

Summary

1. The use of distress, where bailiffs seize possessions as a method for collecting debts, can have a devastating impact on people's lives. In the context of government policies aimed at tackling social and financial exclusion, this report makes the case for root and branch reform of an archaic procedure dating back centuries. The use of bailiffs to collect domestic debts should be abolished. If not, dramatic changes are needed to ensure effective regulation of bailiffs and much needed protection for individuals.
2. Advising clients with debt problems is a growing area of CAB work. In 1998/99, nearly 900,000 of the 6.1 million client problems brought to CABx related to debt, a 12% increase on the previous year. The use of bailiffs affects many people. Looking simply at figures relating to enforcement of council tax arrears and county court judgments, over 1.3 million warrants to authorise bailiff action were issued in 1997/1998¹.
3. The lack of proper protection for debtors from the practices of unscrupulous bailiffs is a source of major concern for CABx. CABx around the country regularly submit case histories to NACAB which detail aggressive and intimidating behaviour on the part of bailiffs towards clients. Sometimes this involves abusive comments or threats of violence. At other times, CABx report deliberate misrepresentation of the extent of the bailiff's powers.
4. CAB reports demonstrate the huge burden on those in financial difficulty of bailiffs' fees and charges. Many clients are faced with a debt they cannot pay, which they then see spiralling upwards due to the addition of such costs. On top of this, CAB reports give rise to serious concerns that some bailiffs are manipulating the fee system in order to maximise their income from fees.
5. CAB advisers also report the impact on their clients, and indeed the frustrations they themselves feel in attempting to act for their clients, when they come up against obstructive or uncooperative bailiffs, and creditors who refuse to take responsibility for the actions of those bailiffs. In the words of one adviser, 'No one takes responsibility. Bailiffs are a law unto themselves.'
6. The situation is compounded by the complexity, inadequacy, and potential cost of current mechanisms for complaint and redress.
7. This report starts by examining the relevance of distress as a debt recovery method to a modern society. It continues by setting out CAB client experience of the use of bailiffs, covering issues such as the abuse of power, the effectiveness of current complaint and redress mechanisms, the current fee system, difficulties with contacting and negotiating with bailiffs, and the role of the creditor.

¹ Latest figures available.

Source: Lord Chancellor's Department - Judicial Statistics Annual Report 1998;
CIPFA (SIS) - Revenue Collection Statistics 1997-98 Actuals

Key recommendations

8. Following an examination of CAB client experience, the report concludes that:
 - The use of distress as a method of enforcement of domestic debt should be abolished.
 - The Government's Social Exclusion Unit should examine the whole question of debt and debt enforcement.
 - If the use of bailiffs to execute distress is maintained, not only should it be used as a last resort, but a radical overhaul of the system is needed. Changes are required in two main areas:
 - greater regulation of bailiffs affording increased protection to the public; and
 - simplification and clarification of the laws which govern bailiff activity
9. A number of more detailed recommendations are made within the report, designed to ensure an effective system of regulation and to remove incentives to use distress as a debt recovery method before pursuing other methods. A summary of all recommendations can be found in Chapter 8.

Chapter 1 - Introduction

Clients of a CAB in Wales received a visit from a bailiff seeking to enforce council tax arrears. The clients offered to make a monthly payment, but this was refused. The clients report that the bailiff threatened to have them arrested if they did not pay the arrears; that he then offered to obtain a loan for them so that they could repay the arrears; and that, despite the fact that it was pouring with rain, he attended the house in a short sleeved shirt, bearing a tattoo on his arm with the words 'pay or die' emblazoned on it.

The CAB made a complaint to the council about the bailiff's behaviour, and the allegations were denied by the bailiff firm. The CAB however, are far from satisfied that the complaint was properly investigated by the council concerned.

- 1.1 For well over a decade, the CAB Service has highlighted the experiences of its clients facing distress as a debt recovery method. A complex and fragmented legal framework, an absence of appropriate protection for debtors, and ineffective regulation of bailiffs, all add up to a system which is wide open to abuse. The CAB experience is that it is some of the most vulnerable in our society who are suffering from this abuse. Reports of intimidation, like the example above, of excessive fee charging, and of unreasonable payment demands, are common place.
- 1.2 These are not new problems. Government reviews and consultations have come and gone through successive administrations, without any significant changes being made. Successive NACAB reports - *The organisation and management of civil enforcement agents: CAB clients' experiences of bailiffs* (1992); *Charging into the Tax* (1992); *The Cost of Living* (1992); *Taxing Times* (1994), to name only a few - have highlighted the distress and misery experienced by CAB clients as a result of bailiffs using distress to enforce debts. And still, day in, day out the distressing experiences of those struggling to meet their financial liabilities, and facing only further debt as a result of the enforcement action taken against them, are brought into CABx around the country.
- 1.3 The strength of the concern about this issue throughout the CAB Service can also be seen from the level of local action which CABx have taken to highlight the issues. Only last year, reports were published by Stoke CAB (*Bailiffs - A Distressing Policy*, May 1999) and by Wakefield CAB (*Distraint and Distress*, October 1999). Many CABx have sought to discuss their client experiences with their local authorities, magistrates' courts, county courts and local firms of bailiffs, and find ways to improve what they see as an untenable situation.
- 1.4 Another government review is underway as this report is being written. A recent consultation paper, commissioned by the Lord Chancellor's Department from Professor Jack Beatson examines the law under which bailiffs operate. The objective of this study is to clarify and simplify the law. Whilst such a move is to be welcomed, the CAB Service is greatly disappointed that once again, the Government has failed to address the fundamental question of whether or not distress, that is the removal or threatened removal of goods to

recover a debt, is an appropriate remedy for the enforcement of domestic debt. It is the view of the CAB Service that this remedy is outdated and disproportionately harsh. It serves more often than not, to increase the indebtedness of those already suffering real financial hardship. As such, its continuation as part of a modern society demands debate.

- 1.5 The CAB Service is not alone in having called, for many years, for the abolition of the use of bailiffs to carry out distress for the collection of domestic debts. The National Consumer Council sought the abolition of private bailiffs as long ago as 1990 (*Private Bailiffs - their role in domestic debt collection* 1990). In 1991, the Law Commission concluded that the remedy of distress for rent should be abolished. More significantly in April this year, a Member's Bill abolishing poindings and warrant sales (the Scottish form of distress) passed through its Stage 1 debate in the Scottish Parliament, following considerable support from Labour Members.
- 1.6 The CAB Service is also concerned that the Lord Chancellor's Department has sought to examine bailiff powers without first addressing the questions of who should carry out enforcement and how they should be regulated. The current system is noteworthy for its complete lack of adequate regulation of private bailiffs. When we consider that the role of bailiffs is to pressure people into handing over money, or to enter their homes and seize their goods, the absence of appropriate regulation, and consequent lack of protection for debtors, is a sad reflection of the way in which society views and treats its poorer members.
- 1.7 The CAB Service accepts that at the heart of any enforcement system should be the principle that individuals should pay their debts. Indeed, the CAB Service also encounters clients, particularly litigants in person using the small claims court, who face difficulties in enforcing county court judgments and obtaining debts owed to them. It recognises therefore the need for an efficient and effective enforcement system, and has argued during the consultation process of the Lord Chancellor's Department's current enforcement review for greater involvement of the court in enforcing the judgments it makes.
- 1.8 But the system must also be sensitive to the real life situation of those who struggle on inadequate incomes to meet their liabilities and to maintain even a basic standard of living. Only when the needs and experiences of debtors are properly taken into account within the process of enforcement, as well as those of creditors, will the system work effectively to resolve the problem of debt in our society.
- 1.9 It is from this standpoint that this report is written. In 1998/99, nearly 900,000 of the 6.1 million client problems brought to CABx related to debt. The percentage increase of debt problems on the previous year was 12%. These figures illustrate that dealing with debt is a significant and increasing aspect of CAB workload. CAB advisers help to examine the client's financial situation, to prioritise debts effectively, and to negotiate with creditors to find a realistic and sustainable route out of debt.
- 1.10 As a result of their work, CAB advisers regularly hear their clients' experience of bailiffs, and indeed, have first hand experience of bailiffs, as they try to act

on behalf of their clients. The CAB Service is therefore well qualified to comment on the use of bailiffs as a means of debt enforcement, and to make recommendations for reform of the framework of legislation and regulation relating to bailiffs and distress.

Scope of the report

- 1.11 The evidence used in this report is taken from cases submitted to NACAB by CABx in the period January 1998 to January 2000. During this period, nearly 900 reports were received from CABx around the country. It should be emphasised that this figure represents case summaries sent in by CABx, unprompted by any specific survey or questionnaire. Cases are sent in by CABx spontaneously, and often act only as examples of the many problems they are facing in their area. The number of reports received represent only a small fraction therefore of the number of clients experiencing problems with bailiffs who visit CABx.
- 1.12 The cases reported demonstrate that CAB clients are still facing the threats of aggressive and intimidating bailiffs; the spiralling costs of bailiff fees and charges; the loss or threat of losing basic domestic goods; and the impossible demands of lump sum payments or high instalments which simply fail to take into account their income and liabilities. The names of the CABx which submitted evidence during this period can be found on page 59.
- 1.13 This report focuses on the experiences of CAB clients of private bailiffs acting on behalf of the local authority or magistrates' court. A creditor wishing to employ a bailiff to enforce a debt arising as a result of a county court judgment, must use a county court bailiff. County court bailiffs are employed by the Court Service and are consequently part of a structured management and supervisory system. As public sector employees, they are not subject to the same financial pressures as private bailiffs, whose income depends on the fees they generate. The CAB Service believes that it is for these reasons that the volume of concerns expressed by CABx about county court bailiffs is substantially less than complaints about private bailiffs. Of the reports received, referred to in paragraph 1.11, only 4% concerned county court bailiffs. The remainder referred to private bailiffs working on behalf of local authorities and magistrates' courts.
- 1.14 Nevertheless, the report's key conclusions about the impact of the current use of distress as a method of recovering debts which increases indebtedness and social exclusion, apply to county court and private bailiffs alike. The report uses the term 'distress' as a generic term to refer to the enforcement of a debt through seizure of goods. A glossary of terms used can be found on page 55.
- 1.15 The CAB Service acknowledges that the evidence contained in this Report does not necessarily reflect the practices of all bailiffs. It also recognises that some steps have been taken to try and improve certain aspects of the bailiff system. For example, there were changes to the certification procedure in 1999; there has been an increased emphasis on the use of Codes of Practice by agencies employing bailiffs; and indeed, efforts by bailiff firms to improve standards and

self regulation, such as the setting up of the Association of Civil Enforcement Agencies in 1997.

- 1.16 However, the fact that the experiences highlighted in this report continue to be reported by CABx on a regular basis, despite these changes, demonstrates that the system as a whole is failing to secure consistent standards. The current complexity of the law surrounding bailiffs, and the lack of adequate regulation of their actions, simply do not provide sufficient protection from unscrupulous practitioners. This situation cannot continue. It is time, in fact long past time, for major change.

Chapter 2 - The use of distress in the 21st century

- 2.1 Day in, day out the CAB Service sees clients struggling under impossible financial constraints to try and meet their liabilities and the needs of themselves and their families. Once bailiffs are brought into the equation, the situation often deteriorates. Financial liabilities are increased with the addition of bailiff fees and charges, and sometimes by the debtor seeking to borrow further to meet high payments frequently insisted upon by the bailiffs. Alternatively, liabilities can be transferred, with debtors using money intended for other purposes, such as rent or utility payments, to satisfy the immediate threat of the bailiff at the door. This has an adverse impact not only on the debtor, but also on other creditors. Where goods are actually removed by the bailiff, it may not only result in a fundamental reduction in the debtor's quality of life, but can also lead to further indebtedness as s/he seeks to replace important items. And so the cycle of debt continues.
- 2.2 Other forms of debt enforcement, for example attachment of earnings, direct deductions from benefits, and the use of administration orders, offer scope for repayment to creditors at a rate the debtor can realistically afford. With bailiffs executing distress, the addition of fees and charges means that a debtor can very quickly, sometimes in a matter of days, see his debt increase two or three fold, often more, without any improvement in his ability to pay even the original amount. Not only does this operate against the interests of the debtor, it also acts against the interest of creditors, as any money which is obtained will generally first go towards meeting the bailiff fees. In cases of multiple debt, any money spent on bailiff fees is money which is not available for repayment to the remaining creditors.
- 2.3 The use of distress is an archaic remedy. Centuries ago, goods were used to a far greater extent as a form of currency, than they are today. Today, it is unlikely that the second hand value of the goods belonging to an average household will raise a significant sum, when coupled with the costs of removal, storage and sale. (In one case highlighted in this report, a car valued at at least £500 sold at auction for only £20 against a debt of £750.) The decision to use bailiffs can greatly increase the distress of those already suffering as a result of poverty or precarious financial situations which have perhaps arisen due to the loss of a job, the death of a partner, or family breakdown. The fear of what will happen or the despair at ever escaping from their circumstances, is only compounded by visits from bailiffs and the threat of losing what possessions they have.
- 2.4 Although the doors of the Marshalsea debtors' prison have long since closed, many of those in debt whom CABx advise could be forgiven for thinking that society still views debt as a crime for which people should be punished, rather than a problem for which they can find help. At present, the public tolerate a system which allows someone to turn up at the door, sometimes late into the evening, demanding entrance, without any proper form of identification being required. Very little is carried out in the way of character or competence checks for those seeking to become bailiffs. Indeed, for enforcement work which does not require a certificate, nothing is required - anyone who wants to can become

a bailiff. At the same time as we are continually urged to be cautious about who we let into our homes - always to check identification, even of the police - we allow the actions of bailiffs to continue, largely unregulated and, as this report will argue, largely uncontrolled.

- 2.5 The fact that, as a society, we tolerate a system of this kind would suggest to many that debt is something through which people forfeit their usual rights and can be treated as second class citizens. The experience of the CAB Service, is that the majority of people in debt wish to resolve the situation they are in. Where they have not taken steps to address their problems, it is often through fear, and even more often, because they think there is simply nothing they can do. A fundamental change in attitude towards debt and debtors is necessary in order to assist those caught in a perpetual cycle of borrowing more and more to pay off less and less.
- 2.6 The Lord Chancellor has been undertaking a review of enforcement since 1998. This review has provided an opportunity for the Government to change attitudes to debt, and to move the law in this area away from a 'punishment' approach towards something more constructive. However, so far the thrust of this review has been on finding ways to assist creditors to enforce debts without any corresponding attempt to establish the problems faced by debtors and to seek to address these. This approach contrasts vividly with the recent Insolvency Service consultation paper on bankruptcy (*Bankruptcy: A Fresh Start*, May 2000) which places great emphasis on rehabilitation of debtors, and seeks an approach to the future which reduces the stigma of financial failure.
- 2.7 The argument is often made that tough sanctions are necessary because debtors refuse to co operate with creditors, or to respond to attempts to resolve the problem of payment arrears. CAB experience suggests however, that the current system actively discourages debtors from co-operating. A huge culture change is required by those seeking to enforce payment from being punitive to assisting debtors to resolve their debt problems.
- 2.8 There have been advances in the handling of debt problems by the credit industry and by some local authorities. The CAB Service does come across examples of good practice. Nevertheless, many CAB reports refer to the judgemental attitudes and unhelpful, sometimes aggressive responses, received by their clients when attempting to approach creditors and enforcement agents. Indeed, many CAB advisers themselves experience similar reactions when attempting to act on behalf of their clients. In some cases, creditors and enforcement agents refuse to deal with the CAB or advise individuals against using the CAB. And yet, by approaching a CAB, the debtor is making a very significant step towards seeking resolution of their difficulties.
- 2.9 The failure of a debtor to attend a court hearing when summonsed to do so, is also seen by some creditors as a lack of co-operation. The CAB Service agrees that it is vitally important for people to attend such hearings, so that their situation can be properly explained to the court. We would suggest however, that many people are deterred from doing so, because of a lack of understanding of what will happen at a court hearing, a belief that nothing they could say would make any difference, and indeed an inherent fear of the court itself.

Recent research commissioned by the Nuffield Foundation from Professor Hazel Genn and the National Centre for Social Research (*Paths to Justice*, 1999) demonstrated the confusion that many people feel about the legal system, with no clear picture about the differences between the criminal and civil systems, or about what actually goes on in a court room.

- 2.10 **The CAB Service believes that the Lord Chancellor's present review of enforcement should widen its remit to look at increasing the availability of information and advice, at widening public education about the courts and legal system, and at ensuring that enforcement methods do not in themselves compound the problems of debt in our society.** These issues are key to the Government's wider policy agenda.

Debt enforcement and social exclusion

- 2.11 This Government has made clear that it aims to tackle the social and financial exclusion experienced by a significant part of our society. It has already taken steps towards doing this with the introduction of the National Minimum Wage, the New Deal for the unemployed, and the Working Families Tax Credit for the low paid. It has also turned its attention to issues such as access to banking services for the less well off, and improving protection for consumers from rogue traders whose actions can particularly disadvantage those on low incomes. Incorporation of the European Convention on Human Rights (ECHR) is another example of the Government's aim to promote protection for the rights of the individual. (The use of distress as a method of enforcement in the light of the ECHR is considered at paragraph 4.26).
- 2.12 The recent abolition of disconnection for water arrears was a positive step towards reducing the adverse impact on poorer members of society of harsh and inappropriate debt recovery practices. However, the CAB Service has had reports that as a result of this change, some water companies anticipate making greater use of bailiffs to enforce arrears. We find it hard to believe that it was the intention of Government that the abolition of one disproportionately harsh enforcement method should lead to the increased use of another.
- 2.13 The CAB Service welcomes the aim of the Social Exclusion Unit to reduce social exclusion by producing 'joined up solutions to joined up problems' (*Social Exclusion Unit Leaflet*, March 2000). Bailiffs act on behalf of many public bodies, whether this be local authorities, government departments, or the courts. Along with all other public service bodies, such organisations are included within the Government's vision, set out in *Modernising Government* (Cabinet Office White Paper, March 1999), of integrated, forward looking policies and practice which link up with other arms of government. There must therefore be a responsibility on such bodies to ensure that practices do not have an adverse impact on the overarching aims of Government. In this context, the CAB Service recommends that the whole issue of debt and debt recovery is examined by the Social Exclusion Unit, with a particular emphasis on the impact of enforcement procedures.
- 2.14 The focus of the reports and programmes developed so far by the Social Exclusion Unit has been on analysing the reasons for exclusion, seeking ways to

reduce and prevent such exclusion, in particular identifying how to reduce the risks of long term exclusion. In the experience of the CAB Service, the social and financial exclusion of those in debt, particularly multiple debt, is increased and perpetuated by the use of bailiffs to execute distress. The emphasis of CAB money advice work is to seek a manageable, sustainable route out of debt. Advisers' work focuses on what the client can afford to pay, whilst maintaining a reasonable standard of living for themselves and their families, thus reducing the risk of increasing indebtedness. Priorities for debt repayment are established, and contact made with creditors to improve communication and encourage negotiation.

- 2.15 The pressures and incentives for private bailiffs however, are such that the debtor's longer term solvency is unlikely to be a major concern. Bailiffs, naturally enough, have to earn a living, and need to be seen as effective by creditors in order to keep their business. Their incentive lies therefore in pressing for full payment, or at the very least, large instalments, rather than reaching payment arrangements which are affordable for the debtor. Faced with the frequent attentions of the bailiff and the threat of losing their possessions, which though perhaps not of great monetary value, are still vital to their quality of life, the pressure on debtors to borrow even more money - from friends or family if possible, but more likely from unscrupulous lenders - is great. The end result - rather than climbing out of debt, they just fall deeper and deeper in.
- 2.16 In its commitment to modern policies, responsive to the needs of a 21st century society, the Government has emphasised the importance of openness and transparency in the development and operation of those policies. It has also highlighted the need for better financial education. The bailiff system however, thrives on the ignorance of those who come up against it. The vulnerability of many debtors combined with the complexity of the legal framework, and the lack of adequate regulation, provide ample opportunity for unscrupulous bailiffs to misrepresent and exaggerate their powers. Indeed, several examples of such misrepresentation follow in the forthcoming chapters of this report.
- 2.17 The CAB Service strongly believes that the current bailiff system serves only to compound the problems of those in our society suffering financial hardship, and consequent social and financial exclusion. Greater use needs to be made of other methods of enforcement which enable repayment at affordable and sustainable rates.
- 2.18 The report of Policy Action Team (PAT) 14, (*Access to Financial Services*, 1999) set up by the Social Exclusion Unit to examine financial services, touched on the issue of debt in its finding that people were in particular need of money advice and help with debts when moving from benefits into work. **The CAB Service recommends that the Government examines the whole issue of debt, looking specifically at methods of debt enforcement and their role in perpetuating or relieving financial and social exclusion, as a follow-up to the Social Exclusion Unit's PAT 14 report, and as part of the National Strategy for Neighbourhood Renewal.**

Chapter 3 - Abuses of power

This chapter outlines evidence from CABx about bailiffs abusing their powers through intimidation, misrepresentation, and acting beyond their powers. It also examines problems with seizure of goods. It goes on to highlight that the problems CAB clients experience are compounded by an absence of effective independent monitoring, complaints investigation and redress mechanisms.

- 3.1 The legal framework which governs bailiffs' practices has built up over hundreds of years, largely based on the archaic principles of the past. Statutes from as far back as 1267 are still in current use, and there is heavy reliance on case law. Different debts bring with them different rules and guidance, making the law a minefield even for the experienced adviser, let alone an uninformed individual.
- 3.2 Regardless of the variations in provisions relating to different debts, the complexity of the law is also a real problem. For example, generally speaking (and with some exceptions) bailiffs are not entitled to force entry to a debtor's property unless they have first gained peaceable entry and completed a valid seizure - usually by making a walking possession agreement. The question of 'what constitutes peaceable entry' brings with it a list of scenarios, dependent upon the position or status of doors or windows. If a door is locked, a bailiff cannot break in. If it is unlocked - they can enter. This seems to have little to do with any principle of whether it is right to invade a person's home and privacy, but is purely to do with mechanics. Similarly, it is often difficult to establish the validity of a walking possession agreement - perhaps where it is posted through the letter box, or signed by a third party, or where there has been a levy but no written agreement. The wording of walking possession agreements is also important, and standard forms may vary in the regulations which govern different types of debt.
- 3.3 The archaic, varied and complex nature of the law brings clear difficulties for the debtor or adviser. But it must also be immensely challenging for the bailiff who wishes to remain within the law. The CAB Service would accept that some of the difficulties experienced by its clients might stem from a mistaken impression on the part of the bailiffs as to the extent of their powers, rather than from a deliberate abuse of power. However, the complexity of the current system not only perpetuates the potential for genuine mistakes but also provides the perfect environment for the unscrupulous in the sector to break the rules without any real fear of challenge or correction. To a large extent, bailiffs depend on those they visit being ignorant of the law. It is perhaps for this reason that the involvement of CAB advisers often meets with an adverse reaction from bailiff firms and creditors, as described in several of the examples in this report.

Intimidation

- 3.4 Time and again, CABx submit case histories to NACAB, which detail aggressive and intimidating behaviour on the part of bailiffs towards clients. Sometimes this involves abusive comments or threats of violence. At other

times, CABx report deliberate misrepresentation of the extent of the bailiff's powers. The majority of the cases reported by CABx refer to private bailiffs undertaking work on behalf of local authorities or magistrates' courts. Although county court bailiffs are not absent from the cases reported by CABx, it is acknowledged that they represent a much smaller number of cases (see paragraph 1.13).

- 3.5 It should be emphasised at this stage that in the majority of cases reported by CABx, the client concerned is in some way vulnerable - whether because they are in receipt of social security benefits or on very low income, or because of family breakdown, illness, infirmity or mental health problems. A code of practice developed in 1997 by the Institute of Revenues, Rating and Valuation (IRRV), in co-operation with the Association of Civil Enforcement Agencies and the Certificated Bailiffs Association, (*Model Code of Practice for the Management of Bailiffs Employed by Local Authorities*, 1997) lists several categories of people who could be considered to be vulnerable. The list includes 'the mentally disabled; cases where the debtor or the debtor's partner is suffering from serious long term or acute illness, or is fragile because of advanced age or disability; people recently bereaved; people who have experienced recent marital break up...; the unemployed; single parents...; persons on income support, or where a benefit application has been made and not yet determined'.
- 3.6 The fact that CABx report numerous problems experienced by clients who fall into the categories mentioned in the IRRV code immediately brings into question the adequacy of voluntary codes of practice as a means of regulation and protection against abuses. This is examined in more detail in Chapter 6 of the report.
- 3.7 The intimidatory behaviour on the part of bailiffs reported by CABx, and set out in examples given below, is inappropriate and indefensible. Where the debtor simply does not have the means with which to pay the required amount in full, or at the large instalment rate insisted upon by many bailiffs, these examples demonstrate the inappropriateness of distress as a method of debt recovery in a modern, inclusive society. In some of the cases reported by CABx, the person receiving the attention of the bailiffs is not even the person who has actually incurred the debt.

A CAB in the North of England reported a client who was visited by a bailiff who showed no identification - just a clipboard with a walking possession order which the client had signed several months before under the impression that it was simply to confirm the bailiffs had called. The family had built up council tax arrears at a time when the father was unemployed and an award of council tax benefit was delayed. The client offered to pay a sum of money to the bailiff as soon as her husband received his wages from his new job. The bailiff refused this and refused to negotiate further. At this point, the client noticed the van driver jeering and mocking her. When she asked the first bailiff not to speak to her so aggressively, he replied that he would talk to her how he wanted to talk to her, that he could take a sledgehammer out of the van and smash her door

in if he wanted to, and that the law was on his side. The van driver then began to put his fists up to the client as if threatening her. The client felt intimidated, and was considerably distressed.

A CAB in the West of England reported an Asian client who defaulted on a fine payment. On being visited by bailiffs, she felt compelled into signing a repayment offer of £55 a week, which she could not afford. She was intimidated by the bailiff, who himself was Asian, saying that if she did not sign, his 'white friend' in the van would not be as kind to her.

The client of a London CAB had a repayment arrangement with a magistrates' court to which she was adhering. The CAB reports that she was visited by a bailiff, who forced himself into her property whilst she was looking for the documentation of the arrangements with the court to show to him. The bailiff then started to remove goods forcibly. During this process the client banged her head; and a stereo, video, and television were damaged. The police were called but refused to assist. When the magistrates' court were contacted, they confirmed to the bailiffs that their visit was a mistake.

Bailiffs acting beyond their powers

- 3.8 CABx often report cases where bailiffs have been able to abuse their powers because of the individual's lack of knowledge about the complex legislation, and a not uncommon assumption that someone acting officially must be operating within the law.

A client of a CAB in the North of England built up several debts following the death of his wife. Enforcement for outstanding court fines was passed to a bailiff. The client, who had a 12 year old son, received letters from the bailiff stating that they were going to turn up at his house with the police and a locksmith. In other words, the bailiff was threatening to break in, even though he did not have the power to force entry. The client was unaware of the limits on bailiff powers and as a result of the letters, cut down drastically on food in an effort to raise money to pay the instalments demanded by the bailiff.

Another CAB in the North reported a client who was being pursued for debts incurred by her ex-husband. Despite the client telling the bailiffs that she had nothing to do with the debt, nor any knowledge of the whereabouts of her ex-husband, they continued to harass her, to be abusive, and to threaten to remove goods. On the intervention of the CAB, the bailiffs' office accepted that they were in the wrong.

Misleading behaviour

- 3.9 CABx also report instances where it is only possible to conclude that bailiffs have deliberately misled people or have given insufficient information about the processes they are carrying out, in order to obtain entry to a property, or signature of a walking possession agreement.

A CAB in the West Midlands reported a case where the bailiffs were admitted into the client's property because they said they could help set up a payment plan for her court fine. Whilst they were in the property, they completed an inventory of her belongings, in effect taking walking possession. The first instalment she paid of the agreed payment plan was returned with a letter saying that payment plans were not acceptable and that full payment was due within 14 days otherwise her possessions would be removed.

A client of a CAB in the West of England received a letter from a bailiff seeking to enforce a fine incurred by her ex-partner who no longer lived at the address. She wrote to the bailiffs to inform them that he no longer lived there. The CAB reports that she then received a visit from the bailiff, who stated that unless she signed a particular form, he would remove goods from the property. She therefore signed. The bailiff then returned at a later date, by now demanding a sum over six times greater than the original fine and saying that he would return again with a locksmith. The CAB then contacted the bailiff firm who insisted that they had a walking possession agreement from the address and were going to proceed. The CAB pointed out that the agreement had been obtained from a third party with no explanation as to what the document meant, or could lead to.

Unreasonable demands

- 3.10 The CAB Service believes that the problems of inappropriate behaviour persist in part because of the incentives on bailiffs. Private bailiffs need to have a reputation for effective enforcement in order to continue to receive business. They also want prompt payment of their fees. Their interest therefore lies in getting the debtor to pay as near the full amount as possible, as quickly as possible, and not in seeking a reasonable, affordable repayment scheme with the client, which will provide the latter with a sustainable route out of debt. Consequently, there is an incentive to exert pressure on the client to borrow the money from somewhere in order to meet the debt.

A CAB in the West Midlands reported a client who owed over £500 for an unpaid fine. A warrant was issued to distrain on goods, but the client denied ownership. The bailiffs said that if he paid them a sum of around £200, then he could negotiate a payment arrangement with the office. The client borrowed this sum from his mother. At the same time as receiving a receipt for this sum, he was given a notice saying that he must pay the remaining amount in five days.

A CAB in the East of England reported a client, on income support, who after three payments, defaulted on a payment arrangement of £20 a month towards a debt of £130. The bailiffs then demanded £155. The client borrowed this sum and paid it, but next day found a note through his door saying that £50 was still owed and his car had been taken. On contacting the bailiffs, he was told he would have to pay £180 to retrieve the car.

When he went to pay this money, again borrowed, he was told that there was a further fine and he owed another £250. After protest, the bailiffs agreed to release the car for the £180 payment. Only later was he told that the further sum was an error.

- 3.11 The cases described above are only examples of the many reports received from CABx of bailiffs using intimidating behaviour to try and gain entry to property, or to force debtors into making immediate payments. The most common complaints received include threats that the bailiff will arrive at a property to which he has not gained peaceful entry with the police and a locksmith in order to 'legally' break in; and threats of imprisonment if the bailiffs are not admitted. Where peaceful entry has not first been gained, bailiffs do not have the power to force entry, except in extremely rare circumstances. Whilst imprisonment is indeed a possibility for non payment of some debts, it will only occur where the courts are satisfied that non payment has been as a result of wilful refusal to pay or of culpable neglect on the part of the debtor. In other words, it should not occur where a debtor simply does not have the means to pay a debt. CAB reports indicate however, that it is very rare for this information to be given to debtors by bailiffs who are threatening them with imprisonment.
- 3.12 Whilst the majority of problems reported concern the actions of private bailiffs enforcing council tax debt or magistrates' court fines, there are also complaints about county court bailiffs - threatening, for example, to obtain a 'break-in order' from a judge, again where they have not previously gained peaceful entry. The fact that county court bailiffs are civil servants working under the management structure of the Court Service however, perhaps provides greater supervisory control over their actions, although there can still be problems for CAB clients:

A CAB in the West Midlands reported a client who received a notice from county court bailiffs stating that the bailiff's intention was to 'enter your premises without further notice and remove goods for sale (transport and locksmith chargeable from proceeds) whether you are in attendance or not'. The bailiffs had not called previously; there had been no levy; and they had no right of entry. When the CAB complained to the court, they confirmed this and said that they would speak to the bailiffs about their actions.

A client of another CAB in the West Midlands defaulted on one payment due on a county court judgment and contacted the claimant to advise them. He was informed that a bailiff's warrant had been issued immediately. The client completed and submitted an application to suspend the warrant and to apply for a variation in the order. However, the bailiffs visited his home in his absence and left behind a letter stating that as it was 'obvious that you do not wish to co-operate with the County Court Bailiff to clear this matter up', they now had 'no alternative but to apply to a County Court Circuit Judge for an Entry Warrant to your premises and indemnity from the Plaintiff for any damage caused by the locksmith on gaining entry'. The CAB complained to the Court Manager and received a reply confirming that the use of such a letter was wholly

inappropriate, and that instructions had been given for its use to be discontinued immediately.

Seizure of Goods

- 3.13 There are some statutory exemptions relating to goods which can be seized by bailiffs. However, these are vague and give rise to much argument, doubt and uncertainty. They are defined within the various statutes applicable to each type of debt as:

'such tools, books and vehicles and other items of equipment as are necessary for use personally in business, employment or vocation' and 'such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the person and family'. (County Court Act 1984 s89(1); Supreme Court Act 1981 s138; Council Tax (Administration & Enforcement) Regulations 1982 reg.45(1)(a))

- 3.14 For magistrates' court fines, whilst there have been recent amendments to the rules to bring exempt goods partially into line with the above provisions, the protection afforded to debtors is more limited. Rule 54(4) of the Magistrates' Court Rules now reads

'There shall not be taken under the warrant the clothing and bedding of any person or his family or the tools, books, vehicles or other equipment he personally needs in his employment, business or vocation.'

- 3.15 To operate the exemptions appropriately requires considerable judgement about what is and is not 'necessary' to satisfy basic domestic needs. The CAB Service strongly believes that a debtor's goods, which are needed for daily living, should be exempt from seizure. There can be no justification for stripping a home of basic goods, especially where those goods could only be replaced by further borrowing. This does nothing to reduce the cycle of indebtedness but merely pushes the debtor further into social and financial exclusion. However, as the following examples show, reports are often received from CABx of bailiffs levying on, and actually removing, goods which we would argue would fall within most peoples' description of basic essentials necessary to maintain a decent existence. Some CABx also report levying on items which are practically worthless in terms of resale value, such as curtains or tea sets, and which would therefore appear to have been included only as a punitive measure to pressure the debtor into payment.

A CAB in the North West reported a client whose living room was cleared out by bailiffs, together with a table, a Hoover and a microwave. The bailiffs had previously accepted an offer of £2.50 a week from the client, but then sent a letter saying the offer was totally unacceptable because she made one payment a week late.

A CAB in the South reported bailiffs who included a kettle and washing machine in their client's walking possession agreement.

A CAB in the West Midlands reported a client who arrived home to find a notice of distress and inventory posted through the letterbox. No one had been at home and the house was secure. The client walked five miles in the rain with two children to visit the CAB to be told that the inventory was not enforceable as the bailiffs had not gained entry. The client had previously approached the bailiffs to try and make a payment arrangement. The inventory posted through the door by the bailiff included a fridge, Hoover, washing machine and microwave.

- 3.16 A person's vehicle can also be of vital significance to their daily life. In rural areas with poor or non-existent public transport, ownership of a car is not a luxury, but a necessity. Without private transport, access to basic services can become impossible for those in rural areas, increasing isolation and social exclusion. The CAB Service does not believe that it is justifiable to seize a person's vehicle where that vehicle is necessary because there is no other practical method of getting to, or carrying out, paid employment or because, for health reasons, that vehicle is necessary to the debtor's mobility.

A CAB in the North West reported a client issued with a parking fine of £12.00, which with costs and bailiff charges had resulted in a debt of £400. Bailiffs took possession of his car which the client had on hire purchase through a Motability scheme, and needed in order to attend hospital for kidney dialysis three times a week.

A client of a CAB in the East Midlands received a notice of seizure of goods and inventory. A sum of money was paid by her sister, but the client was told that if she did not pay a further sum in a few days, her car would be seized. The client, a pensioner, suffers from arthritis and has to walk with the aid of a stick - she needs her car to help get about. The client had already sold her TV set in order to pay instalments to the bailiffs.

- 3.17 The very general wording of the statutory exemptions has led to different interpretations of what can and cannot be taken. If distress continues as a debt recovery method, **the CAB Service believes that the same statutory exemptions should be applied to all forms of enforcement, including magistrates' court fines. Section 16 of the Debtors' (Scotland) Act 1987 provides a more comprehensive list of goods which should be exempt, and should be considered as a basis for reform in this country.** There is a precedent for this, in that these provisions have already been applied in this country to VAT distraint.

Wrongful seizure of goods

- 3.18 As the first case in paragraph 3.16 indicates, another problem reported by CABx is where bailiffs exceed their powers by seizing goods which do not belong to the debtor - either because they are subject to a hire purchase agreement or because they are the possessions of a third party.

A client of a CAB in the North West had her car taken by bailiffs when it was parked outside her father's house. He had a number of outstanding parking fines. The client, who did not live at the same address, had left her car outside his home, and the bailiffs called in the middle of the night and took the car away. Despite the client providing proof of purchase, they refused to release the car - even after she engaged the services of a solicitor. Finally, the bailiffs said they would release the car, but only if the client's father paid the debt or handed over a vehicle belonging to him. The client was without her car for three months.

A CAB in the South West reported a client whose goods were levied by mistake. The bailiffs mistook the garage number with the corresponding street number as belonging to the debtor they were pursuing. The client sought help from the police who said they could do nothing. The company who were pursuing the actual debtor have refused to give the client the address of the bailiffs.

A CAB in the North West reported a client who had a car seized from outside his home at 5am for non-payment of a parking fine. The bailiffs made no attempt to ascertain the status of the vehicle which was subject to a hire purchase agreement. A CAB in the East of England also reported bailiffs levying on a car subject to a hire purchase agreement, whilst enforcing a magistrates' court fine. When the CAB challenged this, they were told that a new law had come into force which gave the bailiff the right to possess the car.

- 3.19 The examples set out in this section highlight, not only the need for a clearer, less ambiguous set of rules, but also the powerlessness which many people currently experience in the face of bailiff action. From the actions described, an individual could be forgiven for thinking that some bailiffs consider themselves to be above the law. This situation is only perpetuated by the complexity, and consequent difficulties of methods of seeking redress.

The myth of redress

- 3.20 It will of course be argued that if a party is the victim of inappropriate or intimidating behaviour at the hands of a bailiff, or suffers an illegal levy, they are entitled to complain and to seek redress. However, for many people who have sought advice from CABx, this is little more than a theoretical remedy for a number of reasons, including the poor knowledge and perceptions of the debtor, the lack of effective complaints procedures or powers to regulate bailiffs' practices.
- 3.21 It is not uncommon for bailiff firms and their contractors to respond to CAB concerns about bailiff practices by pointing to the fact that they receive very few official complaints through their complaints procedures compared to the number of cases they undertake. This argument completely fails to take on board the pressures and strains with which those in financial hardship struggle every day. However distressed they are by the behaviour they have encountered, writing an official letter of complaint is likely to be, in the words of one CAB adviser 'the

last thing on the mind of someone in serious debt'. They may also fear reprisals from a company whose employees have abused and intimidated them.

- 3.22 This situation is compounded by the feelings of powerlessness already referred to in this report. As was argued in Chapter 2, some debtors may feel a loss of status or rights when they are in debt, as if they have committed a crime and are being punished. They may well believe that they have somehow lost their right to complain, or that they will not be taken seriously if they do. CAB advisers also refer to the fear of some clients that a complaint could lead to further bullying; and the apprehension at getting involved with official procedures, and possibly court processes.
- 3.23 In addition, because of the confusion about bailiffs' powers, it is often difficult for a complainant to know whether they have grounds for a complaint. Even the leaflet issued by the Court Service (*About Bailiffs and Sheriffs Officers*), intended as an explanatory leaflet to the public, acknowledges that *'the laws which say what they can and cannot do are complex and varied'*. The leaflet offers no guidance, for example, on whether or not the bailiff has the power to force entry to premises. It is not difficult therefore for people to be misled by unscrupulous bailiffs as to the extent of their powers.

A CAB in London reported a client who had submitted an application to vary payment terms under a county court judgement and suspend a warrant of execution. Subsequently, the bailiff called. The client opened the door but refused entry, informing the bailiff that she had made an application to suspend. The bailiff telephoned the court and this was confirmed to him. However, he insisted that he must still gain entry and obtain a walking possession agreement, which the client refused. At this point, the client reported that the bailiff became threatening, saying that it was all going to get 'very nasty' and that her refusal to let him in would result in the bailiff manager coming to the property with a 'break in order'. The client said that she knew her rights as she had visited the CAB to which the bailiff replied that the CAB 'tell lies, don't know what they are talking about and get their information wrong'. At this point the client became worried, and considered letting the bailiff in, although he eventually left.

- 3.24 The bailiff in the above example was strictly entitled to continue to try and levy on goods despite the application to suspend the warrant. However, the client was equally entitled to refuse entry. Threats that a refusal to grant entry would result in forced entry is a clear misrepresentation of the bailiff's powers. The bailiff's attitude towards the CAB Service is also in clear contradiction with the emphasis behind the Government's establishment of the Community Legal Service, of encouraging people to access appropriate advice services.

Methods of complaint and redress

- 3.25 Assuming the party concerned overcomes the hurdles described above and decides to complain, they then have the difficulty of determining how they

complain and to whom. There are a variety of different methods of complaining or seeking redress which may be available in different circumstances.

3.26 We have considered the effectiveness of the present arrangements for complaints about bailiffs by reference to the principles for effective complaints handling promulgated by the Government's Service First Unit (*How to deal with complaints*, 1998). Amongst other things, an effective complaints procedure is:

- easy to access and well publicised
- speedy
- simple to understand and use
- fair, with a full procedure for investigations
- effective - dealing with all points raised and providing suitable remedies
- regularly monitored and audited

Most of these provisions are absent in the area of bailiffs.

The creditor

3.27 One obvious route to redress is to approach the bailiff firm itself, and if that fails, the creditor who has employed them. Bailiffs are in effect, agents of the creditor with whom they have a contract, and as such, the creditor is responsible for the actions of the bailiff within the scope of that contract. Persuading creditors to accept that responsibility however, is a perennial problem for CAB advisers, who speak of the frustrations at going round in circles between the bailiff and the creditor, continually being referred from one to the other. These difficulties are explored in more detail in Chapter 6, but the problems can be summed up by the words of one CAB adviser - 'No one takes responsibility. It's as if the system is totally lawless. Bailiffs are a law unto themselves.'

Associations which represent bailiffs

3.28 If the bailiff about whom a debtor wishes to complain is a member of the Certificated Bailiffs Association (CBA) or the Association of Civil Enforcement Agencies (and not all bailiffs are members) then a complaint can be directed to those organisations. The CAB Service acknowledges the aims of these organisations to raise standards in the industry and to encourage ethical and professional conduct. Nevertheless, they are not, nor do they claim to be, national, independent regulatory bodies for bailiffs, and their impact on setting and ensuring compliance with standards in the industry is consequently severely limited. Their voluntary nature also limits their effectiveness from our perspective.

3.29 In a recent article written for the NACAB publication *Adviser* (No. 78, March/April 2000), the Secretary of the CBA acknowledged that

'the CBA is not the governing body for bailiffs and has no authority to regulate anyone other than its own members'. He goes on to state:

'While some people might like to see the Association set national standards, little is possible while members have to compete in an aggressive market place against non-members'.

- 3.30 The CAB Service would agree that the need for private bailiffs to compete aggressively for work makes it impossible to control the sector adequately by means of voluntary professional associations alone. It is presumably no coincidence that the number of reports by CABx of concerns about private bailiffs far exceeds those received about bailiffs in the county court, who are not subject to the same levels of competition.
- 3.31 Awareness of the possibility of making a complaint to a professional association relies to a large extent on the bailiff informing the debtor that he is a member, and of the relevant procedures. Difficulties for the debtor can also be compounded by a failure on the part of the bailiff to provide basic information such as their full name or the name of their firm.

Certification

- 3.32 Under the current system, private bailiffs undertaking distress for rent, road traffic penalties, or council tax must be in possession of a certificate which is granted by the county court. In order to obtain a certificate, the bailiff must satisfy a judge that he or she is a 'fit and proper person' to hold a certificate.
- 3.33 In applying, a potential bailiff must disclose any criminal record, although the Rehabilitation of Offenders Act 1974 applies, which means that any spent conviction does not have to be declared. In his book 'Distress & Execution - A Guide to Bailiffs' Law & Practice' [1998], John Kruse points to the anomaly that *'for certain occupations, such as lawyers, court staff or the armed forces, these rules do not apply and all convictions, whether spent or not, must be disclosed. It is not apparent why bailiffs should be an exception.'* The application must also give information on the extent of their knowledge about relevant law, and must provide references. Applicants must also have security of £10,000 which is generally satisfied by a relatively cheap indemnity insurance policy.
- 3.34 Changes were made in 1999 to the certification procedure for private bailiffs, with the intention of making the system more rigorous. Applications for certificates are now heard by fewer county courts and only by circuit judges, with a view to increasing expertise and experience and reducing the risks of certificates being granted inappropriately. Standard complaint forms to make representation against the grant or continuation of a certificate have been introduced both for complaints by individuals, and for complaints by a body employing the services of a bailiff, such as a local authority. Such complaints are made to the court which issued the certificate, and are free.
- 3.35 Nevertheless the system is far from adequate. In the first place, whilst certificates are required in order to carry out distress for rent, council tax, and road traffic penalties, some courts have held that complaints under the rules and awards of compensation may only be made with regard to distress for rent. (John Kruse - *Certifying Bailiffs*, Adviser no. 77 Jan/Feb 2000).

- 3.36 In addition, for some areas of enforcement, such as magistrates' court fines, even the limited protection of the certification procedure is not available, as non certificated bailiffs (or in other words, bailiffs who are not subject to any checks at all or regulated in any way) can be used. Thus, those who fail to meet the tests of a certificate can still practice distress for some types of debts.
- 3.37 A significant problem with the present approach to certification as a means of regulation is that it is not in any way proactive. The system relies solely on problems being brought forward by those who, for the reasons set out in paragraphs 3.20 - 3.24 above, will find the process of making a complaint very difficult. There is no ongoing monitoring or auditing of bailiff activity, nor any requirement on those who have contracts with bailiffs to actively manage them, or monitor performance.

Redress through the courts

- 3.38 People who wish to seek redress can take action through the county court for wrongful distress, which is where the distress or attempt to execute distress is illegal, irregular or excessive. This might involve suing for trespass to goods, land or person for example. As part of the action, the complainant could also apply for an injunction from the court to prevent a bailiff from taking certain steps. An alternative remedy is 'replevin' - which is used to obtain recovery of goods illegally seized. For distraint for local taxes, a person who wishes to make a complaint about a levy or attempted levy, can appeal to the magistrates' court. This remedy does not take away a person's right to sue for damages or seek replevin.
- 3.39 Not only are the differences between such remedies difficult to appreciate for a lay person, but the procedures, the timescales involved, and even the complex terminology are likely to deter those who are most vulnerable from pursuing a case. In addition, taking such action will involve a complainant in court costs, which, for those already in financial difficulty would just represent further hardship. Whilst fees will automatically be waived for those on income support, CAB experience suggests that court staff are often not remitting fees even where a person's essential outgoings would bring their income down to around income support level. Even where a family is in receipt of income support, CABx have reported difficulties in obtaining fee exemptions if the person applying is not the member of the family to whom the benefit is paid.
- 3.40 In summary, the CAB Service believes that the current methods for handling complaints and redress are fundamentally inadequate. Complaints and regulatory procedures are either ineffective, or represent far too difficult a mountain to climb for the people whom CABx advise everyday about problems with bailiffs. It is imperative that the stressful situation of those in serious debt is fully understood, and their vulnerability under the current system, properly appreciated. If this form of debt recovery continues, a regulatory system must be put in place which provides effective protection for individuals from abuse. Whilst the development of clear, simple and inexpensive procedures for obtaining redress are obviously important, the need for preventative action is

vital. Proper regulation is needed for bailiffs, combining responsible recruitment methods and training, regular monitoring of performance, and appropriate disciplinary procedures.

Recommendations

- 3.41 As this report argues throughout, the CAB Service believes that if there is a long term aim of reducing indebtedness and social and financial exclusion in our society, then **the use of distraint on goods is simply not appropriate for the collection of domestic debts, and should be abolished.**
- 3.42 If distress is retained as a debt recovery method, the CAB Service believes that there is a need for a radical overhaul of the current system governing the use and power of bailiffs, to eliminate the problems that have been experienced on a regular basis by CAB clients over a long period of time, and to strengthen regulation and consumer protection.

Regulation

- 3.43 At present, bailiffs are either employed by the Court Service or other public body, or operate independently or from private firms, with or without certificates. **The CAB Service would wish to see one kind of enforcement officer only, properly regulated, controlled and accountable.**
- 3.44 **The CAB Service also recommends that enforcement officers are independent of both creditor and debtor.** They would then be in a position to make a balanced judgement, taking into account both the demands of the creditor and the circumstances of the debtor in determining the enforcement action to take and in negotiating reasonable payment arrangements.
- 3.45 There are several options for achieving this.
- All bailiffs could be brought into the public sector, managed either by the Court Service as county court bailiffs are now, or by a new executive agency which could take on responsibility for debt enforcement generally.
 - An independent enforcement agency could be set up, again with responsibility for enforcement generally, which contracts with firms or individuals in the private sector which meet its standards and requirements to carry out enforcement work.
 - Alternatively, an independent regulatory body could be set up to licence and monitor bailiffs; to investigate and act on complaints; and to ensure compliance with a statutory code of practice.
- 3.46 With any of these options, it is important that an appropriate framework is developed for the recruitment, training, monitoring and discipline of enforcement officers - one which provides an appropriate level of protection for the public. The development of clear, simple and inexpensive complaints and

redress procedures would also be a vital element of any future enforcement system.

- 3.47 An advantage of the first two options above is that there would be greater scope for the enforcement process itself to be managed. Enforcement officers could not only offer advice to creditors on methods of enforcement, but also act as a controlling mechanism to prevent creditors from pursuing inappropriate enforcement action. This would also enable proper consideration, prior to the use of bailiffs, of other enforcement methods such as attachment of earnings orders, direct deductions from benefits etc; thus ensuring that the use of bailiffs to execute distress is used only as a last resort. Rather than simply being agents of the creditor, officers would have a neutral role, independent of both creditor and debtor, with a public interest duty.

The Legal Framework

- 3.48 **Significant simplification of the law governing bailiff activity is essential.** Different types of debt are governed by differing statutes and case law built up over hundreds of years. The use of distress involves essentially the same processes whatever the debt, and there seems no good reason why there should not be more consistency within the law - for example, in terms of fee charging, the scope of goods which may be seized etc. There is too much room for argument at present over for example, what constitutes peaceable entry, or a valid walking possession agreement. Without clarity in the law, it is virtually impossible for an ordinary person to know or to be able to find out whether the bailiff has contravened the law, or misrepresented the extent of his powers.

Chapter 4 - Bailiffs' costs and charges

This chapter summarises the key features and impact of the current fee system, and considers evidence from CABx about problems with abuse of the system, lack of regulation of charges and the level of charges.

The current fee system

- 4.1 The fees and costs which can be charged by bailiffs vary according to the statutes and statutory instruments which govern each form of distress. In general, provision will be made within the regulations for fees and charges for visits, walking possession agreements, transport, storage, valuation and sale of goods. However, although the same activities are provided for in almost every form of distress, the detail of the fee schemes is different in every case.
- 4.2 For example, for council tax debts, regulations set a limit of two on the number of visits which can be charged for, at a cost of £20 and £15 respectively. For the enforcement of parking penalties, the limit on visits which may be charged for is set at three. For distress for rent, there is no such limit on number of visits, but the fees charged must not be more than a certain percentage of the amount of arrears.
- 4.3 Looking at other elements of bailiff charges, for council tax, the charge for walking possession is set at a flat rate of £10. For parking penalties, the charge is 50p per day for the first 14 days and 5p a day after that whilst the walking possession agreement is in force. For rent, the walking possession charge is 45p per day. For all types of distress (except fine enforcement) the allowable charges for transport and storage or goods is defined as 'reasonable costs'. When it comes to enforcement of magistrates' court fines, there is no fixed scale of fees and charges that bailiffs can make, although again, these should be reasonable. Tables showing the statutory fees for council tax distraint, distress for rent, distraint for road traffic penalties, and county court execution can be found in the Appendix on page 52.
- 4.4 The variations in the charges bailiffs can make only serve to increase the complexity of the system. Many bailiffs carry out more than one type of distress, and the potential for making mistakes in charging, or overcharging, can only be increased by the current variations. In addition, the variations add to the difficulties for individuals and advisers, particularly in cases of multiple debt, in establishing whether the fees charged are correct. **Given that the elements of bailiffs' work are essentially the same regardless of the type of debt, the CAB Service recommends that the fee levels for carrying out similar actions for all types of distress should be the same.** This would provide clarity for bailiffs undertaking different kinds of distress; for individuals wishing to establish whether the fees they have been charged are acceptable, and for advisers seeking to help them.
- 4.5 As indicated in paragraph 4.3, for enforcement of magistrates' court fines there is no statutory regulation of fees at all. **The CAB recommends that fees for magistrates' court distraint are brought into this statutory system.**

The impact of bailiffs' fees

- 4.6 The fees charged by bailiffs represent a huge burden to CAB clients, and their existence is one of the main reasons why the CAB Service considers the use of bailiffs to be inappropriate for debtors on low income and suffering financial hardship. CABx report many clients faced with a debt they cannot pay which they then see spiralling upwards due to the addition of bailiff fees and charges. For a debtor who has been unable to meet his liabilities in the first place, the prospect of paying two or three times that amount once bailiff charges have been added, diminishes their hope of ever resolving matters.
- 4.7 Unlike payment arrangements based on an assessment of an individual's income and essential outgoings, the use of distress does nothing to reduce the indebtedness of an individual long term. In cases where goods are removed, the individual will not only lose goods to cover the debt, but also goods to cover the additional costs, further increasing their impoverishment. A debtor, who cannot afford to pay, who sees his debt rise dramatically and faces losing his goods, may seek to settle by borrowing further. Alternatively, money intended for other purposes - such as buying food, or paying for gas and electricity, may be diverted to pay the bailiffs.
- 4.8 There are obvious implications here for debtors and creditors. The more a debtor pays in bailiff costs, the less money will be available to meet other liabilities. This is likely to impact not just on creditors other than the one who has instructed the bailiffs, but also on that particular creditor as well. For example, if, on top of council tax arrears, a debtor has faced large costs which have eaten into any available funds or have forced him into further borrowing, then meeting the current year's liability for council tax will become far more difficult. In this way, debt becomes a vicious circle from which the debtor finds it difficult to escape.
- 4.9 Once bailiff fees and costs have been added to a debt these are usually settled first from any payment or sale of goods. This can mean that all or part of the original debt may still remain even after considerable sums have been paid. The addition of bailiffs' fees can therefore limit the amount of money available to the creditor. Where payment arrangements are set up with the creditor however, or deductions made directly from benefits or earnings, all available money will be going straight to pay off the debt, thus benefiting the creditor as well as the debtor.
- 4.10 Some would argue that the opportunities are there for debtors to seek affordable ways to settle their debts before the addition of bailiff costs sends the sum owed spiralling upwards. However, this argument ignores the real life situation for many debtors struggling with increasing and competing financial demands. Many people do leave it very late to seek advice on how to address their debt problems, whether this is through fear, the hope that the problems will disappear, or the belief that there is nothing they can do. In some cases where people have taken steps to address their problems, advisers report that creditor inflexibility can often be a problem - whether this be through refusal of small

instalments, an unwillingness to change payment dates to fit with the circumstances of the individual, or haste to engage the services of bailiffs once a payment is missed, before the situation has been fully explored with the debtor. Once bailiffs have been instructed, the difficulties of negotiating affordable payment regimes become far worse for the debtor. These difficulties are explored in more detail in Chapters 5 and 6.

Abuse of the charging provisions

- 4.11 Bailiff fees in themselves present a problem for debtors who already cannot afford to pay their arrears. In addition however, CAB reports give rise to serious concerns that bailiffs are actually abusing the fee system in order to maximise their income from fees. These abuses include charging for tasks they have not undertaken, undertaking superfluous tasks or adopting practices designed to inflate charges.
- 4.12 For example, CAB clients often report bailiffs who have charged for work such as visits or letters, of which the clients themselves deny all knowledge.

A London CAB reported a client on income support, who was fined £30 by a magistrates' court. He paid £15, but was a few days late in his second instalment of £15. His cheque was returned from the court saying that the account had been passed to bailiffs. The CAB telephoned the bailiffs who said that the client would receive a letter from them, and the total cost would be £20 for the letter plus the £15 fine. Subsequently, the client received a bailiffs' attendance notice for £155. The bailiffs said they had previously written to the client, but the client denies this. The total costs were more than ten times the original debt.

Another CAB in London reported a client who failed to pay a parking fine of £30. She then received a letter saying that the matter had gone to court, and with court costs she now owed £95. She rang the council to find out how to pay, and was told that the matter had now been passed to bailiffs and that she should wait for them to contact her. She heard nothing, until her car was clamped by the bailiffs who demanded over £300 to release it. The additional charges were apparently for two visits made by the bailiffs, but on both of the days specified the client's mother had been in the house, and had the £95 ready to pay the bailiffs. She maintains that no one called or put anything through the letter box.

- 4.13 In other instances, the actions taken by the bailiffs appear to have been carried out purely with a view to inflating costs.

A CAB in the East Midlands reported a document sent to one of their clients, which was a circular letter to advise people that court fine arrears could be paid at their surgery in the magistrates' court. The clients receiving the letter were charged £35.

A CAB in the South West acted for a client whose debt rose from just over £200 to over £700 because she was charged for five letters, all of

which were received on the same day. With the help of the CAB, the fees were reduced to £240 and a repayment programme was agreed.

A client of a CAB in the North of England had a parking fine for £12 with £45 costs. A warrant of distress was issued. The client, who was in receipt of incapacity benefit, offered £5 a week. The bailiffs refused to accept this unless there was a walking possession agreement in place, for which there would be additional costs.

4.14 Charging twice for actions taken against the same debtor is also an issue reported by CABx.

A CAB in Wales reported a client, on incapacity benefit and income support, who had court fines for illegal parking. Two warrants were issued. The bailiffs made two visits to his home on the same day, one for each warrant, adding £120 in costs.

A client of another CAB in Wales had two outstanding court fines for £75 and £45. The bailiffs called to levy goods on each account and charged fees for both of them even though only one visit was made. As a result, the money owed has risen to over £300.

4.15 In addition, CAB reports demonstrate how inflexibility on the part of bailiffs increases charges and costs.

A CAB in Eastern England reported a client with three separate debts to the local council which were passed to bailiffs. The bailiffs refused to combine the debts into one, and would only accept payment via a payment book at the Post Office, for which there was what they described as, 'a nominal charge'. The charge was £1 per payment per debt. The client was already having difficulty with the £5 per week payment, let alone an extra £3 per week in charges. After making representations to the council, the council did eventually take the case back from the bailiffs.

A client of a CAB in the West Midlands had reached an agreement with bailiffs to pay £15 every week to pay off her £90 fine, although she believed she could only really afford a much smaller sum. She was unemployed and had three children under 15. The client made the required payments, although not always on the exact dates. As a result the bailiffs charged her an additional £65, over two thirds of the original fine, for non payment. The CAB contacted the magistrates' court but were particularly disappointed the court were not willing to intervene, and viewed the additional sum as acceptable.

Elderly clients of a CAB in the North of England had been paying a monthly sum to bailiffs in respect of a community charge debt for over a year. In that time they had missed two payments, but had contacted the bailiffs in advance each time. One of them was then taken into hospital, and their daughter telephoned the bailiffs to explain the delay in payment. A letter then arrived stating that the bailiffs would attend their home to

take goods because of non payment, and that charges would be added for the letter and for the visit. Fortunately in this case, following the intervention of the CAB, the local authority agreed to take back the account from the bailiffs, lowered the repayments and removed the charges.

- 4.16 From the above examples, it is no surprise that one CAB adviser was led to comment that bailiffs were 'more interested in adding charges than in listening to circumstances'. Another adviser commented that it appeared that 'bailiffs can charge what they like'.

'Reasonable costs'

- 4.17 As noted in paragraph 4.3 above, the phrase 'reasonable costs' is used within the statutory fee scales to define what can be charged by bailiffs for transport and storage of goods. Most commonly, charges in this category will be added for attending the debtor's property with a van with the intention of removing goods, regardless of whether goods are taken or not. Such a charge should not be added however, where the bailiffs have not actually gained entry and levied on goods. Nevertheless, CABx report cases where this has occurred:

A CAB in the North West reported a client, on incapacity benefit, with two liability orders for council tax. The bailiffs added van charges of over £100 to each order before they had levied on goods. Prior to levy, the total fees should only have been £35.

The same CAB reported another client, a lone parent in receipt of family credit, who had had van charges added to her debt prior to any levy taking place. The CAB raised the matter with the local authority, who insisted that the charges were accurate. In this case, they did however take back the warrant and reduce the fees to £35.

- 4.18 These cases demonstrate instances where charges have been made which are not allowable under the regulations. However, even where van charges are allowable, the vagueness of the phrase 'reasonable costs' means that debtors are not adequately protected from being charged excessive amounts. This lack of protection is compounded by the fact that it is the debtor on whom the onus lies to challenge any amount charged which he considers unreasonable. If this cannot be successfully negotiated with the bailiff or creditor, then the only option is to pursue a complex court procedure, and therefore incur additional costs. (see paragraph 4.22).
- 4.19 **The CAB Service recommends that, if bailiffs continue to be permitted to charge for variable so-called 'reasonable costs', the phrase 'reasonable costs' should be abolished. Instead there should be a clearer and more transparent method of regulating charges for the activities of transporting, valuing, storing and selling goods, with independent scrutiny.**
- 4.20 One possibility would be to introduce fixed fee amounts for each of these activities. A mechanism could be developed by which the bailiff could apply to

the court (or an appropriate regulatory body established in the future) to increase those charges, if s/he can justify why the cost actually incurred was greater than the amount allowed in any one case. This would deal with situations where costs were higher than average. This may of course lead to a considerable number of individual applications for approval of charges.

- 4.21 An alternative option would be to introduce a statutory framework to require bailiffs to obtain prior approval for their charges from the courts, for example, on an annual basis. Once approved, a bailiff would be obliged to operate within this scheme of charges.

Challenging costs

- 4.22 There are two main remedies available to an individual who wishes to challenge a bailiff's bill, assuming that negotiation with the bailiff or creditor fails.
- 4.23 The first is assessment of the bill in the county court. The second is to pay the amount and then sue, again in the county court. In both cases, court fees will be payable which will represent a difficulty to someone already suffering under financial constraints. This difficulty is further increased by the Government increases in court fees introduced in April 2000. Whilst there is scope for fee exemption and remission in cases of hardship, reports from CABx suggest that courts are only waiving fees where the applicant is on income support, and are not taking into account the actual outgoings of an applicant which might mean they have a very low disposable income. Both procedures are likely to add to the stressful situation of the debtor, who may feel intimidated at the idea of approaching the court.
- 4.24 Court assessment of fees is also a notoriously complex procedure, and, whilst available to challenge those fees for which there is a statutory scale, cannot be used to assess fees charged for magistrates' court distraint as these are not set out in regulations.

Proportionality

- 4.25 One point which stands out from the examples in this chapter, and indeed from many of the examples in this report, is how small the actual debt owed by the debtor is, especially when compared to the amount which is eventually demanded by the bailiffs. The build up of costs, particularly when combined with the harshness of distress as a method of enforcement, is wholly out of proportion to the debts incurred. This is not to say that such debts should not be enforced, but rather to reiterate that other methods of enforcement offer scope for debts to be repaid at an affordable rate, and without the unduly harsh impact which distress can have on the life of a debtor and his or her family.
- 4.26 The CAB Service believes that this aspect must raise human rights implications. The European Convention on Human Rights allows for Convention rights to be violated for certain purposes, including for the enforcement of taxes and fines, and for the protection of the rights of others (such as judgment creditors). However, such enforcement action must be proportionate, in that it should not

impose an excessive burden on the debtor. The CAB Service considers that the heavy costs to debtors implicit in the use of distress as an enforcement method, together with the potential loss of possessions, represent an excessive and undue burden when compared with the use of other enforcement methods such as direct deductions from benefit, and attachment of earnings orders.

- 4.27 In the experience of the CAB Service, creditors seeking to enforce debts often move directly to issuing warrants of distress without having first given proper consideration to other forms of enforcement. We believe that this situation is perpetuated by the fact that local authorities and magistrates' courts have nothing to lose from instructing bailiffs. They can access bailiff services with no upfront expenditure. There is therefore no incentive for the creditor to consider the financial situation of the debtor before issuing a warrant. In the county court, the creditor has to pay a court fee upfront to instruct a bailiff, and although he can recover these costs, he is more likely to give consideration to whether the debtor can actually afford to pay, before laying out more money.
- 4.28 **The CAB Service therefore recommends that, if distress continues as a debt recovery method, for all types of debt enforcement, consideration is given to imposing a requirement on creditors that they pay some element of the bailiff fee upfront, even if this is then recoverable from the debtor at a later stage.**

Recommendations

- 4.29 **The CAB Service maintains that the use of bailiffs should be abolished for the collection of domestic debts.** The fees which accompany bailiff activity serve only to perpetuate the cycle of debt, forcing people to fall further and further into social exclusion and financial exclusion, minimising their chances of finding financial stability. If however, the use of bailiffs continues, the current fee structure and regulation of fees require considerable amendment.
- 4.30 **The CAB Service recommends that all bailiff fees and charges, including those for magistrates' court distraint, should be subject to statutory control. The structure and levels of fees should be the same for all types of distress.** With a system of fees which are laid out in regulations and consistent for each type of distress, it will be far easier for individuals and advisers to establish where illegal charging has taken place.
- 4.31 There may be several options for achieving effective regulation of charges. This may be through a system of fixed fees for specific tasks. Alternatively, fees could be set at a proportion of the debt with a maximum, and possibly a minimum, level. The exact way in which fee regulation mechanisms would work would be dependent upon the way in which bailiffs were regulated. However, there are general principles which would be applicable in any situation. Fees need to be controlled in such a way as to remove incentives for unnecessary work to be carried out and to ensure transparency in the amounts charged. At the same time, they need to offer adequate recompense for the work which is actually required.

Chapter 5 - Contact with bailiffs

This chapter considers evidence from CABx about the problems they and their clients have making contact with bailiffs to discuss client accounts and payment arrangements. This is important because, even when clients seek to contact bailiffs to bring about an early resolution to their problems, they are often frustrated by lack of information or an unhelpful response.

- 5.1 The information leaflet issued by the Court Service for the public, entitled *About Bailiffs and Sheriffs Officers* states: 'You must keep in touch with the bailiff while he is dealing with your debt'. This is sound advice, but for many CAB clients, a great deal more easily said than done.
- 5.2 CAB reports include examples where bailiffs simply fail to leave adequate contact information such as a legible full name, or a telephone number which will actually be answered. Other reports indicate that even if people do manage to get through to the bailiff concerned, or the firm for which they work, they are greeted with unhelpful, sometimes aggressive responses which provide no room for discussion or negotiation.
- 5.3 Another problem which frequently arises for CAB clients contacting bailiffs is establishing what their current situation actually is with regard to the debt. Sometimes this is due to poor administrative records on the part of the bailiff; sometimes because of a simple failure to respond to correspondence, or to provide a breakdown of charges added to the debt.
- 5.4 It is not just individual clients who experience difficulties in their contact with bailiffs. Although the involvement of a CAB adviser can sometimes bring about a resolution of the problem, advisers also report the difficulties they experience in attempting to discuss matters with bailiffs.
- 5.5 There are two issues raised by these difficulties: standards of bailiffs' conduct; and problems negotiating and agreeing reasonable payment arrangements.

Standards of behaviour

- 5.6 First, our evidence points to the need for clearer guidance for bailiffs on acceptable standards and practices. Bailiffs either work for, or on behalf of public bodies, whether this be local authorities, government departments, or the courts. As such, the way in which they carry out their role should conform to the aim set out in *Modernising Government* (Cabinet Office White Paper, March 1999), of achieving high quality and efficient public services.
- 5.7 However, CAB experience suggests that bailiffs are not good at informing people clearly about the processes they are carrying out (see Chapter 3) or about their individual situation - how much they have paid, how much they still owe, and how the amounts added for costs have been made up. In some cases this may be due to poor administrative procedures. However, given that bailiffs have to account to those who employ them for the sums paid over and retained, it is reasonable to expect that the information should be readily available if

requested by a debtor. The examples below suggest that some firms of bailiffs may have a deliberate policy of non co-operation with debtors.

A CAB in the East of England reports several problems with contacting a firm of bailiffs enforcing magistrates' court fines. They have written repeatedly to the firm to obtain breakdowns of charges for individual clients; and subsequently for their code of conduct and complaints procedure, but have not received a reply to one single letter. The CAB has complained to the magistrates' court who have stated that they are not responsible for the actions of their bailiffs. The court did ask the bailiffs to send the information requested by the CAB, but still no response was forthcoming.

Similar problems were reported by a CAB in North London. In one case, the bailiffs turned up at a client's house two days after she had separated from her husband. She requested a breakdown of their charges, which they refused to give. The bailiffs were very rude and aggressive, both to the client, and to the CAB when an adviser contacted them on her behalf, shouting demands for immediate payment of a large sum and again refusing to give a costs breakdown. In another case, the same firm of bailiffs refused to accept a reasonable offer of payment and to give a breakdown of charges. Although they did eventually agree that they should provide the breakdown, it was never received.

- 5.8 CABx have reported cases where very vulnerable people have been subjected to additional worry, partly because of the lack of an adequate response from the bailiffs, or from any other body they turned to for help. For example:

A CAB in the South East reported a client, with mental health problems and caring for a severely ill partner, who defaulted on one payment of council tax arrears due to a crisis in their circumstances. This triggered a visit from the bailiff and the CAB became involved. The CAB was concerned that the bailiffs' figures were incorrect and asked them to hold temporarily on the enforcement action and check their records. This was refused. The CAB concerned wrote to the bailiff firm; took their case to the local authority; and then subsequently complained to the Certificated Bailiffs' Association about the behaviour of the bailiffs' firm, all without success. The CAB pointed out that they were not questioning the enforcement itself, but simply wanted to have the account checked for accuracy, and recovery deferred for a short period while that took place. Had the bailiffs agreed to this in the first place, the CAB felt that a lot of time and effort would have been saved for the various organisations involved, not to mention the distress and additional stress caused to the client at a difficult time.

- 5.9 CAB clients often feel too intimidated to challenge a bailiff who claims they owe a certain amount, as the following example shows.

A CAB in the North West reported clients who had reached an agreement with bailiffs for repayment of a fine for non payment of a television

licence. After payment of the last instalment, they received a letter saying that the bailiffs would be calling to seize goods. When the firm of bailiffs was contacted, the supervisor rather aggressively said that they still owed a sum of £70 in costs, and that the bailiffs would call if it was not paid. The clients felt so intimidated that they said they would send a cheque that day, even though they did not know what they were paying for.

- 5.10 Other reports demonstrate the aggressive response which CAB clients, and CABx themselves, receive from some bailiff firms from whom they have simply sought information and clarification.

A London CAB reported a client who had fallen into arrears with a parking fine. He eventually paid the fine and all costs in full and contacted the bailiffs' office for confirmation that the payments had been received, which was given by two separate officers. However, he continued to receive letter upon letter demanding payments, although each time with different balances. The client then visited the CAB who spoke to the manager of the firm. The manager refused to let the adviser speak, but accused the client of not paying his debts and running to the CAB once the bailiffs became involved.

- 5.11 Calls for tough sanctions to ensure repayment of debts are often based on the assertion that debtors simply fail to co-operate with their creditors. However, it is unsurprising if people begin to feel that there is little point in taking any steps to address the situation they are in if they meet the response described in the examples above.

- 5.12 Far greater emphasis needs to be placed on the training, monitoring and discipline of bailiffs to ensure an acceptable standard of behaviour in their dealings with the public. We accept that the bailiff is seeking to obtain money from an individual in order to pay a debt to a creditor. However, the existence of the debt does not turn the debtor into a second class citizen with no rights to expect courtesy and fair treatment in their dealings with others. As has been stated before in this report, the majority of CAB clients facing bailiff action are in very straitened financial circumstances, often with multiple debts and dependants to care for, and are not deliberately withholding payment which they could afford to make. In such circumstances, sensitivity and a willingness to negotiate is needed to reach a fair outcome which will produce some money for the creditor at a rate which will not increase the indebtedness of the individual. Seeking to inspire fear and further reduce the quality of life for the debtor does not resolve debt.

- 5.13 The CAB Service considers that there should be positive requirements for minimum standards to be met by bailiffs, both in their contact with the public, and with their office administration procedures. Bailiffs should, as a matter of course, and at no additional cost to the debtor, provide receipts for payments made to them. They should keep up to date files on the debts they are seeking to enforce, with records of action taken and any telephone contact made, and copies of any correspondence. They should also be required to provide breakdowns for any charges they are seeking to recover. Debtors should also be

given information about steps they can take to complain if they are unhappy with the actions of the bailiff, and the complaint handling body should have the duty to investigate complaints and the powers to obtain information promptly from the bailiff. It is unlikely that these important protections could be provided by a voluntary code of practice. Independent regulation and supervision of bailiffs appears to be the only acceptable option.

Unreasonable demands

- 5.14 The second issue raised by the problems which CAB clients experience in their contact with bailiffs is the reluctance of bailiffs to take into account individual circumstances and their inflexibility in negotiating payment arrangements. This inevitably increases the stress and pressures on the debtor, compounding both their financial hardship and social exclusion, as the following cases illustrate.

Clients of a CAB in the West Midlands had made arrangements with bailiffs to make a payment of £50 a month, to which they were adhering. The bailiffs then visited to discuss the account. On entry, they took an inventory, and said that despite the fact that the clients had kept to the payments they would now have to pay the full balance immediately. The clients were in receipt of family credit, and the husband was receiving only statutory sick pay because of a tumour. The bailiffs refused to negotiate further.

Another CAB in the West Midlands reported several problems with clients in their area who were facing problems because bailiffs would not negotiate. One couple, on low income, had reduced their outstanding debt for a fine for non payment of a television licence to £35. However, they had problems meeting a few payments and the bailiffs visited and took an inventory of their belongings, including a microwave oven, television, three piece suite, kitchen table and chairs. They demanded a sum of nearly £120 in order to prevent the goods being taken, which the clients had little hope of raising.

- 5.15 CABx even report cases where reasonable offers they have made to bailiffs on behalf of clients, after reviewing their income and expenditure are turned down; or the bailiff refuses to discuss the proposal.

Clients of a CAB in the North West were contacted by bailiffs regarding council tax arrears of nearly £400. Their joint weekly income from incapacity benefit was just over £140. From that they were also making a payment of £15 a week for a community charge debt which would be paid off in a few months. The clients tried to negotiate with the bailiffs a payment of £5 a week towards the council tax debt, which they would then increase to £15 a week once the community charge debt had been paid off. The CAB also wrote with a financial statement in support of this offer. The bailiffs refused. The clients also report that the bailiffs said that they did not care whether or not the clients let them in, as they would keep charging for visits anyway.

A CAB in the South East reported clients in arrears with payment of their council tax, because of the loss of a job. The clients were also fighting repossession of their home, and consequently under great stress. The bailiffs enforcing the council tax arrears refused to negotiate a repayment schedule unless £400 was paid off in a lump sum. The clients had no money with which to pay such an amount. The bailiffs also refused to talk to the CAB.

- 5.16 It is accepted that, at present, bailiffs cannot always negotiate without the specific consent of the creditor who has instructed them. So, in some cases, inflexibility may stem from the creditor's demands on the bailiff to recover the whole debt within a specified timetable. The role of the creditor is discussed in Chapter 6. However, this is another example of how the current system simply perpetuates the cycle of debt, and fails to ensure that the problems experienced by those suffering financial hardship are properly taken account of.
- 5.17 As this report has already stated, **the CAB Service recommends that all enforcement agents should be independent of both creditor and debtor.** They would then be in a position to make a balanced judgement, taking into account both the demands of the creditor and the circumstances of the debtor in determining the appropriate enforcement action to take and in negotiating reasonable payment arrangements.
- 5.18 **Where a repayment arrangement is agreed, and is being maintained by a debtor, creditors should take steps to ensure that further charges are not added to the account.** This would avoid situations like the one described below:

A client of a CAB in the South West was paying off arrears on five liability orders at a rate of £5 per fortnight. The debt was actually increasing as the bailiffs were charging walking possession costs of £7 per fortnight. The CAB alerted the Council to the problem, and they agreed to take back the liability orders from the bailiff if the client agreed to a direct deduction of £2.55 from benefit.

Recommendations

- 5.19 The examples set out in this report demonstrate that significantly better regulation of bailiffs is needed in terms of entry to the market, competence, charges, quality of service, standards of conduct and redress. Doing nothing is simply not an option.
- 5.20 As set out in Chapter 3, there are several options for achieving the necessary improvements. These are reproduced below for ease of reference.
- All bailiffs could be brought into the public sector, managed either by the Court Service as county court bailiffs are now, or by a new executive agency which could take on responsibility for enforcement generally.

- An independent enforcement agency could be set up, again with responsibility for enforcement generally, which contracts with firms or individuals in the private sector which meet its standards and requirements to carry out enforcement work.
- Alternatively, an independent regulatory body could be set up to licence and monitor bailiffs; to investigate and act on complaints; and to ensure compliance with a statutory code of practice.

Chapter 6 - The role of the creditor

This chapter examines the role of the creditor, specifically local authorities and magistrates' courts, in the enforcement process. It emphasises the impact which choice of enforcement method can have on indebtedness and social and financial exclusion. It also examines CAB experience of creditors abdicating responsibility for the actions of bailiffs acting on their behalf.

- 6.1 The role of the creditor is obviously one of key significance in the process of debt enforcement. It is the creditor who takes the decision as to whether or not to enforce or write off a debt, and, if enforcement is to be pursued, the method which will be used. The CAB Service believes that the use of negotiated payment plans, a developed system of administration orders, or methods of enforcement such as direct deductions from benefit or attachment of earnings orders, are more sustainable and socially acceptable prospects than the use of distress, for obtaining repayment at a rate the debtor can afford, thus assisting the debtor out of the perpetual cycle of debt.

Local Authorities

- 6.2 The role of the creditor is of particular significance where that creditor is a local authority. In partnership with others, local authorities have a role to play in tackling the problems of poverty and social exclusion in their neighbourhood. It is ironic therefore, that for many CAB clients, the debt enforcement method selected by the local authority has such a direct impact on them maintaining or regaining financial and social inclusion.
- 6.3 From the client experience reported by CABx, it appears that warrants of distress remain the first choice of debt enforcement for many local authorities. This is substantiated by the figures set out in *Revenue Collection Statistics 1997-98 Actuals* (CIPFA Statistical Information Service, 1999) which gives information on recovery action taken by 253 local authorities in England and Wales. These figures show that following approximately 1.6 million liability orders for non payment of council tax, in 1997/98 there were less than 0.5 million applications for attachment of earnings orders and deductions from income support, but more than 0.8 million cases referred to bailiffs to levy distress. (It is not apparent from the figures how many of the applications for attachment of earnings and deductions from benefits occurred in cases which had initially been referred to bailiffs to execute distress.)
- 6.4 The CAB Service believes that many warrants of distress are issued without proper attempts having been made to use other methods of enforcement such as direct deductions from benefit, or attachment of earnings.

A CAB in the North West reports general problems with their local authority. They are concerned that once an account is passed to bailiffs, the council officers refuse to negotiate payment arrangements with clients; and the bailiffs themselves will only accept large weekly or monthly instalments, usually at unsustainable rates for those on low income. In the

words of the CAB 'the Council uses bailiffs when it has other less draconian options available e.g. direct deductions from benefits'.

Another CAB in the North West reports that bailiffs working in their area are making it a condition, before any arrangement is made to repay a debt, for an inventory of the client's possessions to be taken, and a walking possession order signed. The CAB has queried this with their local authority, only to be told that it is the local authority's policy for debts to be dealt with in this way.

- 6.5 As some of the examples previously highlighted in this report have shown, local authorities will sometimes agree to take back warrants, and then arrange a payment plan or enforce by means of direct deductions. However, this can be difficult to achieve, may require the intervention of a third party such as a CAB, and in any event, only seems to occur after unnecessary stress has been placed on the individual concerned, and potentially, additional costs incurred.

A CAB in London reported a client, a mother of two children, who was left with a community charge debt of over £500, after her partner left her. Following the separation, she was in receipt of income support. The council instructed bailiffs who refused the client's payment offer of £20 a month. The CAB described the client as frightened by the aggression of the bailiffs. Subsequently, the CAB were able to negotiate a payment arrangement with the council.

A CAB in the North reported a client, a single parent of four children living on income support, who was being pursued by bailiffs for unpaid council tax. The bailiffs gained walking possession, listing items which were rented by the client. The client tried to negotiate with the bailiffs, offering weekly payments, but this was flatly refused. The bailiffs insisted on the full amount despite knowing how little money the family had. The CAB attempted to negotiate with them on behalf of the client, but met with the same response. They then approached the council and the case was taken back.

- 6.6 Regardless of the wider principles of tackling poverty and social exclusion, contracted private bailiffs are working on behalf of their local authority. As such, the authority is responsible for the actions of its agents. Despite this, CABx report numerous cases of local authorities effectively abdicating from this responsibility. This is obviously a serious problem where the bailiff has acted inappropriately or illegally. However, even where this is not the case, the confusion over responsibility can cause real problems for the debtor - particularly where they are seeking to arrange a repayment scheme, or to suspend a bailiff's actions while they await some form of income which could be used to pay the debt. Individuals are caught between the bailiff, who says that he is carrying out the instructions of the creditor and cannot act independently, and the creditor who says that as the case has been passed to a bailiff, they cannot get involved. Meanwhile, the individual, who is actually making attempts to resolve the situation, sees his debt climb with the addition of bailiff costs, and risks losing his possessions.

A CAB in the East of England reported a client with council tax arrears of £670 which had arisen because of serious family problems. A bailiff visited the client. He did not at first identify himself, was reported to be rude and aggressive, becoming abusive when he was not allowed in. The client offered him a cheque of £200 towards payment, but this was refused. The client subsequently contacted the bailiff firm, sending the cheque and requesting details of arrears. The reply letter acknowledged the cheque, but stated that arrears were now over £700. No breakdown of costs or payment was provided. The CAB rang the local authority on behalf of the client, but they said that they could not get involved as the matter was being dealt with by the bailiffs. They suggested that the client make an offer to the bailiffs to clear the debt in three months, which, as her difficulties were now partially resolved, she was able to do. However, the local authority went on to say that goods might still have to be levied, with the further costs of another bailiff visit, despite the fact that the client had already cleared one third of the debt.

Codes of practice

- 6.7 The CAB Service has argued for many years for local authorities to specify codes of practice in their contracts with bailiffs. Many local authorities have developed such codes. Nevertheless, some CABs have reported difficulties in obtaining information about the codes and agreements in place in their area. One CAB for example, was told that 'each agreement is confidential between the authority and the bailiffs it employs'.
- 6.8 The associations representing private bailiffs have also sought to improve standards by the development of codes of practice. As mentioned earlier in the report at paragraph 3.5, in 1997 the Institute of Revenues, Rating and Valuation (IRRV) produced a national document entitled 'Model Code of Practice for the Management of Bailiffs Employed by Local Authorities', in co operation with the Association of Civil Enforcement Agencies and the Certificated Bailiffs Association. This code contains recommendations on issues such as client vulnerability, acceptable behaviour of bailiffs, and removal of goods.
- 6.9 However, the IRRV code is a guide and not a legislative document, and may well be adapted for local agreements between local authorities and contracted bailiffs. Compliance with it is not subject to any independent monitoring. The CAB Service believes that statutory regulation is needed to prescribe the conduct which is required from bailiffs and the role of the creditor. This would avoid situations like the following:

A CAB in the North West reported a client who was forced to leave work due to ill health. He believed he could not claim any further benefits until an award of family credit had run out. The client contacted the local council tax department about the change in circumstances. The department failed to point out the availability of council tax benefit, and advised him to 'pay what you can'.

Inevitably the client fell into arrears and the case was passed to bailiffs. They visited on several occasions demanding payment in full and at no point attempting to assess the family's circumstances. Eventually they agreed to payment by instalments but these were too large for the client to stick to. The client defaulted and asked to renegotiate, but the bailiff refused because of the client's failure to adhere to the original agreement.

At this point the client visited the CAB who contacted the bailiffs. The adviser was told that the clients had a week to pay over £250 and was asked 'Have you got a problem with that?'. When the adviser asked if a means test had been carried out, the reply was 'Don't tell me how to do my job'.

The CAB subsequently complained to the local authority who responded by saying that the clients should have been aware they could claim council tax benefit. They also said that the bailiffs had carried out a means test, but failed to explain how this had led to a payment instalment of £40 a week, when the family's income was little over £70 a week for five of them.

A meeting was then arranged between the CAB and the local authority. The final response of the local authority to the CAB's arguments was 'We only have guidelines; we don't have to stick to them'.

- 6.10 By contrast, some local authorities welcome the involvement of their local CABx in monitoring compliance with the terms of the contract by drawing problems to their attention and seeking ways to resolve them. Nevertheless, the CAB Service does not believe that local authorities should wait for problems to be brought to their attention, but should actively manage and monitor their contracts - perhaps by following up a proportion of cases by speaking to the debtors about their experiences, and observing bailiff visits. Local authority staff should also be trained to deal sensitively and responsively with members of the public who contact them with concerns or complaints about bailiffs rather than simply abdicating any responsibility.
- 6.11 It will be obvious from the examples cited in this report that the CAB Service is particularly concerned about the situation of potentially vulnerable clients, for example those on means tested benefits or awaiting the outcome of an application, those with mental health problems, or those who have recently suffered or are suffering family breakdown, serious illness or bereavement. It is generally accepted that bailiff action is inappropriate in such circumstances. The IRRV code referred to above contains a list of people who could be considered to be vulnerable. However, it suggests that it is for the local authority to decide which people it considers to be members of a 'vulnerable group'. In the experience of the CAB Service, many vulnerable people are wholly unprotected.

A client of a CAB in the West Midlands, a lone parent with two children and in receipt of income support, faced bailiff action for a community charge debt of £80. She also owed an amount of rent and was making a

weekly payment to clear this debt. The bailiffs enforcing the community charge, whom the client described as intimidating and frightening, insisted that she pay £25 a week or lose her possessions. In the words of the CAB adviser, 'Clearly, this client cannot afford to pay £25 each week on top of her rent arrears payments and her ordinary living expenses'.

A CAB in the East Midlands reported clients who were facing bailiff action for community charge debts of just over £400. The couple were in receipt of income based Job Seekers' Allowance, but still offered £5 a week. The bailiffs refused this offer and demanded £10 a week, despite the fact that the local authority's code of practice recommended recovery rates of £2.50 for clients on means tested benefits. The bailiffs took walking possession, including a kettle and a Hoover on the inventory.

- 6.12 Even where a local authority does have a Code of Practice which stipulates who should be considered as 'vulnerable', this does not necessarily ensure protection from the bailiffs for those people. A recent report published by Stoke-on-Trent CAB (*A Distressing Policy*, May 1999) highlighted cases where bailiff action was being carried out against people who fell into the local authority's categories of vulnerable groups. To cite the report,

'it seems that no action has been taken to ensure that...screening is done - the council are assuming the bailiffs will do it, and the bailiffs assume that cases would not be passed to them if they were considered 'vulnerable'.'

- 6.13 The CAB Service believes that it is necessary for those in vulnerable situations to be protected from bailiff action by statute. This report has stressed the need for radical change to the law and regulation of bailiffs, and such statutory protection needs to be considered within this. In the event that reform of the law takes some time to achieve, **the CAB Service recommends that all local authorities make public the codes of practice within which they expect their bailiffs to operate, to standards they have set, and actively monitor the practice of their bailiffs, taking responsibility for addressing problems when they arise.**

Magistrates' courts

- 6.14 CAB experience suggests that magistrates' courts are even more likely than local authorities to distance themselves from the actions of the bailiffs they instruct. Whilst their agreements with bailiffs may include certain elements of typical codes of practice, there is little to suggest that, as a general rule, any monitoring of compliance is carried out. In order to enforce magistrates' court fines, private bailiffs do not even have to have a certificate. There is effectively therefore, no regulation at all of their activities. Once again, it is vulnerable people who are so often suffering from this lack of protection.

A CAB in South Wales reported a client, a single mother on income support suffering with health problems which had led to her being hospitalised several times, and for which she was taking medication. Her

income support was being reduced due to rent and water arrears, and a social fund repayment, and she was therefore finding it very difficult to keep up payment of a fine imposed for non payment of a TV licence. The situation was made worse by the fact that, every time the bailiffs visited, increases were made to the debt. The client told the CAB that both the magistrates' court and the bailiffs were aware of her financial difficulties, but this did not seem to have made any difference.

A CAB in the East Midlands reported a client who had defaulted on a fine. A bailiff gained entry to her premises (by saying that he was talking to the police on his mobile telephone, and they were on the way to break the door down) and distrained on goods. He said that he would return in four days to remove the goods unless she paid the full amount owing of £270. The client was a lone parent on income support, and could not afford this. The CAB adviser tried to negotiate with the bailiff, but to no avail. The magistrates' court informed the CAB that they could do nothing unless the bailiff sent the case back.

- 6.15 The problems of what appears to be an abdication of responsibility, are compounded by the fact that, unlike in the civil courts, there is no power to suspend a bailiff's warrant in the magistrates' court. This makes it even more vital that warrants are not passed to bailiffs in haste. Some reports from CABx describe cases where individuals have actually made payment to the magistrates' court, only to have their cheques returned to them because the warrant has been passed to the bailiffs. Others describe situations where oversights or misunderstandings have led to the issue of the warrant. It is nonsensical that in such circumstances the warrant cannot be suspended.

A client of a CAB in the North West received a £65 fine for a motoring offence. He sent a cheque in, but the payment was late and the cheque was returned as a warrant had already been issued. He then telephoned the bailiffs immediately, but was told by them that they were not aware of his case and would not accept his cheque. He then contacted the magistrates' court again, but was told that they could not do anything as the case had passed to the bailiffs. When the bailiffs did contact him, the debt had risen to over £180, which they claimed was due to a previous visit when they had delivered a letter. However the client was adamant that he had not received this letter. The CAB concerned acknowledged that the £65 should have been paid in the time limit, but in the circumstances believed it unreasonable that the debt had trebled.

A CAB in the West Midlands reported a client who had been fined by a magistrates' court. He completed a means test form and sent it back to the court seeking remission or payment by instalments. He then received a letter from bailiffs seeking payment of the full sum, which was by now over £500. When he telephoned the enforcement section at the court, they said that no means form had been received and the matter had therefore been passed to bailiffs. They said that it was not possible 'in law' for them to recall the matter from the bailiffs, who were insisting in full payment over 12 weeks.

A CAB in the East Midlands reported a client who was fined for non payment of a TV licence, which was passed to bailiffs to enforce. The client offered the bailiffs £5 a week, but was told by them that they did not have the authority to accept this and that costs would mount when they revisited. The CAB expressed concern that the magistrates' court could not suspend the warrant.

- 6.16 The CAB Service recommends that amendments are made to the Magistrates' Courts Act to give the court specific power to suspend warrants for distress.**
- 6.17 Prior to any fundamental reform of the regulation of bailiffs, as with local authorities, magistrates' courts should develop codes of practice within which they expect their bailiffs to operate. Codes should be published and should conform to a national standard. Magistrates' courts should actively monitor the practice of their bailiffs, and take responsibility for addressing problems when they arise.**

Examples of good practice

- 6.18 It would perhaps be useful to end this chapter with a reference to instances of good practice on the part of both local authorities and magistrates' courts of which the CAB Service is aware. The following are examples of schemes which have been developed to ensure repayment of debts, but at a rate which is both manageable and sustainable for the debtor.
- Six years ago, a debt repayment scheme was developed between Kirklees Council and local advice agencies to improve debt recovery practices in the area. The Council allows advice agencies which are part of the scheme, which includes the local CABx, to draw up what is called a MARG agreement with the client. (The acronym MARG stems from the Money Advice Review Group which was the working party who first developed the idea.)

Essentially, where a client is in arrears with council tax, he will be referred to one of the advice agencies taking part, who will complete a detailed assessment form of the client's income and outgoings, obtaining any necessary proofs, and then make a payment offer to the Council. Any such offer must seek to repay arrears over a maximum of a four year period (but over a lesser period if this is feasible).

Offers made in this way will generally be accepted, although the Council will renegotiate where it believes a higher amount is reasonable. However, the Council will accept the information given about the client's financial situation, providing the agreement has been drawn up by one of the advice agencies it has approved for this purpose.

The Council does report some practical difficulties with the scheme, which they are seeking to overcome through further development, and discussion with the advice agencies involved, with whom they have a good working relationship. However, they report that in principle, the scheme is a good one, which fits well with their anti-poverty strategy.

- A scheme underway in Salford magistrates' court was developed with the aim of sorting out affordable repayment arrangements with debtors without the need for bailiff intervention, although bailiffs are still used as a residual sanction.

When a debtor defaults on a fine, a letter is sent from the court inviting the individual to attend a 'surgery' to discuss their circumstances and financial situation. The warrant to instruct bailiffs is issued but stayed for two weeks to allow the debtor to come to the surgery and discuss payment terms. Debtors are encouraged to make offers at a rate they can realistically afford and adhere to, and once the channel of communication is open, there is flexibility for the debtor to come back to court staff and seek postponement or variation of a payment if their circumstances change.

Court staff describe the scheme as very successful, which suggests that debtors are willing to co operate and address their difficulties if given sufficient opportunity and encouragement to do so.

- 6.19 These examples display a recognition of the fact that any success obtained from the current use of bailiffs to execute distress is reliant upon the fear and ignorance of debtors, who pay a high price. It is time to move away from a system which uses intimidation and confusion as its main tools, to one which seeks to encourage co operation, examines individual circumstances, and takes into account the real life situation of a debtor suffering financial hardship. After all, breaking the cycle of debt is not only of advantage to the debtor, but also to creditors in general who otherwise face the same struggles to recover debts over and over again.

Chapter 7- The way forward

An end to the use of distress

- 7.1 This report contains many examples of the various problems which CAB clients have experienced with the bailiff system. The following case provides a good summary of the overall effect which the use of bailiffs to execute distress can have:

A CAB in the West of England reported a client who was fined by a magistrates' court. He completed forms for a standing order which, because of a misunderstanding on his part, was not activated, although he thought it was in place. Bailiffs became involved and seized his car.

With the help of his bank manager, the client tried to negotiate with the bailiffs a payment of over half of the debt upfront and subsequent high monthly payments to clear the rest of the fine and fees (which by then stood at approximately £750). The offer was refused and the car was sold at auction for only £20 (despite an insurance valuation of well over £500). After auctioneer charges, proceeds were forwarded to the court.

The client then faced a fine default hearing for the outstanding amount of the fine. He also had to buy another car on finance in order to get to work. In the words of the CAB 'because of the bailiffs' refusal to accept the client's offer of payment, the fine is still outstanding, he is further in debt and having to buy a car on finance and has to attend a fine default court where he could face a custodial sentence'.

The CAB subsequently reported that at the hearing, the magistrates' court accepted the client's offer of one immediate payment followed by several weekly payments. However, they refused to take any steps with regard to the actions of the bailiff, and indicated that if the CAB had any complaint, they should take it up with the bailiffs themselves.

- 7.2 CAB experience indicates that the use of bailiffs as a means of debt enforcement contradicts the Government's stated aims of tackling social and financial exclusion. Aside from the examples of harassment and intimidation contained in this report, which greatly increase the pressure on those already in stressful situations, the addition of bailiffs' fees and the incentives for bailiffs to press for full payment or high instalments, mean that an individual's indebtedness inevitably increases. The threat of losing goods, or simply fear from the bailiff's visits, often pressurises people into borrowing more or using money set aside for other purposes such as utility payments, or food. Where goods are taken (which as shown by the examples in Chapter 3 can include essential items of importance to maintain a standard of living such as living room furniture, domestic electrical equipment, and cars needed for getting to work or general mobility) replacing such items will often again lead to further indebtedness.

- 7.3 In the experience of the CAB Service distress for domestic debts is a debt recovery method out of all proportion to the circumstances involved, particularly when the size of many of the debts referred to in this report is considered. For a debt of tens of pounds, individuals face losing items which it would take hundreds of pounds to replace, but which in terms of second hand value, may not even cover the debt in question. **Distress is an archaic and unduly harsh remedy. It should be abolished. Emphasis should instead be placed upon the use of enforcement methods which provide the debtor with a sustainable route out of debt - direct deductions from benefit; attachments of earnings orders; and a more developed scheme for administration orders.**

Reform of the System

- 7.4 If the Government considers that it is in the public interest that the use of bailiffs to distrain against goods is maintained, steps should be taken to ensure that it is used only as a last resort, and a radical overhaul of the system is needed in order to increase protection for debtors. The current complexities of the law and lack of regulation of bailiff practices only serve to increase the vulnerability of those whose situations are already precarious due to their financial difficulties. In many of the cases brought to CABx around the country, the client's debts have arisen because of the low level of income on which they are having to support themselves and their families, or because of an unexpected change in circumstances such as loss of a job, death of a family member or relationship breakdown. If people are to gain control of their financial situation, they need help in prioritising their debts, in maximising their income, and in setting up affordable, manageable and sustainable payment arrangements with their creditors. This is the kind of help which CAB advisers provide to their clients. Under the current system however, their chances of improving their clients' situations and reducing their indebtedness are often greatly reduced by the involvement of bailiffs.
- 7.5 The CAB Service would like to see considerable streamlining and simplification of the legislation, rules and practice governing the different types of distress, distraint and execution. Similarly, the industry itself should be streamlined, with one kind of enforcement agent only, operating under a structure that is properly regulated and accountable. At present, bailiffs are either employed by the Court Service or other public body, or operate independently or from private firms, with or without certificates. The role of all bailiffs is essentially the same - to obtain payment where possible, or to recover goods to cover payment, again where possible. There seems therefore little rationale in maintaining a system of different types of bailiff all operating to different rules and guidelines.

The Legal Framework

- 7.6 The CAB Service believes that there is a strong case for replacing completely rather than modifying the law surrounding the use of bailiffs. Current laws and practices have come down through the mists of time, each building on the archaic principles of the past. The result is a complex web of different statutes and case law. Add to this the complicated and, for many, unfamiliar

terminology - 'distress', 'distrain', 'replevin', 'interpleader' - and it is unsurprising that many people feel totally out of their depth when faced with the enforcement action against them. After all, the complexity and lack of clarity over certain rules can also give rise to dispute as to what is and is not legal, even amongst those well versed in bailiff law and practice. If we are to maintain the remedy of distraint in a modern society, then it should be completely rethought to fit in with that society. It should be clear, open, transparent. Most importantly, it should complement, rather than contradict the Government's stated aims of reducing poverty and financial exclusion.

- 7.7 In this context, the CAB Service believes that if distress is to continue, there is an urgent need for one Act of Parliament which replaces all the current strands of legislation and sets out clearly the extent of bailiff powers with regard to rights of entry, seizure of goods, fee charging etc.; and which provides for regulation of their conduct, their scope for negotiating payment, and their responsibilities to consider the financial situation of the debtor before pursuing enforcement action.**

Regulation

- 7.8 When we consider the work that bailiffs carry out - the contact that they have with the public; the powers that they have to take away people's possessions - it is wholly unacceptable that there is no strict framework of regulation for those entering and working in the sector.
- 7.9 We understand that the scope of the Government's *Proposals for Regulation of the Private Security Industry in England and Wales* (Home Office Consultation Paper March 1999) may be extended in the future to cover contracted court enforcement officers. At present the proposals are intended for other forms of security services such as doormen and wheelclampers. The Home Secretary's Foreword to the Paper points out that *'if the private security industry is to take a greater role in our society, then the public have a right to be protected from the rogues who exploit the current unenforceable system'*.
- 7.10 The CAB Service would certainly agree with this sentiment. However, it is inconceivable that we might soon see those operating as doormen in clubs, or clamping vehicles, being subject to more stringent regulation than those who are attempting to obtain entry to peoples' houses in order to remove their goods for non payment of a fine. The Access to Justice Act 1999 included provisions to enable civilian enforcement officers, instead of the police, to enforce warrants of arrest for fine non payment or non compliance with a community order. In other words, 'a greater role' is being extended to enforcement officers, but without any corresponding increase in protection for the public.
- 7.11 The CAB Service would strongly recommend that the provisions of the Access to Justice Act 1999 to allow civilian enforcement officers to enforce warrants of arrest for fine non payment or non compliance with a community order are not implemented until the Lord Chancellor's review of bailiffs has been completed. Even then, unless there is considerable**

reform of the regulation of bailiffs, it would not support this extension of bailiff responsibilities.

7.12 The CAB Service believes that reform of the bailiff system should be on a wider scale than simply introducing more stringent certification procedures. Although some problems with county court bailiffs are reported, the CAB Service's main concern lies with the activities of private bailiffs, for whom strong competition combined with little or no regulation, results in greater incentives to push and exceed the boundaries of acceptable behaviour.

7.13 The CAB Service has set out in this report possible options for achieving a regulated, controlled and accountable profession of enforcement officers.

- All bailiffs could be brought into the public sector, managed either by the Court Service as county court bailiffs are now, or by a new executive agency which could take on responsibility for enforcement generally.
- An independent enforcement agency could be set up, again with responsibility for enforcement generally, which contracts with firms or individuals in the private sector which meet its standards and requirements to carry out enforcement work.
- Alternatively, an independent regulatory body could be set up to licence and monitor bailiffs; to investigate and act on complaints; and to ensure compliance with a statutory code of practice.

7.14 In the interests of public protection, it is essential for an appropriate framework for the recruitment, training, monitoring and discipline of enforcement officers to be developed.

Conclusion

7.15 The CAB Service has urged the Government for change to the bailiff system for many years. The examples in this report, which represent only a fraction of the problems with which CABs deal on a daily basis, illustrate that the system continues to fail to ensure adequate protection for the public. The system is outdated, poorly regulated and frighteningly complex.

7.16 It is time for major change. The CAB Service welcomes the Government's aims to tackle the root causes of poverty, deprivation, and social exclusion. If it is to address this task properly however, it cannot avoid the issue of how debts are enforced in this country, nor ignore the impact on debt and poverty of our current bailiff system.

Chapter 8 - Summary of recommendations

1. As part of the National Strategy for Neighbourhood Renewal, the Government should extend the follow-up work to the Social Exclusion Unit's Policy Action Team 14's report *Access to Financial Services*, to examine the whole issue of debt, looking specifically at methods of debt enforcement and their role in perpetuating or relieving financial and social exclusion. **(para. 2.18)**
2. The use of bailiffs to execute distress is unduly harsh, not appropriate for the collection of domestic debts, and should be abolished. **(paras. 3.41, 4.29, 7.3)**
3. If distress is retained as a debt recovery method, there must be a radical overhaul of the regulatory and legal frameworks currently governing the use of bailiffs. The following recommendations are made in the event that the Government considers it is in the public interest for the use of bailiffs to distrain against goods to be retained.
4. There should be one kind of enforcement officer, properly regulated, controlled and accountable, and independent of both creditor and debtor. There are several options for achieving this.
 - All bailiffs could be brought into the public sector, managed either by the Court Service as county court bailiffs are now, or by a new executive agency which could take on responsibility for enforcement generally.
 - An independent enforcement agency could be set up, again with responsibility for enforcement generally, which contracts with firms or individuals in the private sector which meet its standards and requirements to carry out enforcement work.
 - An independent regulatory body could be set up to licence and monitor bailiffs; to investigate and act on complaints; and to ensure compliance with a statutory code of practice.**(paras. 3.43-3.46, 5.19-5.20, 7.13)**
5. Significant simplification of the law governing bailiff activity is needed. There is an urgent need for one Act of Parliament which replaces all the current strands of legislation and sets out clearly the extent of bailiff powers with regard to rights of entry, seizure of goods, fee charging etc.; and which provides for regulation of their conduct, their scope for negotiating payment, and their responsibilities to consider the financial situation of the debtor before pursuing enforcement action. **(paras. 3.48, 7.7)**
6. If distress continues as a debt recovery method, the CAB Service believes that the same statutory exemptions should be applied to all forms of enforcement, including magistrates' court fines. Section 16 of the Debtors' (Scotland) Act 1987 provides a more comprehensive list of goods which should be exempt, and should be considered as a basis for reform in this country. **(para. 3.17)**

7. Fee levels for all types of distress and execution should be the same. Fees for magistrates' court distraint should be brought into the statutory system. The exact way in which fee mechanisms would work would be dependent upon the way in which bailiffs are regulated, but general principles would be applicable in any situation. Fees need to be controlled in such a way as to remove incentives for unnecessary work to be carried out and to ensure transparency in the amounts charged. At the same time, they need to offer adequate recompense for the work which is actually required. **(paras. 4.4, 4.5, 4.30, 4.31)**
8. If bailiffs continue to be permitted to charge for variable so-called 'reasonable costs', the phrase 'reasonable costs' should be abolished. Instead there should be a clearer and more transparent method of regulating charges for the activities of transporting, valuing, storing and selling goods, with independent scrutiny. **(para 4.19)**
9. A requirement should be imposed on creditors to pay some element of the bailiff fee upfront, even if this is then recoverable from the debtor. **(para 4.28)**
10. Prior to any fundamental reform of the regulation of bailiffs, all local authorities should make public the codes of practice within which they expect their bailiffs to operate, to standards they have set, and actively monitor the practice of their bailiffs, taking responsibility for addressing problems when they arise. **(para 6.13)**
11. Magistrates' courts should develop codes of practice within which they expect their bailiffs to operate. Codes should be published and should conform to a national standard. They should actively monitor the practice of their bailiffs, and take responsibility for addressing problems when they arise. **(para. 6.17)**
12. Amendments should be made to the Magistrates' Courts Act to give the court specific power to suspend warrants for distress. **(para. 6.16)**
13. The provisions of the Access to Justice Act 1999 to allow civilian enforcement officers to enforce warrants of arrest for fine non payment or non compliance with a community order should not be implemented until the Lord Chancellor's review of bailiffs has been completed. Even then, unless there is considerable reform of the regulation of bailiffs, the CAB Service would not support this extension of bailiff responsibilities. **(para. 7.11)**

APPENDIX - Bailiffs' fees and charges**County court judgments****Fees**

| | |
|--|-----|
| Where the sum of money to be recovered is £125 or less | £25 |
| Where the sum of money to be recovered is more than £125 | £45 |

This fee covers all visits made by bailiffs.

Charges

| | |
|----------------------------|---|
| Transport of removed goods | Reasonable costs. Where no goods are removed, the law is not clear about charges for attendance with a van. However, it is likely that reasonable costs could be made, provided that goods are levied. |
| Storage of removed goods | Reasonable costs. |
| Valuation | Reasonable costs of an independent person. If a bailiff values the goods, there is a charge of 5% of the value of the goods. |
| Sale | 15% of the proceeds of sale. The 15% includes any out-of-pocket expenses. If the goods are not sold because the warrant is suspended or the debtor pays the debt, a charge of 10% of the value of the levied goods will be made plus reasonable transport, storage, valuation and advertising costs already incurred. |

Council Tax**Fees**

For each liability order where no levy is made, £20 for the first or only visit and £15 for a second visit can be charged.

For levying distress, the following fees may be charged (or a lesser amount if that would be reasonable):

| | |
|-----------------------------------|-------|
| Where the sum due is £100 or less | £20 |
| For the next £400 | 4% |
| For the next £1,500 | 2.5% |
| For the next £8,000 | 1% |
| For any additional sum | 0.25% |

Charges

| | |
|---|---|
| Walking possession | A flat rate of £10. |
| Attendance with vehicle/removal/storage | Reasonable costs. |
| Valuation | Reasonable costs, but no charge can be made unless the debtor has been advised beforehand of the charge and how it is calculated. |
| Sale | Up to 15% of the proceeds of sale if the sale is held on auctioneer's premises plus reasonable out-of-pocket expenses and reasonable advertising costs. Where the sale is held on the debtor's premises, up to 7.5% of the proceeds of sale, plus reasonable costs. |
| Where sale does not take place | £20 or actual costs up to 5% of the amount of the liability order (whichever is the larger sum). |

Road traffic (parking) penalties**Fees**

| | |
|--|---|
| For preparing and sending a letter advising the client that a warrant is with bailiff and requesting the sum due | £10 |
| For levying distress where the sum due is not more than £100 | £25 |
| For levying distress when the sum due is more than £100 | 25% on the first £200 and 5% on any sum over £200. |
| For attending to levy distress but where no levy is made | Reasonable costs, but not more than the fees that could be charged if a levy were made. |

The fee for sending a letter to the debtor can be charged only if the letter is sent before a first visit is made.

Bailiffs are allowed to charge the fees for a maximum of three visits only.

Charges

| | |
|--|---|
| Walking possession | 50p each day for the first 14 days and 5p a day after that. |
| Valuation | Reasonable costs. |
| Removing goods or attending to remove goods where no goods are removed | Reasonable costs. |
| Sale of goods | 15% of the proceeds of sale if the sale is held on auctioneer's premises plus |

| | |
|---------------------------|---|
| (Sale of goods continued) | reasonable costs of advertising, removal and storage. 7.5% of the proceeds of sale if the sale is on the debtor's premises, plus reasonable cost of advertising, removal and storage. |
|---------------------------|---|

Rent

Fees

The fees that can be charged for one or more visits to the premises in order to levy distress (whether levy is made or not) must be reasonable, but no more than:

| | |
|---------------------------------------|-------|
| For the first £100 or less of arrears | 12.5% |
| For the next £400 of arrears | 4% |
| For the next £1,500 of arrears | 2.5% |
| For the next £8,000 of arrears | 1% |
| For any additional sum | 0.25% |

Charges

| | |
|--|--|
| Walking possession agreement | 45p per day |
| Transport and storage of removed goods | Reasonable costs. |
| Valuation | Reasonable costs. |
| Sale | If the sale takes place at the auctioneer's premises, 15% of the proceeds of sale. This includes out of pocket expenses. If the sale takes place at the debtor's home, s/he will be charged a maximum of 7.5% of the sale proceeds plus any out-of-pocket expenses. If no sale takes place, reasonable costs can be charged. |

Magistrates' court fines

There is no fixed scale of fees and charges that bailiffs must make. Charges must be reasonable and each court will have agreements with the firm of bailiffs it uses. Home Office guidance recommends that all charges must be agreed by the court before levy and must not be disproportionate to the amount due.

Source: Extracted from:

County Court Fees Order 1982
 Regulation 45(2) Council Tax (Administration and Enforcement) Regulations 1992
 Schedule 1 of Enforcement of Road Traffic Debts (Certificated Bailiffs) Regulations 1993
 Appendix 1 Distress for Rent Rules 1988

Glossary of terms used in the report

| | |
|----------------------|---|
| Bailiff | A person who is employed to obtain payment of a debt through removal or threatened removal of goods |
| Private bailiff | All bailiffs other than county court bailiffs are private - that is, they work on a commercial basis and obtain their income from the fees they charge for the work |
| County court bailiff | County court bailiffs are civil servants managed by the Court Service. They enforce warrants of execution for debts which have arisen as a result of a county court judgment. |
| Enforcement | This is used to refer to any process of seeking to compel payment of a debt by the use of a legal remedy. |
| Execution | This refers to the process of removing or threatening to remove goods in order to enforce a debt which has been established by a county (or high) court judgment. (When coupled with the word 'distress', as in 'executing distress', it refers to the act of carrying out distress.) |
| Distress & distraint | These terms mean the same, and refer to the process of removing or threatening to remove goods in order to enforce a debt. They do not apply to debt enforcement in the civil courts. However, in this report, the word 'distress' is in some places used as a generic term to refer to the enforcement of debts through seizure of goods. |
| Levy | In this report, the word levy is used to refer to the process whereby a debtor's goods are seized and impounded. |
| Seizure | This refers to the process of identifying goods which can be taken to redeem the debt. |
| Impounding | This is the process by which bailiffs obtain legal control over the goods that they have seized. In other words, the process of impounding gives the bailiff the power to return to the premises, remove and sell the goods. Goods could be impounded by immediate removal, or by leaving a bailiff in 'close possession' of the goods - ie. on the premises. However, by far the most common method of impounding is 'walking possession'. |
| Walking Possession | This is the form of impounding which is most commonly used for the enforcement of domestic debt. Once goods have been seized, they remain on the debtor's premises, and therefore available for his use, on the understanding |

that they will not be removed. Once a bailiff has obtained walking possession, usually via a signed written agreement, he has the right to return to the premises, forcing entry if necessary, and to remove and sell the goods. There is a charge for walking possession, which may take the form of a flat fee, or a daily rate.

Replevin

Where goods have been subject to distress illegally, replevin is a court remedy which can be used to recover those goods.

Warrant

As in 'warrant of distress', 'warrant of execution' - the authorisation which allows bailiffs to carry out the processes of distress or execution.

Certification

Private bailiffs who enforce distress for rent, road traffic penalties, or council tax must be in receipt of a certificate. This is granted by a county court judge, who must be satisfied that the bailiff is a 'fit and proper person' to hold such a certificate. Certificates are not required for bailiffs enforcing magistrates' court fines.

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CABx which submitted evidence

EAST REGION

Aylesbury
 Bedford & District
 Bishop's Stortford District
 Braintree & District
 Broxbourne
 Buckingham, Winslow & District
 Bury St Edmunds
 Cambridge & District
 Chesham
 Corby
 Daventry & District
 Diss Eye & Harleston
 Dunstable & District
 Elstree & Borehamwood
 Epping
 Harlow
 Haverhill
 Hertford
 High Wycombe
 Huntingdon
 Kettering
 Leighton Linlade
 Lowestoft
 Mid-Suffolk
 Peterborough
 Potters Bar
 Rayleigh
 Rickmansworth
 Stevenage
 Thetford & District
 Welwyn Hatfield
 Witham
 Wymondham & District

Burton-Upon-Trent
 Cannock
 Chesterfield
 Cradley Heath (Sandwell District)
 Dudley
 East Lindsey
 Grimsby
 Hereford & District
 Leominster & District
 Lichfield
 Malvern Hills District
 Mansfield & District
 Matlock
 Newcastle-Under-Lyme
 Nottingham & District
 Nuneaton
 Ollerton & District
 Redditch
 Rugby
 Rugeley
 Rutland
 Shrewsbury
 Smethwick (Sandwell District)
 Solihull
 South Derbyshire
 South Shropshire
 Stamford & District
 Stoke-On-Trent
 Tipton (Sandwell District)
 Warwick District
 Wellington
 West Bromwich (Sandwell District)
 Wychavon District (Evesham)
 Wyre Forest

MIDLANDS REGION

Advicelincs
 Ashfield
 Banbury & District
 Bassetlaw (Retford)
 Bedworth & District
 Beeston
 Biddulph
 Boston
 Bridgnorth & District
 Bromsgrove & District

NORTH WEST REGION

Altrincham
 Atherton
 Bacup
 Barrow-in-Furness
 Bebington
 Blackburn
 Bolton & District
 Bootle (Netherton)
 Bradford (Gtr Manchester)
 Burnley
 Bury
 Carlisle

Chester
 Gorton
 Hindley
 Hulme
 Hyndburn
 Kendal & District
 Knowsley Central (Huyton)
 Knowsley North (Kirkby)
 Knowsley South (Halewood)
 Lancaster
 Liverpool City Centre
 Longsight
 Lymm
 Manchester Central
 Manchester District Projects Team
 Millom & District
 Morcambe & Heysham
 Old Trafford
 Runcorn
 Sale
 Southport
 St Helen's
 Stockport
 Stretford
 Urmston
 Wallasey
 West Kirby
 Whitehaven
 Widnes
 Wilmslow
 Winsford
 Withington
 Workington
 Wyre District (Poulton-Le-Fylde)
 Wythenshawe

LONDON REGION

Addington
 Beckenham & Penge
 Bermondsey
 Bromley & Chislehurst
 Camden HIV Housebound Project
 Catford
 Chessington & Hook
 Edmonton
 Enfield Town
 Erith
 Feltham
 Finchley/Frien Barnet
 Hackney (Mare Street)

Harrow
 Hillingdon
 Holborn
 Holloway
 Hounslow
 Kensington
 Kentish Town
 Kilburn
 Kingston & Surbiton
 Merton Money Advice Service
 Mitcham
 Morden
 New Barnet
 Orpington
 Paddington
 Palmers Green
 Peckham
 Romford
 Royal Courts of Justice
 Sheen
 Streatham
 Sutton
 Sydenham
 Thornton Heath
 Tottenham
 Tooting & Balham
 Tower Hamlets East
 Walthamstow
 Wandsworth MAS
 Whitechapel
 Willesden (Brent)
 Woolwich

NORTH REGION

Barnsley
 Bradford (West Yorkshire)
 Chapeltown
 Darlington
 Doncaster
 Durham
 Harrogate
 Holderness
 Hull City Centre
 Hull (Orchard Park)
 Keithley
 Killingworth Benton & District
 Leeds
 Pontefract
 Redcar & Cleveland (Guisborough)
 Richmondshire

Rotherham
 Ryedale
 Scarborough & District
 Scunthorpe
 Selby District
 Sheffield Debt Support Unit
 South Elmsall
 South Kirklees
 Sedgemoor
 Stainforth
 Stockton & District Information &
 Advice Service
 Todmorden
 Wakefield
 Wear Valley

SOUTH REGION

Aldershot
 Alton
 Basingstoke
 Bexhill & Rother
 Bracknell
 Bridport & District
 Brighton & Hove
 Camberley
 Canterbury
 Chichester & District
 Christchurch
 Crawley
 Dartford
 Deal
 Dorchester & District
 East Dorset
 Epsom & Ewell
 Farnham
 Farnborough
 Faversham & District
 Gillingham
 Gosport
 Gravesham
 Hastings & Rother
 Havant & District (Waterlooville)
 Isle Of Wight
 Lancing & Sompting
 Lewes (Peacehaven)
 Maidenhead
 Maidstone
 Malling
 North Dorset
 Poole

Portsmouth
 Reading Community WRU
 Romsey & District
 Sevenoaks
 Slough
 Southampton
 Thanet
 Tonbridge
 Tunbridge Wells
 Weymouth & Portland
 Whitehill & Bordon
 Winchester
 Wokingham
 Yateley & District

WALES

Bargoed & District
 Caerphilly
 Caldicot & District
 Cardiff City Centre
 Carmarthen
 Chepstow
 Cowbridge
 Cynon Valley
 Flint
 Grangetown
 Landudno
 Merthyr Tydfil
 Newport
 Penarth
 Pontypridd
 Port Talbot
 Prestatyn
 Radnor
 Risca
 Ruthin & District
 Torfaen
 Wrexham & District

WEST REGION

Bath & District
 Bodmin (see North Cornwall)
 Bristol
 Devonport (Plymouth)
 Didcot & District
 Exeter
 Exmouth
 Falmouth
 Forest of Dean
 Gloucester & District

Henley & District
Liskeard
Ilfracombe (North Devon)
Kerrier
Newton Abbott
North Cornwall
North Somerset
North Wiltshire
Oxford
Paignton
Salisbury & District
Sedgemoor
South Somerset
South Hams (Dartmouth)
Stroud
Torquay
Truro (Carrick)
West Wiltshire
Witney