event that contact with the claimant cannot be made, and the risk assessment form (annex B) can therefore not be completed, stage two of the process must commence.

The details of any threats made by a defendant or third party **must** be treated as genuine and shared with any other agencies that have an involvement in the execution of any process. For example, if you are informed by a housing officer that an individual has made threats relating to the re-possession of their property, then you must share this information with the Bailiff Manager, etc. prior to the execution of the warrant. If you plan to involve the police in the execution of a warrant or

require the police to attend during the course of an eviction, etc. you have a duty to share any relevant risk assessment information and you must do as soon as practically possible.

You **must** also make the claimant aware that they have a duty of care to share relevant risk information with any other staff or contractors employed by them who may be present when a warrant or process is to be executed. At the address, you must inform any other parties involved (e.g. locksmith) of any relevant risk information.

In turn, any details of threats made by an individual, whether specific or generic, provided to you by a claimant, third party or other agency, must be recorded in the Risk Assessment section on your Bailiff's Daily Record Sheet (DRS) and on the specific warrant/process, so that the information can be assessed when you carry out your risk assessment.

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### **22.7.2 Warrants of possession or restitution**

The following process should be followed for all warrants of possession or restitution.

Upon receipt of the warrant of possession / restitution the risk assessment form must be completed by the claimant. Any information provided by the claimant on the application, which indicates that a potential risk exists, **must** be checked and verified with the claimant to ensure that the full details and reasons for providing this information are clear.

Any relevant risk information obtained should then be recorded on the warrant. The date and risk assessment code should also be noted on the warrant.

The eviction date can be set prior to receipt of the returned risk assessment form or before any contact is made with the claimant; however, if the risk assessment form has not been returned or contact with the claimant made before the date of the repossession then the repossession, **must** be assessed as 'medium' risk unless other alternative control measures can be put in place to reduce the risk.

**The preliminary visit is generally regarded as low risk, however, if any information contained on the risk assessment form indicates that there may be potential risks then you should refer this information to your Bailiff Manager prior to undertaking the visit. When discussing any information you should refer to the likelihood & hazard table contained on page 199.**

When undertaking the preliminary visit to deliver the notice of eviction (N54) to the defendant, not less than 7 days prior to eviction taking place, you should note any behaviour or information relevant to the risk assessment process i.e. the defendant's behaviour, any verbal threats made, or if the property appears to be unoccupied, etc. Details of all preliminary visits including any risk assessment information must be entered on the DRS using the risk assessment summary codes and also endorsed/dated on the warrant.

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On the day prior to the re-possession taking place you **must** confirm that the risk assessment form sent to the claimant has been completed and returned. If this form has not been completed then you **must** contact the claimant immediately by phone and ensure that the risk

assessment form is completed.

On the morning that the re-possession is due to take place, it is recommended that you contact the claimant to check whether any further contact with the defendant has been made and if the repossession is still going ahead. At this point you should also confirm that any existing information outlined on the risk assessment form, is still relevant and check with the claimant if any new information relevant to the defendant has been identified.

Once all of the above steps have been completed stage one of the risk assessment process is complete and you should refer to the information contained in 'Stage Two – Local Information & Knowledge'

### **22.7.3 Warrants of delivery**

The following process should be followed for all warrants of delivery.

Upon receipt of the warrant of delivery, the risk assessment form must be completed by the claimant. Any information provided by the claimant on the application, which indicates that a potential risk exists, **must** be checked and verified with the claimant to ensure that the full details and reasons for providing this information are clear.

Any relevant risk information obtained should then be recorded on the warrant. The date and risk assessment code should be noted on the warrant.

In the majority of cases the warrant should only be executed once the completed risk assessment form is received, contact made with the claimant.

**The preliminary visit is generally regarded as low risk, however, if any information contained on the risk assessment form indicates that there may be potential risks then you should refer this information to your Bailiff Manager prior to undertaking the visit.**

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**When discussing any information you should refer to the likelihood & hazard table contained on page 199.**

When undertaking the preliminary visit to deliver the notice to the defendant, not less than 7 days prior to execution taking place, you should note any behaviour or information relevant to the risk assessment process, i.e. the defendant's behaviour, any verbal threats made, or the location of the property, etc. Details of all preliminary visits including any risk assessment information must be entered on the warrant using the risk assessment summary codes and endorsed/dated.

On the morning that the warrant is to be executed, it is recommended that you contact the claimant to check whether any further contact with the defendant has been made and if the warrant of delivery is still going ahead. At this point you should also confirm that any existing information outlined on the risk assessment form etc is still relevant and check with the claimant if any new information relevant to the defendant has been identified.

Once all of the above steps have been completed stage one of the risk assessment process is complete and you should refer to the information contained in 'Stage Two – Local Information & Knowledge'

### **22.7.4 For Warrants of execution**

The following process should be followed for all warrants of execution.

Upon receipt of the warrant of execution, the risk assessment form must

be completed by the claimant.

Any relevant risk information obtained should then be recorded on the warrant. A list of the risk assessment codes is contained at annex C.

The date and risk assessment code should also be noted on the warrant.

**Prior to any visits taking place you must ensure that every effort has been made to have the risk assessment form completed.**

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For warrants of execution you must check for any responses to the N326 (Notice of Issue of Warrant of Execution) that indicate the existence of any risk related information.

Once all of the above steps have been completed stage one of the risk assessment process is complete and you should refer to the information contained in 'Stage Two – Local Information & Knowledge'

#### **22.7.5 Personal service documents (including foreign process)**

The following process should be followed for all items of personal service.

If practical, the claimant should be contacted to ascertain if any relevant risk assessment information is known.

All visits should be entered onto your DRS sheet and any relevant risk information obtained should then be recorded on the document. The date and code should also be noted on the document.

In addition to entering the risk assessment code onto the document this code must also be entered in the 'Bailiff's Note Book' (Personal Service Book, ref C.C. No. 64).

**All practical efforts should be made to contact the defendant by letter or telephone and arrangements made for the defendant to collect the papers from the court office.**

Any foreign process to be served at private residential addresses or the business premises of the defendant, as opposed to professional business premises such as the defendant's solicitor's office, etc. **must be automatically treated as a medium risk if no other information relating to risk is included with the application.** If for any reason the serving of foreign process is delayed or is likely to be delayed, the Court **must** ensure that the requesting authority are informed of the delay in service and the reasons for this delay.

European Commission Council Regulation (EC) No 1348/2000 specifies that processes are to be personally served and the notification is to be

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returned to the transmitting EU member state within one month of receipt of the papers.

**With the exception of some foreign process, detailed as above, the service of documents is generally regarded as low risk, especially as there is no necessity to enter the address. However, if any information obtained indicates that there may be potential risks, then you should refer this information to your Bailiff Manager prior to undertaking the visit.**

Once all of the above steps have been completed stage one of the risk assessment process is complete and you should refer to the information contained in "Stage Two - Local Information & Knowledge"

#### **22.7.6 Committal warrants or arrest**

All committal warrants or arrests **must**, as a minimum, be treated as medium risk and you should refer to the criteria & control measures contained in the table on page 190.

### 22.8 Stage Two – Local information & knowledge

Office staff **must** bring to the Bailiff's attention, as a matter of urgency, any contact with an individual, i.e. correspondence, phone calls, or contact at the counter, which causes them concern. Particular attention must be given to any type of verbal or physical threats. These should be reported to the Bailiff Manager as soon as is practically possible.

As part of the risk assessment process, you must assess whether there is any local information or knowledge known to you or colleagues, which may affect the level of risk assigned to a particular piece of process, etc. You should consider all of the following potential hazards; however this list is not exhaustive:

- Has violence occurred in the past?

- a) Have you or a colleague been the subject of an attack by this individual in the past?

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- b) Does any information provided by the claimant/3<sup>rd</sup> party suggest that the individual concerned has been violent in the past?

- Has the individual concerned made threats in the past?

- a) Have you or a colleague been the subject of threats made by this individual in the past?

- b) Does any information provided by the claimant suggest that the individual concerned has made threats in the past?

- Has the individual concerned been verbally abusive in the past?

- a) Have you or a colleague been the subject of verbal abuse made by this individual in the past?

- b) Does any information provided by the claimant suggest that the individual concerned has been verbally abusive in the past?

- Location of the address

- a) Is the address in an area in which it is known that the individual is more likely to be aided by other persons or large groups of youths, etc?

- b) Is the address in an area where you may be more likely to be threatened or robbed, etc?

- c) Is the address in a remote location where assistance may be delayed if required?

- Is the individual a known drug user?

- a) Is the behaviour of the individual more likely to be erratic or their mood likely to change because of the use of drugs?

- b) Is there likely to be other drug users in the property?

- c) Is the individual concerned likely to be in possession of syringes or other drug paraphernalia, which may present a danger?

- Is the individual known to abuse alcohol?

- a) Is the behaviour of the individual more likely to be erratic or their mood likely to change quickly because they abuse alcohol?

- b) Is there likely to be other individuals in the property who are also abusing alcohol?

- Is there likely to be other persons or known associates at the address who could cause difficulties?

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- a) Does the individual reside at an address where other known drug users live or are known to regularly visit?
- b) Is the individual known to associate or live with other individuals who may be known to the Court?
- c) Does the individual live alone, with parents or as part of a larger family who may be present at the address during the time of the visit?
  - Is the individual known to have mental health problems or learning difficulties?
- a) Is the individual likely to have problems in understanding the reason for the visit?
- b) Is the behaviour of the individual likely to be erratic or their mood likely to change quickly?
- c) Does the individual require a responsible adult to accompany them if they are being arrested?
  - Are there known to be any aggressive dogs or other dangerous animals in the property?
- a) Have staff who visited the address previously encountered a dangerous dog or other animal or had threats made to them involving the use of a dangerous dog or animal?
  - Are there any known language difficulties?
- a) Is English the first spoken language of the individual?
- b) Are there any known language barriers that may increase the risk of misunderstanding and thereby increase the risk of conflict

## **22.9 Stage Three – Assessing all available information and completing the risk assessment**

### **22.9.1 Assessing information**

Prior to the visit taking place, you must complete the risk assessment in conjunction with your Bailiff Manager, where necessary.

Information obtained in stages one and two of the risk assessment process above should be taken into account, for example:

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- Any information from the claimant contained on the application form e.g. N325.
- Any information from the claimant contained on the completed risk assessment form.
- Any information gathered when undertaking preliminary visits e.g. to deliver the notice of execution.
- Local information or knowledge as highlighted in stage two.
- Any incidents at Court, correspondence or phone calls from the defendant that raise concerns.

This information should be assessed, the hazards identified & measured and the appropriate risk rating for the process calculated. The purpose of risk measurement is to determine the likelihood and hazard of a risk occurring. HMCTS evaluates risks by using a 5 x 5 matrix, which is an approach used across the whole of the Ministry of Justice.

Assessing a risk therefore involves evaluating two key factors:

- The **Likelihood** of an incident occurring, e.g. how often does or could the incident occur

· The **Hazard** and consequence to staff should an incident occur, e.g. a minor or serious injury.

Therefore to measure the risk to staff from an individual, both the likelihood and hazard are given a score ranging from one to five based on the information gathered both from the claimant/3<sup>rd</sup> party and locally. The scores along with examples of information to be used when assessing the likelihood and hazard are summarised in the table below. It must be noted that the table is for guidance only and the overall assessment of risk is determined by the person making the assessment, taking into account all the relevant factors and information.

**The Bailiff having conduct of the visit is the final arbiter of risk.**

## **Score Likelihood Hazard Criteria**

**5**

### **Very High**

>80% Fatal Injury There is evidence that it is very probably that the individual will become violent:

· The individual is well known to the Court and has a history of making threats of violence to specific members of staff, assaulting staff, has absconded from Court on a previous occasion, or been violent during the execution of process.

· Information obtained from the claimant/3<sup>rd</sup> party indicates that the individual concerned has made specific threats of violence to current Court proceedings.

**4**

### **High**

51-80% Serious or severe injury or illness.

Reportable major injury and/or long term absence

absence

There is evidence that it is probable that the individual will



become  
violent:

- The individual is known to the Court, has previously been verbally abusive to staff and has also made specific threats of violence to members of staff should a particular process be executed;
- the warrant if possession or restitution relates to the eviction of squatters from property or land;
- information obtained from the claimant/3<sup>rd</sup> party indicates that the individual concerned has previously made threats of violence to other individuals or employees.

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**3**

### **Medium**

21-50% Moderate

Injuries or  
Illness.

Medical  
treatment  
and/or brief  
absence e.g.

Over 3 days.

There is evidence that it is possible that the individual may become violent:

- The defendant is known to the Court and on occasion has previously been verbally abusive or made non-specific threats of violence, staff consider that it is possible this individual may become violent.

- The risk assessment form has not been returned by the

claimant/3<sup>rd</sup> party.

- The risk assessment form has been returned by the claimant/3<sup>rd</sup> party but no information is known about the defendant.
- It has not been possible to contact the claimant/3<sup>rd</sup> party by phone to complete the risk assessment form.
- Foreign process served at private residential addresses or the business premises of the defendant if no other information relating to risk is included with the application.
- The warrant of possession or restitution relates to the eviction of travellers from property or land.
- Warrant is to be executed at a remote location where assistance may be delayed if required.
- Warrants of restitution.
- The warrant of possession has had a hearing on the day of the appointment and the application has been dismissed.

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**2**

**Low**

6-20% Minor

Injuries or

illnesses

requiring

minimal

medical

treatment

(e.g. check

up or triage)

and/or very

brief  
absence e.g.  
less than 3  
days.

There is no evidence to suggest that the individual will become violent.

- The claimant/3<sup>rd</sup> party risk assessment form has been completed and there is no indication that the defendant presents any risk to staff.

- The property which is the subject of the warrant of possession is empty or appears to be empty.

- Contact has been made with the defendant and no risk related issues were identified.

- The service of personal papers where there is no indication that the defendant presents any risk to staff.

- Foreign process to be served at the offices of the defendants representative e.g. solicitors office.

**1**

**Very  
low**

<5%

Minor  
Injuries  
requiring first  
aid treatment

The individual is known to the Court and presents a very low danger to staff.

- The individual is known to the Court and previous contact with

Court staff or Bailiffs has not given cause for concern.

### **22.9.2 Individuals previously unknown to the court**

If the individual is previously unknown to the Court and no information relating to risk is available locally or via the claimant/3<sup>rd</sup> party then **the process must be automatically assessed as Medium Risk**. This is because whilst the likelihood of an incident occurring is low, the potential consequence is high.

### **22.9.3 Scoring the risk**

When the information available and the related risks have been assessed, you need to consider whether there are any control measures that can be put in place that will reduce the overall level of risk prior to scoring the hazard and likelihood. Possible control measures might include:

- Bailiff Manager endeavours to contact the claimant or defendant.
- Bailiff Manager undertakes an assessment visit to the address (noncontact).
- Using two or more Bailiffs/Bailiff Managers to execute process.
- Ringing into the office before/during/after execution.
- Use of the 'amber alert' function on the lone worker alarm;
- Mandatory use of body armour.
- Contact and involve the police prior to the execution of the process; however, if this control measure is to be used then serious consideration should be given as to why the process has not been assessed as 'high' risk.
- Liaison with other agencies e.g. social services and local council; etc.

When all possible control measures have been considered, both the likelihood and hazard must be scored to calculate the overall risk of the process. Using the table above as a guide, give both the likelihood and hazard a score between 1 and 5. Record these scores on the item of process. Multiply the two scores together to obtain the overall risk score and record this number on the warrant/process.

Using the risk matrix table below lookup the overall risk score and record the level of risk (Low, Medium or High) and the Likelihood and Hazard score for the process in the relevant column on the DRS and on 19 6

the process itself in red ink i.e. RAL, RAM or RAH. If the overall risk score is High or Very High then the overall risk assessment of the process is recorded as High. It is therefore expected that the warrant will be executed in partnership with the police.

**Hazard**

**Hazard**

**L i k e l i h o o d**

**Very High (5)**

Fatal Injuries

**High (4)**

Serious Or

Severe Injury

**Medium (3)**

Moderate Injuries  
Requiring Medical  
Treatment

**Low (2)**

Minor Injuries  
Requiring Minimal  
Medical Treatment

**Very Low (1)**

Minor Injuries  
Requiring First Aid  
Treatment

**4 5** Medium **3** Low **2** Low **1** Low **Very Low (1)** Low  
Unlikely To Occur

**4 6** Medium **8** Medium **10** Medium **2** Low **Low (2)** Low  
Low Expectation To  
Occur

Medium (3) **3** Low **6** Medium **9** Medium **12** High **15** High  
Occasional Occurrence

High (4) **4** Low **8** Medium **12** High  
Regular Occurrence

**5** Medium **10** Medium **15** High

**Very High (5)**

Will Occur On A  
Regular Basis

#### **22.10 Executing/serving process**

The level of risk assigned to each piece of process dictates the criteria and control measures under which that process must be executed; the following table outlines these criteria. **Any item of process assessed as 'Medium' or 'High' must be discussed with your Bailiff Manager prior to execution to discuss any further measures which can be taken to further reduce the level of risk.**

**All process** where there is a requirement to either arrest or convey an individual to a Court or Prison must be executed by a minimum of two Bailiffs/Bailiff Managers using a HMCTS secure cell vehicle.

#### **Level of Risk Criteria & Control Measures**

##### **Low Risk**

All process assessed as Low Risk may be executed/served by a single Bailiff. The wearing of body armour for process assessed as 'low' risk is **not mandatory** and Bailiffs may

use their discretion when deciding whether to use this equipment

### **Medium Risk**

All process assessed as Medium Risk may be executed/served by a single Bailiff, however, the wearing of body armour is **mandatory** for all process assessed as 'medium' risk **unless** alternative control measures can be agreed between the Bailiff and Bailiff Manager that further reduces the risk i.e. the use of two Bailiffs to execute/serve the process.

### **High Risk**

It is expected that all high risk process is executed in partnership with the police. The use of body armour by Bailiffs for high risk process is **mandatory** for the duration of the execution of the process

**If police are not available then withdraw and re-schedule.**

19 9

HMCTS views your personal safety as the most important element of the risk assessment process. If at any time during a visit you feel that your personal safety is or may be compromised then you **must** withdraw and inform your Bailiff Manager immediately.

If during a visit you are physically attacked, verbally threatened or subject to any other threatening behaviour, you **must** complete an accident/incident report form as soon as possible within five days of the incident occurring. A copy of the accident/incident reporting form can be obtained locally from your line Manager or is available on the HMCTS or MoJ intranet sites. There may be instances where the Bailiff Manager needs to complete the form.

### **22.11 High risk log**

In addition to completing an accident/incident form you will also need to ensure that any relevant incidents, etc. are also recorded on your local high risk log. The log can be found at annex D.

### **22.12 Can I change the risk assessment?**

A risk assessment can be changed at any time. When undertaking visits you should, as part of the ongoing dynamic risk assessment process, continue to assess your situation taking into account the suggested list of possible hazards listed earlier in the process and any other changes in circumstance which you consider increases the level of risk you are exposed to. Should the level of risk increase, then you should either withdraw or put into place any other appropriate control measures agreed with your Bailiff Manager.

An example of when an assessment may change is if an application to suspend a warrant of possession is dismissed. In such cases consideration must be given to increasing the likelihood of a hazard occurring.

If any existing information changes or new information becomes available, then you should consider whether this changes the risk assessment you have carried out. If as a result you consider that the

level of risk has increased, then you should discuss your concerns with  
20 0

your Bailiff Manager and the existing risk assessment should be reviewed.

If it is intended to make an 'out of office hours' visit, you should reassess the risk accordingly and consult with your Bailiff Manager. You must complete the remainder of the Bailiff's Daily Record Sheet (DRS) (EX97). Following the visit you should record any problems encountered with the defendant at the address i.e. threats made or violence on the warrant/process.

### **22.13 Risk assessment and the Bailiff's Daily Record Sheet**

The Bailiffs Daily Record Sheet (DRS) is a national form agreed between the Public and Commercial Services Union and HMCTS. Local amendments to the form are not allowed.

It has been designed to satisfy two requirements:

1. To formally record the risk assessment process by identifying and recording whether a doorstep visit has been assessed as a Low, Medium or High risk and to also document the discussions and actions agreed with your Bailiff Manager to mitigate the risk to your safety including the time you intend to end your shift to enable your Bailiff Manager (or designated officer) to be aware of the time to expect your end of work day call, and providing an itinerary so that if necessary your steps can be re-traced in the event of an emergency.
2. To substantiate travel and subsistence claims to enable quality checks on route planning, how many visits you have made and the order in which you made them. It will also show the time you spend in the office.

It also provides a 'cash summary' section, which you can use in conjunction with items of process plus receipt book, to account for payments you have taken, a column to record return codes and one for 'additional information', e.g. note of difficulties, explanation of deviation from route, return visit.

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**It is not the DRS but the actual individual items of process which are the full and official record of individual proceedings – computer entries and process 'return' to claimants should be derived from the items of process and not from the information on the DRS.**

Bailiffs **must** complete a form for each day they are working, in advance of any visits being made, to record itinerary, process to be dealt with and risk assessments.

Endorse the sheet with your name, date, Bailiff area code/no, planned end of shift time and the sheet number. Then, in the order planned for your visits, and for each item of process you must record the following:

- Process number;
- Defendant's name, house number, street name & area/postcode.
- Whether the risk assessment of the process (as set out earlier), is Low (RAL), Medium (RAM) or High (RAH).
- The type of process.

On making the visit you would then enter the value of any money

recovered the return code and any further additional information. The additional information is not limited to risk information or warrant returns, it should also be used, for instance, to identify a visit not made. Process served whilst 'in office' must be marked accordingly, passed to the office in the usual way and entered on the DRS.

On the reverse of the DRS you must sign, date and enter the emergency contact number. These will normally be the Bailiff Manager or designated officer's telephone number.

All process you have assessed as Medium Risk or High Risk must be discussed with your Bailiff Manager and the details entered on the reverse of the Bailiff Daily Record Sheet accordingly. This should include full details of the defendant's name, address, nature of the risk, i.e. previous problems or claimant/3<sup>rd</sup> party information, and the action agreed to overcome the risk i.e. using two or more Bailiffs to execute the process. Any process assessed as high risk **must** be executed in partnership with the police. If you feel that not enough has been done to  
20 2

minimise the risk, then you have the right to refuse to execute that item of process and should discuss your concerns with your Bailiff Manager or another appointed Manager.

Once completed, you must forward a copy of the DRS to your Bailiff Manager or appointed Manager for their approval and signature. You **must not leave** until you have received a signed copy back. (NB If someone else other than the Bailiff Manager is to receive your end of shift call (e.g. Nominated Officer / Buddy) then you must hand/send them a copy of the completed DRS.

#### **22.14 Unscheduled visits or deviation from planned route**

These must be avoided if possible but an unscheduled visit must only be made on Low Risk process. An unscheduled visit may be made on Medium Risk process but **only** following notification to and agreement from your Bailiff Manager using any previously agreed countermeasures. The person responsible for receiving the end of shift call must be contacted and informed of the full details of the proposed visit or deviation. After the visit is completed, contact must be made again in order to confirm the return to the planned route.

The DRS must be clearly marked with the details of the visit and the form must show where it fits in with the day's planned visits. If the deviation involves a planned visit being missed out, this also must be shown clearly on the form by drawing a line through the entry and putting an appropriate remark (visit not made) in the 'additional information' column.

#### **22.15 Out of office hours visits**

You should plan early morning, evening and weekend work in advance and this **must** be agreed with your Bailiff Manager in advance. This is to ensure that reasonable arrangements can be put in hand for the Bailiff Manager, Nominated Officer or 'Buddy' to be contactable at those times should you have a problem and for start/end of shift call ins. The existence and sufficiency of these arrangements will be part of the risk assessment process for such visits. Any 'out of office hours' visits on Medium Risk process **must** only be undertaken following notification to  
20 3



and agreement from your Bailiff Manager using any previously agreed countermeasures.

### **22.16 Bailiff Managers**

Remember, at all times the health and safety of you and your colleagues is paramount.

You must discuss all Medium and High Risk process with the Bailiff with the aim of identifying and agreeing the action/s necessary in each case to reduce the risk to an acceptable level.

It is expected that all high risk process is executed in partnership with the police.

There may be some instances where the risk is such that no visit is justified. In such cases a full report should be made to the Delivery Manager, Lead Delivery Manager or as appropriate. The Bailiff having conduct of the visit is the final arbiter of risk and you do NOT have the authority to countermand the Bailiff risk assessment.

You must complete your own DRS for your 'out of office' work. Your own 'nominated officer' or 'buddy' must have a copy.

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### **Annexe A – Bailiff emergency sheet**

### **Annex B – Risk assessment form**

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### **Annex B – Risk assessment form**

20 6

### **Annex C – Risk assessment codes**

RA19 Visit undertaken and contact made, defendant was physically violent

RA 18 Defendant previously known to Court and has been violent

RA17 Claimant risk assessment form received or contact made - Defendant known to be previously violent

RA16 Visit undertaken and contact made, defendant made verbal threats

RA15 Claimant risk assessment form received or contact made - Defendant known to have previously made verbal or written threats

RA14

Defendant previously known to Court and has been verbally abusive or made threats to staff

RA13 Claimant risk assessment form received or contact made - Defendant known to have previously been verbally abusive

RA12 Claimant risk assessment form received or contact made – Previous police involvement with the defendant or other occupiers of the property

RA11 Warrant to be executed on travellers or squatters

RA10 Claimant risk assessment form received or contact

made – Previous social services involvement with the defendant or other occupiers of the property  
 RA9 Claimant risk assessment form received or contact made – Dogs or other potentially dangerous animals known to be kept at property  
 RA8 Warrant to be executed in remote location therefore assistance, if required, may be delayed  
 RA7 Risk assessment form not received and it has not been possible to contact the claimant to obtain any information  
 RA6 Claimant risk assessment form received or contact 20 7  
 made – Defendant is not known to the claimant and therefore no information is available  
 RA5 Foreign process to be served at private residential address or the business premises of the defendant  
*(Only to be recorded in 'Foreign Summons Book' C.C. No. 39)*  
 RA4 Claimant risk assessment form received or contact made – Defendant is known and no issues have been recorded  
 RA3 Visit undertaken and property appears empty  
 RA2 Visit undertaken, contact made with defendant no issues recorded  
 RA1 Foreign process to be served at the office of the defendants representative *(Only to be recorded in 'Foreign Summons Book' C.C. No. 39)*  
 20 8

## Annex D – High risk log

### High Risk Log

Date Address Postcode Surname Forename(s) Details of incident Reporting officer

#### Forms

There are a number of forms mentioned throughout this manual (which are not covered in the annexes) and this list gives you the links of where these can be found on the HMCTS intranet.

Accident report form <http://libra.lcd.gsi.gov.uk/hmcts/securitysafety/4499.htm>

Annual risk assessment <http://libra.lcd.gsi.gov.uk/hmcts/securitysafety/safe-secure/7935.htm>

General security and safety incident report <http://libra.lcd.gsi.gov.uk/hmcts/security-safety/4499.htm>

Minor verbal abuse / assault form <http://libra.lcd.gsi.gov.uk/hmcts/security-safety/4499.htm>

Payments received £1,000 and over <http://libra.lcd.gsi.gov.uk/hmcts/courts-work/general/guidance/fgl.htm>

Riddor form <http://libra.lcd.gsi.gov.uk/hmcts/security-safety/4499.htm>  
D90 - Request for Bailiff service <http://libra.lcd.gsi.gov.uk/hmcts/courtswork/family/forms/496.htm>  
D91 – Application for substituted service of a petition  
<http://libra.lcd.gsi.gov.uk/hmcts/courts-work/family/forms/496.htm>  
EX97 Daily record sheet <http://libra.lcd.gsi.gov.uk/hmcts/courtswork/civil/forms/602.htm>  
EX680 – Certificate of service of foreign process  
<http://libra.lcd.gsi.gov.uk/hmcts/courts-work/civil/forms/602.htm>  
N49 – Warrant for possession of land  
<http://libra.lcd.gsi.gov.uk/hmcts/courts-work/civil/forms/566.htm>  
N50 – Warrant of restitution (order 26 rule 17)  
<http://libra.lcd.gsi.gov.uk/hmcts/courts-work/civil/forms/566.htm>  
21 1  
N51 – Warrant of restitution (order 24 rule 6(1))  
<http://libra.lcd.gsi.gov.uk/hmcts/courts-work/civil/forms/566.htm>  
N54 – Notice of eviction <http://libra.lcd.gsi.gov.uk/hmcts/courtswork/civil/forms/566.htm>  
N215 – Certificate of Service <http://libra.lcd.gsi.gov.uk/hmcts/courtswork/civil/forms/566.htm>  
N218 – Notice of Service on a Partner  
<http://libra.lcd.gsi.gov.uk/hmcts/courts-work/civil/forms/566.htm>  
N244 – Application to set aside judgement  
<http://libra.lcd.gsi.gov.uk/hmcts/courts-work/civil/forms/566.htm>  
N245 – Application for suspension of a warrant and/or variation of an order <http://libra.lcd.gsi.gov.uk/hmcts/courts-work/civil/forms/566.htm>  
N326 – Notice of issue of warrant of execution  
<http://libra.lcd.gsi.gov.uk/hmcts/courts-work/civil/forms/566.htm>  
N332 – Inventory of goods removed  
<http://libra.lcd.gsi.gov.uk/hmcts/courts-work/civil/forms/566.htm>  
21 2

## Glossary of Terms

You may hear the following terms during the course of your duties. The definitions given are only a guide to the true meaning of each item. If you are in any doubt as to the meaning you should seek advice from your Bailiff Manager or Line Manager.

### **Action**

A court case started by issuing a claim

### **Acknowledgement of Service**

Form of reply to, or confirmation of, service of process

### **Administration Order**

An order that links all the debtor's debts. The debtor makes regular payments into court; the court divides the money between creditors and makes regular payments to them. Attachment of earnings orders are often used to collect the money

### **Admiralty Actions see High Court**

### **Affidavit**

A written statement verified by taking an oath

### **Affirmation**

Declaration by a witness who has no religious belief, or has religious

beliefs that prevent him/her taking the oath, that the evidence he/she is giving is the truth

**Appeal**

Application to a higher Court or authority for review of a decision of a lower Court or authority

**Appellant**

Person who appeals

**Applicant**

Person making the request or demand, e.g. person who issues an application

21 3

**Application**

The act of applying to a Court

**Appraisement**

The act of valuing goods removed by Bailiffs (or sheriff's officers) under a warrant of execution

**Arval Fuel Card**

Is used to purchase fuel to cover official mileage

**Assets Debenture**

A debtor may have borrowed money and the lender usually a company may require the borrower to sign an all assets debenture (fixed interest usually on a unsecured loan), as security for the borrowings

**Attachment of Earnings**

An order that directs an employer of a debtor to deduct regularly an amount, fixed by the Court, from the debtor's earnings and pay that sum into Court

**Bail**

Release of a defendant from custody, until his/her next appearance in Court, subject sometimes to security being given and/or compliance with certain conditions

**Bailiff**

Officer of the County Court empowered to serve Court documents and execute warrants

**Bankrupt**

Insolvent - unable to pay creditors and having all goods/effects administered by a liquidator or trustee and sold for the benefit of those creditors; as a result of an order under the Insolvency Act 1986

**Barrister**

A member of the bar: the branch of the legal profession which has rights of audience before all Courts

**Bill of exchange**

A written order from a person A, addressed to person B, requiring them to pay a certain sum of money to person C. The most common bill of exchange is a cheque

21 4

**Bill of Sale**

A document by which one person (called the grantor), gives to another person an interest in personal property. Usually there is the pledge of goods as security for the repayment of money

**Bond**

A sealed document acknowledging a debt and promising to repay a

specific amount of money

**Car Record Sheet**

To be used if a Bailiff owns or leases a car from the department. The sheet provides a daily record of journeys made

**Case Number**

A unique reference number allocated to each case by the issuing Court

**Charge**

A charge secures one person's legal interest in another person's goods. It is usually security against a loan: if the loan is not repaid the goods may be removed and sold. There are two types of charge: a fixed charge and a floating charge. A fixed charge is against specific goods. A floating charge is against goods which the owner can sell on condition they are replaced (e.g. stock kept in a shop or factory). A floating charge can 'crystallise': this means it becomes a fixed charge against the goods in hand at that moment and the owner cannot continue to sell and replace them

**Charging Order**

An order directing that a charge be registered at the Land Registry on property owned by the debtor. This is also a form of enforcing civil debt. An order preventing the sale or disposal of a property until the charge has been cleared

**Chattels**

Personal property, such as a motor car, garden tools and furniture, domestic animals (pets), linen, china, pictures books

**Circuit Judge**

A judge who sits in the County Court and/or Crown Court

21 5

**Claim**

Proceedings issued in the County or High Court. Previously known as an Action

**Claimant**

The person issuing the claim. Previously known as the Plaintiff

**Claim Form**

The form that a claim is issued on. Previously known as a Summons

**Committal**

Committal for Trial: Following examination by the Magistrates of a case involving an indictable or either way offence, the procedure of directing the case to the Crown Court to be dealt with

Committal for Sentence: Where the Magistrates consider that the offence justifies a sentence greater than they are empowered to impose they may commit the defendant to the Crown Court for sentence to be passed by a judge

Committal Order: An order of the Court committing someone to prison

**Committal Warrant (see Warrant of Committal)**

**Common Law**

The ancient law of the country based on its customs

**Conduct Money**

Travelling expenses given to a person ordered to attend court to ensure they have the cost of getting to court and home again

**Constructive Levy**

A constructive levy is the term sometimes used to describe a levy made

without entering the premises (e.g. by looking through a window). It is invalid

**Contract**

An agreement between two or more parties which creates a legal obligation on them all to do (or not do) certain acts. A contract may be verbal or written. An implied contract is one where the agreement is implied or suggested by something

21 6

**Co-Respondent**

A person named in a divorce case based on alleged adultery

**Costs**

The cost of taking part in a court case. At the conclusion of a case, the unsuccessful party may be ordered to pay all, or part of, the costs of the successful party. The term 'costs' includes court fees and witness expenses, plus any solicitor's and barristers fees

**County Court**

Sometimes inaccurately referred to as the Small Claims Court, County Courts deal with civil matters. Many County Courts have extra powers, which enable them to deal with divorce and other family proceedings, bankruptcy actions, matters relating to children and cases involving ships and boats known as admiralty actions. Some County Courts are also branch offices of the High Court known as district registries

COURT Body with judicial powers (see also Court Room)

**Creditor**

A person to whom money is owed by a debtor

**Crown**

The term 'The Crown' usually refers to the State of a government department

**Daily Record Sheet**

Record and support the risk assessment process and support travel subsistence claims

**Damages**

A sum of money given as compensation for physical or material loss

**Debenture**

A document which creates or confirms a debt and contains a promise to pay

**Debtor**

Person owing money to another party

**Declaration**

A court order stating a party's rights

21 7

**Deed of Arrangement**

A document, registered with the Department of Trade by a firm or business, transferring property for the benefit of creditors

**Deed of Assignment**

A document which legally assigns responsibility for the administration of a business

**Default Judgment**

Obtained by the Claimant as a result of the failure of a defendant to comply with the requirements of a claim i.e. reply or pay within 14 days period after service of the claim

**Default Summons**

A summons on which judgment can be entered without a hearing if it is not defended

**Defendant**

Person sued; person standing trial or appearing for sentence

**Deposition**

A statement of evidence written down and sworn on oath, or by affirmation

**Disability**

See minor and mental patient

**Dismissal**

To make order or decision that a claim be ceased

**Distress**

The term for when landlords seize goods to cover unpaid rent. Distress can be levied by a landlord in person, or by a certificated Bailiff on the landlord's behalf

**District Judge**

A judicial officer of the Court whose duties involve hearing applications made within proceedings and final hearings subject to any limit of jurisdiction previously known as Registrars

21 8

**District Registry**

A local office of the High Court. In practice, it is part of a county court handling High Court cases

**Enforcement**

Method of pursuing a civil action after judgment has been made in favour of a party. Process carried out by Magistrates Court to collect fines and other monetary orders made in the Crown Court

**Entry of Judgment**

Decision of the Court in favour of one or other of the parties

**Execution**

(see Levy) Seizure of debtors goods following non payment of a Court order

**Fieri-Facias (Fi-Fa)**

(see Sheriff) High Court version of warrant of execution in County Court. A directive by a High Court to a sheriff to seize sufficient goods of a debtor to satisfy judgment debt

**Fixed Charge**

See charge

**Fixed Date Summons**

A summons for which there must be a court hearing before judgment can be given

**Fixtures**

Items fixed in a building (e.g. windows, doors) but which are not part of the building (e.g. a wall or floor)

**Floating Charge**

See charge

**Foreign Court**

Another county court (but see also foreign process)

**Foreign Warrant**

A warrant received by your court from another county court for

execution

21 9

### **Foreign Process**

A document from another county for service in your court (but see also foreign court)

### **Hearing**

The trial of a court case

### **High Court**

A civil Court that consists of three divisions:

Queens Bench (can be known as King's Bench Division if a King is assuming the throne) – civil disputes for recovery of money, including breach of contract, personal injuries, libel / slander;

Family – concerned with matrimonial matters and proceedings relating to children, e.g. wardship;

Chancery – property matters including fraud and bankruptcy HIGH COURT JUDGE see Judge and High Court

### **High Court Enforcement Officer**

Appointed on behalf of the Lord Chancellor and responsible for enforcing court orders by recovering money owed under a High Court judgement, or a County Court judgement transferred to the High Court

### **Indemnity**

A promise (or undertaking) by one person to protect another from any compensation for wrong done, or trouble, or expenses. An indemnity may be required by a district judge before authorising a Bailiff to take any action that could lead to a claim for damages (e.g. breaking into a property)

### **Injunction**

An order by a Court either restraining a person or persons from carrying out a course of action or directing a course of action be complied with. Failure to carry out terms of the order may be punishable by imprisonment

### **Insolvency**

To be insolvent is to be unable to pay your debts when due: insolvency can happen to individuals or businesses. Insolvency (or bankruptcy)

22 0

proceedings may result in the sale of a person's property so the proceeds can be distributed among their creditors to pay as much of the debts as possible

### **Interlocutory Application**

An application made during a case, often during the preparations for the final hearing or trial. Most interlocutory applications are made 'on notice', meaning that the other party in the case must be told of the application and have the opportunity to attend when the application is heard. An 'ex parte' application is one which is not served on the other party; only one side attends the hearing

### **Interpleader Proceedings**

The case that results from the issue of an interpleader summons

### **Interpleader Summons**

A summons issued by the court after receiving a written claim to goods on which a levy has been made

### **Issue**



To initiate legal proceedings in pursuit of a claim

**Judgment**

A decision or order of a Court

**Judgment Creditor**

A person who is entitled to recover money, goods or land from another under a court order

**Judgment Debt**

A debt payable under a court order

**Judgment Debtor**

A person who is ordered by a court to pay money or pass to a judgment creditor

**Judgment Summons**

A summons issued for arrears due under a judgment for payment of income tax, excess social security or money due under a maintenance order. If a judgment summons is not paid a warrant of committal may be issued against the defendant

22 1

**Judge**

An officer appointed to administer the law and who has authority to hear and try cases in a Court of law. Judgment a final decision of a Court. A monetary judgment requires the payment of sum of money by one party to another

**Levy**

(see Execution & Fi-fa) A duty carried out by a Bailiff or sheriff under the authority of a warrant or writ of fi-fa, for a sum of money whereby goods of value belonging to the debtor are claimed with a view to removal and sale at a public auction in an attempt to obtain payment

**Lien**

The right of a creditor to keep property that is in their possession but which belongs to the debtor. The creditor keeps the property until a claim has been satisfied (e.g. a garage mechanic may keep a car until the repair bill is paid)

**Liquidation**

A company or firm which is 'in liquidation' is being wound-up (closed) because it cannot pay its debts

**Litigation**

A party to a court case (e.g. claimant, defendant, and applicant)

**Lord Chancellor**

The cabinet minister who acts as speaker of the House of Lords and oversees the hearings of the Law Lords. Additional responsibilities include supervising the procedure of Courts other than Magistrates or Coroners Courts and selection of judges, magistrates, Queen's Counsel and members of tribunals

**Master**

A member of the judiciary who sits at the Royal Courts of Justice in London dealing with High Court work. Queen's Bench Masters and Chancery Masters have a similar role to district judge

**Matter**

A court case started by originating application

22 2

**Mental Patient**

A person who, because of mental disorder, is incapable of managing and administering their own property and affairs

**Minor**

Someone below 18 years of age and unable to sue or be sued without representation, other than for wages. A minor sues by a next friend and defends by a guardian

**Next Friend**

A person who acts on behalf of a claimant who is a minor or is under a disability

**Notice to Quit**

Gives prior notice, when served in possession proceedings, of termination of a tenancy

**Oath**

(see Affirmation) A verbal promise by a person with religious beliefs to tell the truth

**Official Receiver**

A civil servant who works for the Department of Trade and Industry and is appointed by the Court to act as:

A liquidator when a company is being wound up;

A trustee when an individual is made bankrupt. The duties of an official receiver will include examining the company/bankrupt's property which is available to pay the debts and distributing the money amongst the creditors

**Order to Attend for Questioning**

A method of questioning a person under oath before an officer of the Court to obtain details of their financial affairs

**Originating Application**

The document that begins a court case under specific Acts of Parliament (e.g. Domestic Violence and Matrimonial Proceedings Act 1976; Married Women's Property Act 1982)

22 3

**Particulars**

Details relevant to a claim

**Party**

Any of the participants in a Court action or proceedings

**Penal Notice**

Directions attached to an order of a Court stating the penalty for disobedience may result in imprisonment

**Person under Disability**

A person who is either under 18 years old (an infant or minor) or of unsound mind (see Mental Patient)

**Personal Application**

Application made to the Court without legal representation

**Personal Protective Equipment**

Provided to those who are exposed to risk

**Personal Service**

Personal delivery (i.e. not by mail) of a claim, or notice

**Petition**

A method of commencing proceedings whereby the order required by the petitioner from the Court is expressed as a prayer, e.g. the petitioner therefore prays that the marriage be dissolved (divorce proceedings)

**Petitioner**

A person who presents the petition

**Possession Proceedings**

Legal proceedings by a landlord to recover land/property i.e. house, flat, garage etc

**Power of Arrest**

An order attached to some injunctions to allow the police to arrest a person who has broken the terms of the order

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**Pre-Trial Review**

A preliminary appointment at which the District Judge considers the issues before the Court and fixes the timetable for the trial

**Process**

The document commencing a claim or subsequent action

**Promissory Note**

A written promise to pay a specific amount of money at a certain time

**Registered Office**

The office of a limited company which is registered with the Registrar of Companies

**Respondent**

The person on whom a petition or originating application is served

**Seizure**

For practical purposes it means to remove goods after levy. Legally, when a levy is made the goods are taken into custody of the court and sometimes 'seizure' may mean levy

**Service**

Delivery by post or personal service of the claim, or other court documents

**Solicitor**

Member of the legal profession chiefly concerned with advising clients and preparing their cases and representing them in some Courts. May also act as advocates before certain Courts or tribunals

**Squatter**

A person occupying land or property without the owners consent

**Stay of Execution**

An order following which judgment cannot be enforced without leave of the court

**Subpoena**

A summons issued to a person directing their attendance in Court to give evidence

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**Summons (Witness)**

Order to appear as a witness at a hearing

**Supreme Court of Judicature**

Collective name encompassing - High Court of Justice, Crown Court and Court of Appeal

**Suspended Sentence**

A custodial sentence which will not take effect unless there is a subsequent offence within a specified period

**Statement**

A written account by a witness of the facts of details of a matter

**Summons**

Order to appear or to produce evidence to a Court Also the old name for a claim form

**Third Party Debt Order (Garnishee Order)**

An order made against a third party (the 'garnishee') who owes money to the debtor or holds money on the debtor's behalf (e.g. a bank or building society) ordering them to pay the money (or part of it) direct to the creditor

**Tipstaff**

An officer of the Supreme Court whose duties involve the enforcement of High Court arrest warrants

**Walking Possession**

A signed agreement by a debtor not to remove goods levied by a Bailiff under the authority of a warrant of execution and to allow the Bailiff access at any time to inspect the goods, in consideration of which the Bailiff leaves the goods in the possession of the debtor

**Ward of Court**

The title given to a minor who is the subject of a warship order. The order ensures that custody of the minor is held by the Court with day to day care of the minor being carried out by an individual(s) or local authority. As long as the minor remains a ward of Court, all decisions  
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regarding the minors upbringing must be approved by the Court, e.g. transfer to a different school, medical treatment etc

**Warrant of Committal**

Method of enforcing an order of the Court whereby the penalty for failing to comply with its terms is imprisonment; the Bailiff is authorised to carry out the arrest and deliver the person to prison (or in some instances the Court)

**Warrant of Delivery**

Method of enforcing a judgment for the return of goods (or value of the goods) whereby a Bailiff is authorised to recover the goods (or their value) from the debtor and return them to the creditor

**Warrant of Execution**

Method of enforcing a judgment for a sum of money whereby a Bailiff is authorised, in lieu of payment, to seize and remove goods belonging to a defendant for sale at public auction

**Warrant of Possession**

Method of enforcing a judgment for possession of a property whereby a Bailiff is authorised to evict people and secure against re-entry

**Warrant of Restitution**

A remedy available following illegal re-entry of premises by persons evicted under a warrant of possession. The Bailiff is authorised to evict all occupants found on the premises and re-deliver the premises to the plaintiff

**Winding Up**

The voluntary or compulsory closure of a company and the subsequent realisation of assets and payment to creditors

**Witness Summons**

See Subpoena