

DEBT RECOVERY

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LAW • PROPERTY • FINANCE

SPEAKER

DAVID ALEXANDER

HEAD OF DEBT RECOVERY AT GILSON GRAY LLP

FORMERLY A SOLICITOR AND PARTNER AT BLACKLOCKS

19 YEARS “HANDS ON” EXPERIENCE OF SHERIFF COURT LITIGATION

SET UP GILSON GRAY TO GROW ITS DEBT RECOVERY DEPARTMENT IN
2014

OVERVIEW

EXPLAIN WHAT I MEAN WHEN I SAY “DEBT RECOVERY”

PRE-LITIGATION STEPS THAT ARE COMMONLY USED

GIVE YOU SOME RECOMMENDATIONS ABOUT MAKING RECOVERIES AT THAT STAGE

EXPLAIN WHAT TYPES OF COURT ACTIONS ARE COMMONLY RAISED BY US

INCLUDE VIEWS ON SIMPLE PROCEDURE AND VEHICLE RECOVERY CASES

TEASE OUT SOME TIPS FOR YOU SHOULD YOU DO DEBT RECOVERY YOURSELF

QUESTIONS

NOT GOING TO DISCUSS ENFORCEMENT; KENNETH GILLIES WILL BE DOING THAT!

WHAT DO I MEAN WHEN I SAY “DEBT RECOVERY”?

TWO TYPES: DIRTY AND CLEAN

DIRTY:

- DEBT COLLECTION AGENCIES
- UNREGULATED
- BARRAGE OF LETTERS/PHONE CALLS/TEXT MESSAGES

CLEAN:

- LEGAL SIDE
- WORK NORMALLY CARRIED OUT BY SOLICITORS
- RECOVERY OF SUMS DUE TO YOUR CLIENT BY WAY OF LITIGATION

PRE-LITIGATION

SEVEN DAY LETTERS OF DEMAND

- POPULAR
- INEXPENSIVE
- DIFFERENT LETTERHEAD CAN WORK

TIPS

- EMAIL OUT AS WELL
- IF BUSINESS TO BUSINESS DEBT, ADD LATE PAYMENT COMPENSATION FEE AND LPI

PRE-LITIGATION cont.

21 DAY STATUTORY DEMAND FOR PAYMENT

- FORM 5, SCHEDULE 1, REGULATION 3, BANKRUPTCY (S) REGULATIONS 2016
- DEBT DUE BY AN INDIVIDUAL
- DEBT MUST BE £3,000 OR MORE
- MUST BE SERVED BY SHERIFF OFFICERS
- IF DENIAL SLIP RECEIVED, GOES NO FURTHER

TIPS

- QUICK
- ALLOWS YOU TO PETITION FOR THE DEBTOR'S SEQUESTRATION ON ITS EXPIRY

PRE-LITIGATION cont.

72 HOUR DEMAND FOR PAYMENT (BLUE STAR LETTER)

- ONLY APPLIES TO LIMITED COMPANIES
- MUST BE SERVED BY RECORDED DELIVERY OR SHERIFF OFFICERS
- AT THEIR REGISTERED OFFICE (SO CHECK IT!)
-
- HIGHLY AGGRESSIVE BUT VERY EFFECTIVE

TIPS

- REALLY QUICK
- ALLOWS YOU TO PETITION FOR THEIR LIQUIDATION IF NOT PAID
- BEWARE A (GENUINE) DISPUTE

LITIGATION

IF NO RESPONSE TO SEVEN DAY DEMAND LETTER, LITIGATE

IF SUMS DUE LESS THAN OR EQUAL TO £5,000: SIMPLE PROCEDURE

IF SUMS DUE GREATER THAN £5,000: ORDINARY CAUSE/COMMERCIAL ACTIONS

IF SUMS DUE REPRESENT RENT ARREARS RELATING TO RESIDENTIAL PREMISES: APPLICATION TO THE FIRST TIER TRIBUNAL FOR SCOTLAND

TIPS

- DON'T HANG ABOUT
- IF BUSINESS TO BUSINESS DEBT, ADD IN LATE PAYMENT COMPENSATION

SIMPLE PROCEDURE

INTRODUCED ON 28 NOVEMBER 2016

REPLACED THE OLD SMALL CLAIMS/SUMMARY CAUSE RULES AND PROCEDURES

RELATING TO ACTIONS SEEKING PAYMENT OF SUMS OF £5,000 OR LESS

AND ACTIONS SEEKING RECOVERY OF MOVEABLE PROPERTY WHERE THERE IS AN ALTERNATIVE CLAIM FOR PAYMENT (OF A SUM OF £5,000 OR LESS)

RULE 1.1 – A SPEEDY, INEXPENSIVE AND INFORMAL WAY TO RESOLVE DISPUTES

SIMPLE, PLAIN LANGUAGE THAT EVERYONE COULD UNDERSTAND

BRAND NEW LANGUAGE AND SET OF FORMS

MEANT TO ALLOW ONLINE ACCESS (UPLOADING AND DOWNLOADING OF DOCUMENTS)

USE OF AN INTEGRATED ONLINE CASE MANAGEMENT SYSTEM (“CIVIL ONLINE”)

SIMPLE PROCEDURE IN PRACTICE?

INITIALLY THE FORMS WERE HARD TO UNDERSTAND AND COMPLETE

COURTS WERE INCONSISTENT IN THEIR APPROACH TO ACCEPTING THEM (OR NOT!)

NO ONLINE CASE MANAGEMENT SYSTEM – DELAYED!

WE WORKED WITH SCS DURING 2017 AND 2018 TO DEVELOP AND TEST THE SYSTEM

FINALLY INTRODUCED ON 25 APRIL 2019

SINCE THEN, FULLY FUNCTIONING CASE MANAGEMENT SYSTEM

WAS IT WORTH THE WAIT?

WELL, YES

RAISING CLAIMS IS QUICK AND EASY

MOST COURTS LODGE YOUR CLAIM AND PROVIDE YOU WITH A COURT TIMETABLE WITHIN 24-48 HOURS

LESS SCRUTINY FROM THE SHERIFF CLERKS RE THE CONTENT OF YOUR CLAIM FORMS

WHOLE PROCESS IS ABOUT 4 WEEKS QUICKER THAN IT USED TO BE

BUT

THERE ARE STILL SOME DIFFICULT COURTS
(FALKIRK/ABERDEEN/PAISLEY/GLASGOW/LIVINGSTON)

THE MAJORITY OF RESPONDENTS DON'T USE THE CASE MANAGEMENT SYSTEM AS MUCH AS WE
DO

ORDINARY CAUSE AND/OR COMMERCIAL ACTIONS

ACTIONS OVER £5,000

ORDINARY CAUSE PROCEDURE CAN BE QUICK IF ACTION IS UNDEFENDED

IF DEFENDED, IT IS SLOW

ARE COMMERCIAL ACTIONS ANY QUICKER/BETTER?

IN THEORY, YES THEY SHOULD BE (OCR 40)

IN PRACTICE, NOT REALLY

HAVING THE SAME SHERIFF HAS ITS BENEFITS

BUT ACTIONS INVARIABLY LURCH FROM ONE CMC TO ANOTHER WITH SLOW PROCEDURAL PROGRESS BEING MADE

FIRST TIER TRIBUNAL FOR SCOTLAND

INTRODUCED ON 1 DECEMBER 2017 (S.16 of the HOUSING (S) ACT 2016)

ALL CLAIMS FOR RECOVERY OF RENT ARREARS RELATING TO PRIVATE RESIDENTIAL PROPERTIES MUST NOW BE MADE TO THE FTT AND NOT THE SHERIFF CLERK

NO OUTLAYS, NO NEED FOR SERVING DOCUMENTS....BUT NO EXPENSES!

FORMS AND SYSTEMS EASY TO UNDERSTAND AND USE

YOU BASICALLY DRAFT YOUR PRO FORMA APPLICATION AND SEND IT TO THEM

IF IT PASSES THE SIFT PROCESS, A HEARING IS FIXED AND THE FTT SERVE ALL PAPERS ON THE DEFENDERS

LANDLORD FRIENDLY DECISIONS SO FAR

BUT SOME TEETHING ISSUES BETWEEN FTT AND THE SHERIFF COURTS (PGs, COMMERCIAL ARREARS)

RECOVERY OF VEHICLES

CAR FINANCE COMPANIES, RECOVERY OF VEHICLES PLUS ARREARS

HIGH VOLUME INSTRUCTIONS

THREE STAGE PROCESS; OBTAIN ORDER TO UPLIFT THE VEHICLE, UPLIFT IT AND SELL IT AT AUCTION, THEN OBTAIN ALTERNATIVE CLAIM FOR PAYMENT (TAKING IN TO ACCOUNT THE SALE PROCEEDS)

STAGE ONE: STRAIGHT FORWARD – ACTION FOR DELIVERY OF VEHICLE, WITH ALTERNATIVE CRAVE FOR PAYMENT

STAGE TWO: NOT SO SIMPLE – SHERIFF OFFICERS OFTEN HAVE DIFFICULTY FINDING THE VEHICLE/VEHICLE CAN BE HIDDEN, MOVED OR SCRAPPED/EXPECT HIGH SHERIFF OFFICERS FEES AT THIS STAGE

STAGE THREE: EASY – QUICK APPLICATION TO COURT FOR PAYMENT BUT MAKE SURE YOUR MATHS IS GOOD!

TIPS

BLACK HORSE LTD v SHARON CAMERON (2019) SC DUM 36

JUDGMENT OF SHERIFF JAMIESON AT DUMFRIES SHERIFF COURT

SIMPLE PROCEDURE ACTION SEEKING RECOVERY OF A VEHICLE AND AN ENFORCEMENT ORDER UNDER THE CONSUMER CREDIT ACT 1974 (NO ALTERNATIVE CRAVE FOR PAYMENT)

THE VEHICLE WAS WORTH OVER £30,000

UNDEFENDED ACTION, WARRANT FOR SERVICE UNDER RESERVATION OF COMPETENCY GRANTED, ACTION SERVED, UNDEFENDED, BUT SHERIFF JAMIESON FIXED A HEARING

AT THE HEARING, HE DISMISSED IT AS BEING INCOMPETENT BECAUSE:

- THIS WAS AN ACTION FOR DELIVERY ONLY OF A VEHICLE VALUED OVER £30,000 (IE OVER £5,000)
- THERE WAS NO ALTERNATIVE CRAVE FOR PAYMENT OF A SUM £5,000 OR LESS
- AS SUCH, SIMPLE PROCEDURE WAS THE INCORRECT FORUM (SUMMARY CAUSE WAS)

WHY IS THIS RELEVANT?

THE DECISION SEEMS STRAIGHTFORWARD

“SIMPLE PROCEDURE ONLY COVERS ACTIONS FOR DELIVERY WITH AN ALTERNATIVE CLAIM FOR PAYMENT OF UP TO £5,000

ACTIONS FOR DELIVERY ONLY SHOULD BE RAISED AS SUMMARY CAUSE

AND ACTIONS FOR DELIVERY AND FOR PAYMENT OF A SUM GREATER THAN £5,000 IS AN ORDINARY CAUSE

BUT IT HAS BEEN CAUSING US PROBLEMS!

SHERIFF CLERKS HAVE BEEN REFUSING TO WARRANT OUR SIMPLE PROCEDURE CLAIMS

A NUMBER OF NEEDLESS CASE MANAGEMENT DISCUSSIONS HAVE BEEN FIXED

TIP

- STAND YOUR GROUND!
- HAVE AUTHORITIES AND LEGISLATION READY IN CASE OF PROBLEMS

TIPS

- SPEED (EMAIL/72 HOUR DEMANDS/QUICK TURN AROUND)
- USE TECHNOLOGY (EMAIL/USE SCS ONLINE CASE MANAGEMENT SYSTEM)
- BE CLEAR ON COSTS
- S.5A(2A) OF THE LATE PAYMENT OF COMMERCIAL DEBTS (INTEREST) ACT 1998
- NEED GOOD RELATIONSHIPS WITH SHERIFF OFFICERS, TRACE AGENTS, AUCTION HOUSES, ETC
- STAND YOUR GROUND WHEN YOU ARE RIGHT!

QUESTIONS?



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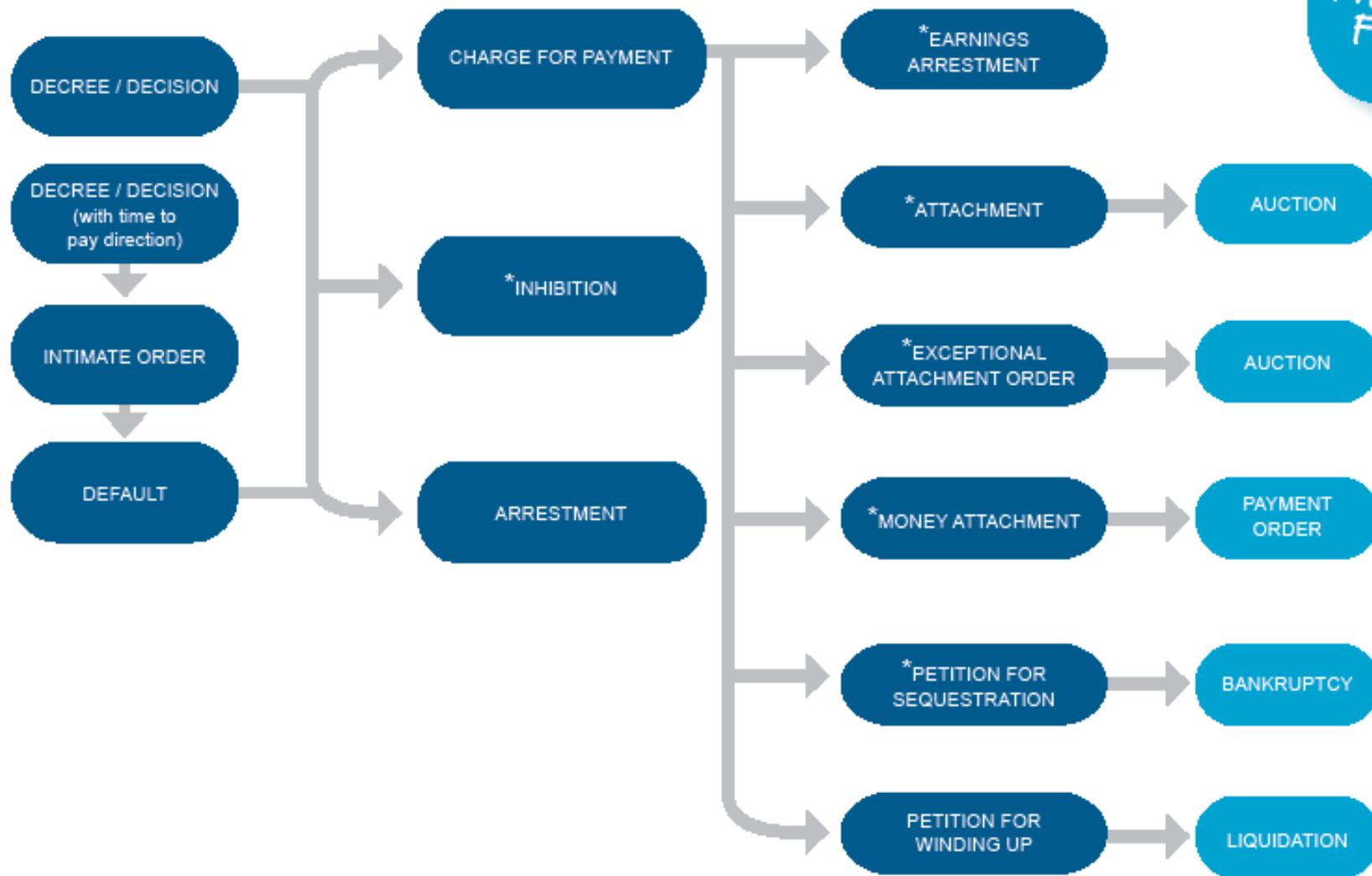
Royal Faculty of Procurators in Glasgow

'Enforcing a Decree'

Kenneth Gillies - Stirling Park LLP

26th September 2019

Scottish Enforcement Process



*Debt and Information Pack to be provided to individual debtor(s)

Enforcement fees are regulated and recoverable from the debtor

Enforcement measures

- **Arrestment in Execution**
- **Inhibition in Execution**
- **Charge for Payment**
- **Earnings Arrestment**
- **Attachment**
- **Money Attachment**

Arrestment in Execution

- **Freezes funds/goods held by arrestee**
- **Protected Minimum Balance (in certain cases)**
- **Arrestee's Duty of Disclosure within 3 weeks**
- **Automatic release of funds after 14 weeks**
- **Mandate to release arrested funds earlier**
- **Timing of service should be considered**

What can be arrested?

- Bank and Building Society accounts
- National Savings bank deposits
- Fees or Commission under a contract of service
- Rent, Periodical Payment and Annuities
- Bonds
- Insurance policies
- Claims and awards for damages
- Expenses
- Shares
- Partnership interest
- Trust funds

What can't be arrested?

- Heritable property
- Joint and common property
- Documents of no intrinsic value
- Earnings
- Alimentary payments
- Social security benefits
- Articles exempt from attachment
- Rolling stock of railways

Inhibition in Execution

- **Prevents debtor selling, disposing of or burdening heritable assets**
- **Effective for 5 years from date of registration**
- **Can be served if whereabouts unknown**
- **Should be registered urgently post-service**
- **Must be discharged if debt paid in full**

Charge for Payment

- **Written command to pay in name of sovereign**
- **Pre-requisite for several enforcement methods**
- **Prescribes after 2 years**
- **Establishes apparent insolvency**
- **Can be served if whereabouts unknown**
- **Opportunity to gain valuable intelligence**

Earnings Arrestment

- **Prescribed deductions from salary**
- **DAIP required within 12 weeks before service**
- **Service by Recorded Delivery initially**
- **Charge and earnings arrestment fee recoverable**
- **Employer's obligation if employee leaves**
- **Definition of Earnings (s73 of D(S)A 1987)**

Prescribed Deductions

Net Earnings (Monthly Salary)	Deductions
Not exceeding £529.90	Nil
Exceeding £529.90 but not exceeding £1,915.32	£15 or 19% of earnings exceeding £529.90, whichever is the greater
Exceeding £1,915.32 but not exceeding £2,879.52	£263.23 plus 23% of earnings exceeding £1,915.32
Exceeding £2,879.52	£485.00 plus 50% of earnings exceeding £2,879.52
<p><i>Example 1. Net earnings of £600 per month = £15.00 deduction</i> <i>Example 2. Net earnings of £1000 per month = £89.32 deduction</i> <i>Example 3. Net earnings of £2000 per month = £282.71 deduction</i> <i>Example 4. Net earnings of £3000 per month = £545.24 deduction</i></p>	

Definition of Earnings

Any sums payable to the debtor:

- as wages or salary,
- as fees, bonuses, commission or other emoluments payable under a contract of service or apprenticeship,
- as a pension, including a pension declared to be alimentary, an annuity in respect of past services, (whether or not the services were rendered to the person paying the annuity), and any periodical payments of compensation for the loss, abolition, relinquishment, or diminution in earnings of any office or employment, or
- as statutory sick pay.

Not considered earnings

The following shall not be treated as earnings:

- a pension or allowance payable in respect of disablement or disability,
- any sum the assignation of which is precluded by section 356 of the Armed Forces Act 2006 unless it is a sum consisting of pay or allowance payable by his employer to him as a special member of a reserve force (within the meaning of the Reserve Forces Act 1996),
- any occupational pension payable under any enactment which precludes the assignation of the pension or exempts it from diligence,
- A tax credit within the meaning of the Tax Credits Act 2002,
- a pension, allowance or benefit payable under any enactment relating to social security,
- a guaranteed minimum pension within the meaning of the Social Security Pensions Act 1975, or
- a redundancy payment within the meaning of the Employment Rights Act 1996.

Attachment

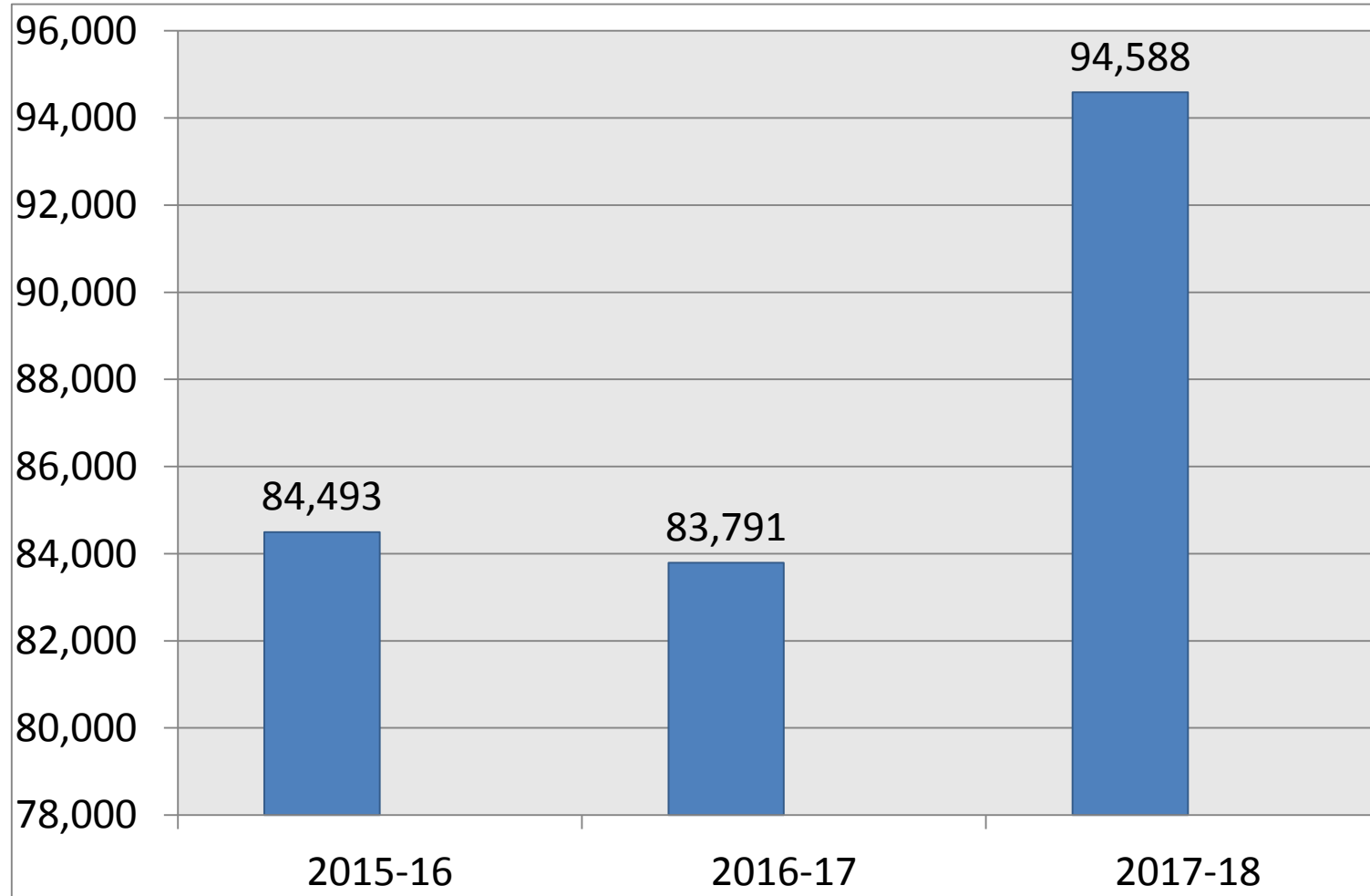
- **Moveable articles valued as security**
- **Articles out-with dwelling house only**
- **Full payment demanded prior to execution**
- **Presumption of Ownership**
- **Redemption of Attached Articles**
- **Prescribes 6 months after execution**

Money Attachment

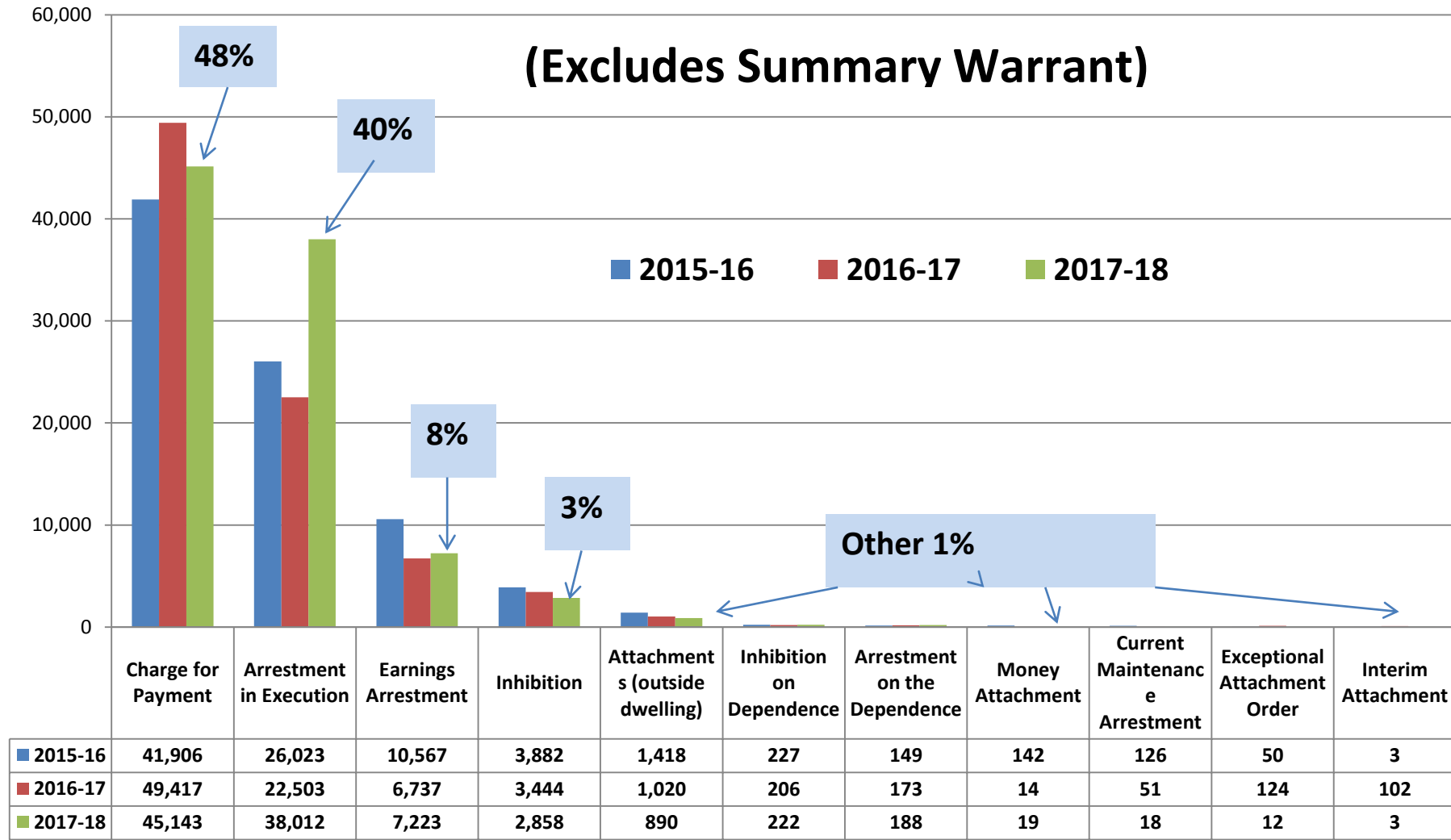
- **Normally executed at business premises**
- **Definition includes cheques, postal orders etc**
- **Restricted hours of execution**
- **Money removed at time of execution**
- **Not restricted to single attachment**
- **Possible future improvements**

Total Executed Diligence

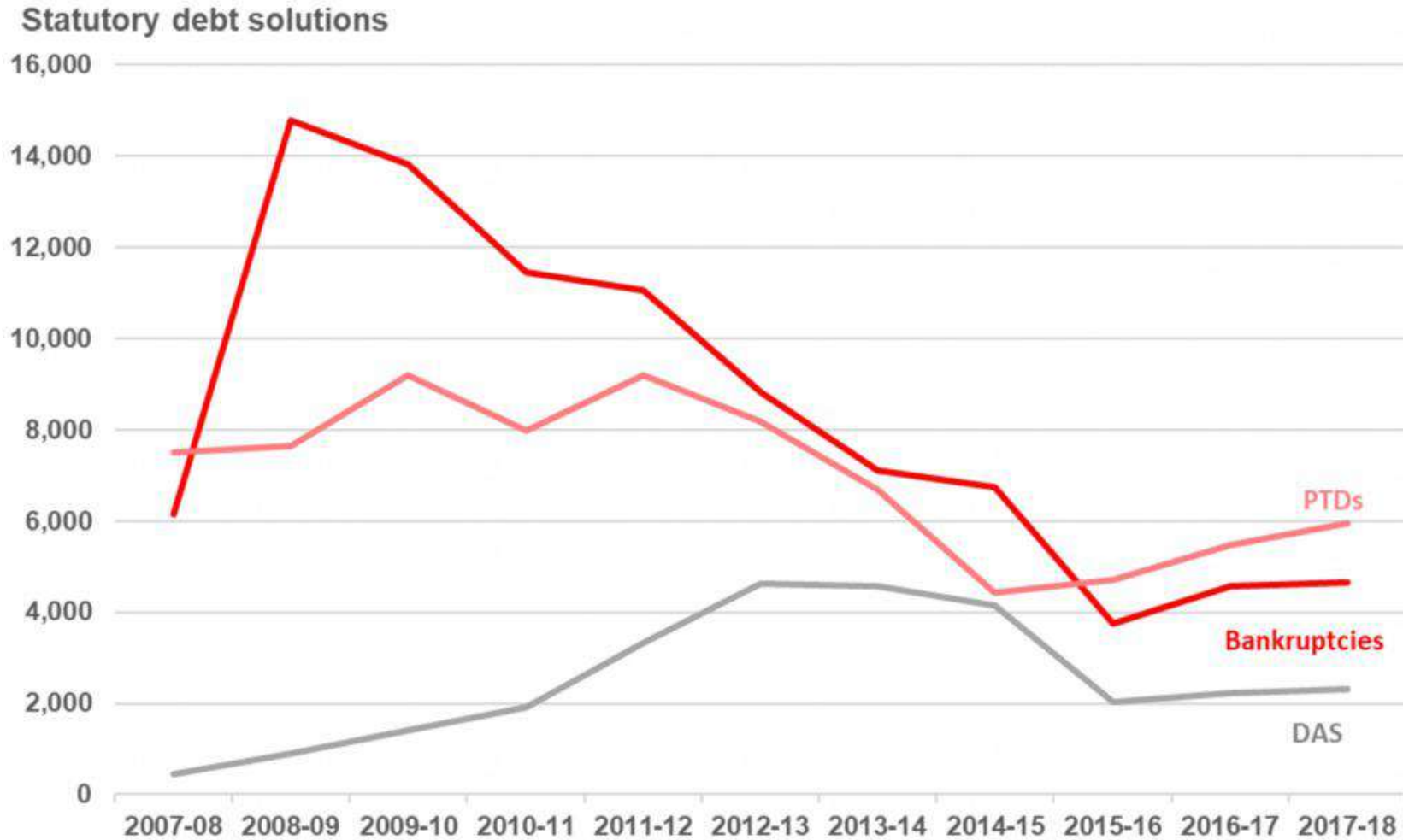
(Excluding Service & Summary Warrant)



Diligence Statistics



Personal Insolvency

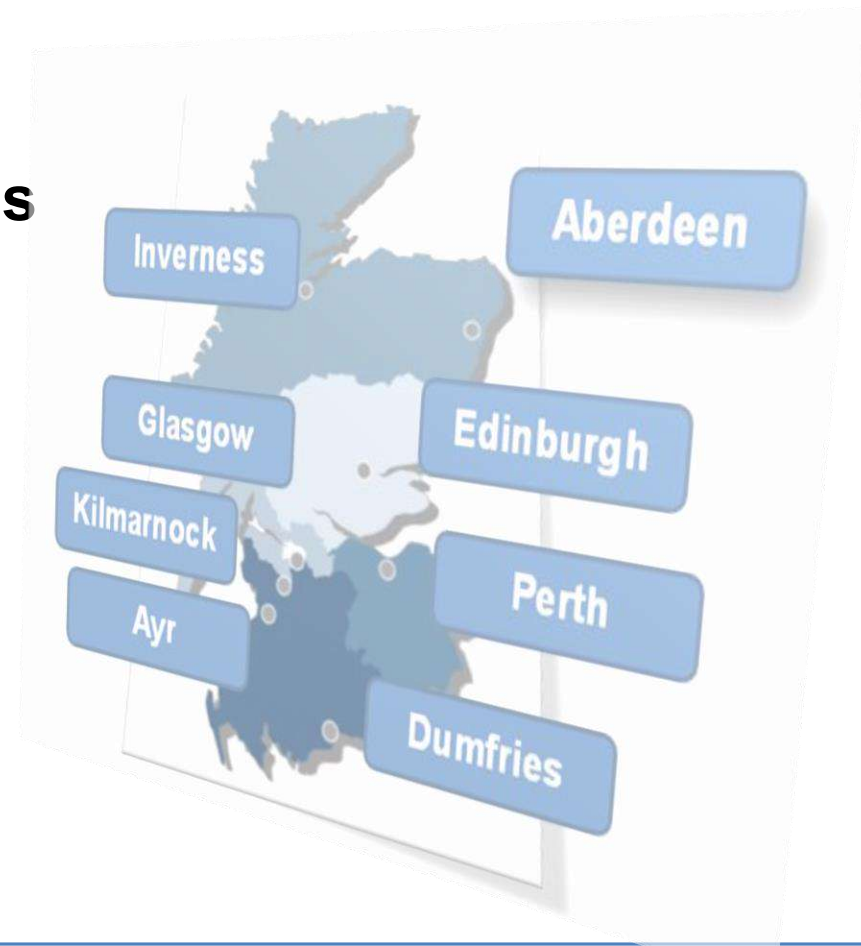


Diligence Review

- **Information Disclosure Orders**
- **Land Attachment**
- **Residual Attachment**
- **Minor changes to existing diligence**

Service Offering

- ✓ **Full coverage**
- ✓ **35 Sheriff Officers/19 MAA's**
- ✓ **Mobile printers**
- ✓ **Real-time updates**
- ✓ **Information Security**
- ✓ **Detailed reporting**



Questions

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