



# The Scottish Justices Association

## ***The Scottish Justice – eNewsletter May 2022***

Welcome to this, the latest newsletter from The Scottish Justices Association. As we begin to emerge, at long last, from the worst that Covid 19 had to throw at us all, we appear to have merely exchanged one international crisis for yet another with the war in Ukraine now filling the daily news headlines. As chaotic as times appear to be, we hope that this newsletter finds all our members and their families in good and hearty health.

This edition of The Scottish Justice has two articles from SJA Executive Committee member and former Secretary to the Association, Dennis Barr. The first article clarifies a number of issues surrounding the signing of utility warrants whilst the second explains the process of electing the Association's Executive Committee. There is also a short article from David Caddick on the origin of many every-day sayings related to the legal world.

As always, if you've any comments or thoughts on any of the articles in the newsletter, or wish to submit articles for future publication, please do get in touch.

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*"Lawyers occasionally stumble over the truth, but most of them pick themselves up and hurry off as if nothing had happened" – Winston Churchill*

## **Clarification of Certain Issues with the Signing of Utility Warrants**

### **1. Background**

As you are aware the rising cost of energy has been a major news item in recent weeks. This has coincided with the SJA receiving a number of questions regarding issues surrounding the signing of utility warrants. We do anticipate that there will be a significant increase in the number of utility warrant requests placed on JPs, particularly in Scotland as it has proportionally a higher number of utility warrant requests than England & Wales. This note is designed to answer some of the most frequently raised issues.

However it must be stressed that the rules detailed below only apply to utility warrants for debt recovery in domestic premises. Please note that these rules do **NOT** apply to commercial or industrial premises. In addition the rules do not apply where a warrant is sought when the energy supply company believes that there is meter tampering or other fraudulent activity, these warrants are usually referred to as 'Revenue Protection' warrants. Similarly, when a warrant is sought for safety reasons, particularly for gas supply issues, these provisions do not apply. It is essential therefore that the use of the premises and the type of warrant being applied for, is established prior to the signing of a utility warrant.

### **2. The Use of Utility Warrants**

The legislation covering the use of utility warrants dates back to 1954 and was introduced in conjunction with the nationalisation of the energy supply industry in this era. Warrants do allow the supplier of energy to forcibly enter premises to check and validate meters for safety purposes or fraudulent tampering, and where required, to recover debt by installing alternative meters, including pre-payment meters (PPMs). In general the nationalised industries did not use warrants as extensively as is current practice but would simply disconnect consumers. Following privatisation the new energy companies realised that they had customers rather than consumers, and that disconnecting customers carried an adverse reputational impact. This led to a rise in the number of warrants requested by the new privatised utility companies, whereby, the customer was allowed to 'self-disconnect' by not feeding the pre-payment meter.

It was anticipated that the advent of 'smart' meters would eliminate the use of utility warrants as it would allow the energy companies to remotely vary the individual tariff for each customer and thereby recover customer debt by higher unit charges. The 'smart' meter rollout has however been significantly delayed by technological and pandemic reasons, and the energy suppliers are having to react to some customers who wish to continue to use a pre-payment meter as a means of managing their domestic budget.

The SJA did become concerned about the growing use of utility warrants and raised the matter directly with OFGEM. In particular the SJA was concerned that all of the costs associated with the implementation of the warrant were simply added to the customer's

account. In 2016 in discussions with OFGEM we discovered that the average additional cost added to the customer's debt for the warrant implementation was in excess of £600. This was regarded by the SJA as a disproportionate additional cost when in many instances the actual level of debt was lower than this figure. The SJA did make full representation of our views to OFGEM in response to a public consultation.

### **3. Current OFGEM Requirements**

With effect from 8 January 2018 OFGEM issued new rules governing the installation of pre-payment meters (PPMs) into domestic premises specifically for debt recovery purposes. Prior to this OFGEM had required the energy companies to adhere to six key principles:-

- Having appropriate credit management policies and guidelines
- Making proactive contact with customers
- Understanding individual customer's ability to pay
- Setting repayment rates based on ability to pay
- Ensuring that the customer understands the arrangement
- Monitoring the of arrangements after they have been set up

Whilst these principles remain in force it was evident from the responses to the public consultation that further more detailed and specific rules were introduced. It should be noted that adherence to the OFGEM rules is a requirement of the licence granted to the energy company to supply customers. The licence can be withdrawn by the government for repeated breaches of the OFGEM rules.

The specific new provisions are:-

- A. A prohibition on suppliers using warrants in certain exceptional cases.** OFGEM require that suppliers do not install a PPM under warrant for the purposes of recovering debt where the process would be severely traumatic due to a customer's mental capacity and/or psychological state. This measure is designed to protect these customers from having these traumatic experiences, and to direct suppliers to pursue other, more suitable debt recovery methods.
- B. A prohibition on suppliers levying warrant-related charges in certain other cases.** OFGEM require that suppliers do not levy charges associated with the installation of a PPM under warrant where either the customer's vulnerability has significantly impaired their engagement with the supplier in the debt recovery process, or where the charges would exacerbate a customer's existing financial vulnerability by requiring them to pay additional warrant-related charges. This is designed to incentivise suppliers to pursue other, more suitable debt recovery methods given that they will not be able to recover any warrant-related costs in these instances.
- C. A cap on warrant related charges of £150 in all other cases.** OFGEM imposed a cap of £150 on the amount that suppliers can levy on customers when a warrant is used to force-fit a PPM for debt recovery purposes. The cap is designed to encourage greater

engagement between suppliers and indebted customers, to incentivise suppliers to explore alternative debt recovery methods, and only use warrants as a last resort. Another intended effect of the cap is that all customers will be protected from disproportionate costs when a warrant is used, and will be clear on the maximum amount that they may be charged if a warrant is used.

In practice most utility warrants are based on implementing a warrant in line with the cap of £150. This cap is usually identified in the “Human Rights’ letter which is sent to the customer, but it is worth checking that this limit is clearly identified by the supplier in their correspondence. It should also be checked the the energy supply company has undertaken the necessary checks as to the vulnerability and mental and physical state of the customer to establish whether the other provisions may apply.

#### **4. Other Considerations**

The main constraints on the energy supply company are detailed above, and as with all warrants the Justice of the Peace has to be satisfied that all relevant criteria have been met and that the request is reasonable. Do not feel obliged to sign utility warrants by SCTS staff; SCTS do receive £12 for each warrant that is signed, and it is a revenue stream for them. As with all warrants you as a JP are obliged to consider the warrant but you are not obliged to sign it. It is your responsibility and decision as to whether the warrant is appropriate and reasonable before signing it.

Dennis Barr JP

*“I broke a mirror and got seven years bad luck, but my lawyer thinks she can get me five”*

### **Have you ever wondered?**

Have you ever wondered about the origins of everyday sayings and how they might be related to the legal world? Here are few to get you thinking:

**To Read the riot Act.** The riot act of 1715 required justices of peace to stand before a mob and read the riot act if 12 persons or more were unlawfully assembled. If they did not disperse after the riot act had been read, then after one hour the army or local constables could use such force as necessary for them to be dispersed and the JP would not be liable for anyone who was killed maimed or hurt.

**Diehard.** The expression diehard today is more commonly associated with motion pictures involving the actor called Bruce Willis, and prior to that it became the nickname for several Regiments of the British Army who professed that they would ‘die hard’ in the face of the enemy. However, the original meaning of a diehard was a prisoner who was executed by

hanging and took a long time to die. It was said that they ‘died hard’. This was usually as they struggled against strangulation from a botched execution.

**Kangaroo Court.** Surprisingly the expression a kangaroo court, meaning an illegal court, did not originate in Australia but in America. During the gold rush of the 19th century the local courts dealt with lots of cases of claims and counterclaims over mining rights, and it was remarked that they jumped or skipped through cases like an Australian kangaroo hopping about.

**Bigwig.** The original meaning of bigwig was to be somebody of importance as status was directly related to the length of a person’s wig. This is still seen today in the Scottish justice system - the more senior judge, the bigger the wig.

**Jedburgh Justice.** The border town of Jedburgh had a reputation for summary justice. The wild borderlands between England and Scotland saw extensive cattle rustling, fighting and general lawlessness, and on one occasion it is said that a band of ruffians entered the town and were immediately seized by the King’s men and summarily executed by hanging. Supposedly the JP at the time said, “we need to hang them first and try them later”. Today this reputation is reflected in a walking and mountain biking trail around the town called the ‘justice trail’.

**Caught red-handed.** This refers to poachers who were caught literally with blood on their hands or red-handed, and once apprehended they would be taken immediately before the Justice with that blood still on their hands as evidence.

**Pressed for an answer.** In medieval times a form of interrogation was to pile successive heavy objects on a suspect's chest, slowly suffocating them until they confessed or gave an answer to their interrogator. Extra pressure could be applied by pressing down on the weights on their chest hence the expression ‘pressed for an answer’.

**Hauled over the coals.** This again was another punishment or way of extracting a confession, and the accused was physically hauled over hot coals that had been thrown on the floor.

**Paying through the nose.** This comes from the punishment meted out by the Vikings to anyone who didn't pay their taxes. Their nose was literally split from the bottom up to the eyebrows, a great incentive to make sure your tax return was completed on time.

**A baker’s dozen.** Traditionally there are 13 loaves in a baker’s dozen, not the normal 12. This originated in the 13th century when laws were passed to prevent the sale of adulterated bread using flour had been mixed with dust or powder or selling underweight loaves. The punishment for selling such goods was to have your hand chopped off, so all good bakers put in an extra loaf to make sure that they were not caught out in this way.

**A briefcase.** The word brief comes from the Latin of ‘brevis’ or short and originally, they referred to lawyers’ case notes that they would use for court, and the case for carrying those briefs was called a briefcase.

Finally, **sober as a Judge**, not to be confused with **drunk as a Lord**. As judges must be wise and sober temperance was seen as a key quality of a good judge. Its use perhaps best illustrated in the following anecdote:

*Sheriff: Do you have anything to say in your defence?*

*Accused: Only that I was as drunk as a judge.*

*Sheriff: Don't you mean drunk as a Lord*

*Accused: Yes m'Lord*

David Caddick MBE, JP

## **Appointment of Senior Legal Advisers**

As many of you will already be aware, the SCTS has announced the appointment of Senior Legal Advisers in the Sheriffdoms of Grampian, Highlands and Islands; North Strathclyde; and Glasgow and Strathkelvin. It does not appear that the Lothian and Borders post has been filled by an internal candidate and this is likely to be advertised externally in due course. The appointments are:

- James McPherson- Sheriffdom Legal Adviser, GHI
- Julie Scott- Sheriffdom Legal Adviser, NS
- Rose McLeary- Sheriffdom Legal Adviser, G&S

## **SJA Executive Committee - Elections 2022**

Remarkable as it may seem, the SJA Executive Committee has started the process to elect its new members, who will be taking up their appointment at the next Annual General Meeting (AGM) of the Association. Whilst no date has yet been set for the 2022 AGM it will probably be held again in the month of November.

The SJA Executive Committee is fortunate this year in having a full complement of eighteen members, three from each of the six Sheriffdoms. All Executive Committee members are appointed for a period of three years and one-third of positions (one member from each Sheriffdom) becomes available for election each year. This policy is designed to allow for a rotation of members and to allow as many members as reasonable to participate on the Executive.

Given that there are still some limited residual restrictions following the covid pandemic, it has been decided that following the success of the process in the past two years, the policy of simply allowing members to nominate themselves for election to the Executive Committee will continue this year.

The six positions on the Executive Committee that are due for election this year, and the current post holders are detailed below:-

- Glasgow and Strathkelvin - John Lawless
- Grampian Highland and Islands - David Caddick
- Lothian and Borders - Sue Cook
- North Strathclyde. - Grace Macleod
- South Strathclyde, Dumfries & Galloway - Gordon Hunter
- Tayside, Central & Fife - David Donaldson

All of the existing post holders are eligible to propose themselves for re-election.

In accordance with the SJA Constitution the Executive Committee has appointed an Election Sub-Committee to oversee the election process. This Sub-Committee has four existing members of the Committee all of whom are not seeking re-election; they are Dennis Barr (G&S - Chair), Sharon Hardie (NS), Stephen Stable (SSD&G) and Robert Walsh (SSD&G).

The Sub-Committee do wish to complete the election process by the end of September in order that the new Executive Committee will be decided well in advance of the AGM. In addition time has to be provided to allow members to self-nominate themselves, and as may be required, to hold elections. Elections will be held in all of the Sheriffdoms where more than one candidate has nominated themselves. Elections, where required, will be limited to those SJA members who sit in these Sheriffdoms.

The Election Sub-Committee shall establish a full timetable for the election process. This will be circulated to all members. Full details of how members may self-nominate themselves for election to the Executive Committee will be circulated along with the election timetable. This information will be circulated at the beginning of June 2020.

The full Executive Committee would recommend as many members as possible consider standing for election to join the new Executive Committee. This is your opportunity to help shape the future of the Scottish Justices Association, and enhance the role of Justices of the Peace in the Scottish judicial system.

Dennis Barr JP  
On behalf of the Election Sub-Committee

## **Unusual sentences**

*“Licence endorsed three penalty points and fined £200”*. This would be a disposal common in the JP courts and familiar to all JPs. In higher courts, disposals are generally more significant, but even in these higher institutions, the following – true – sentences would have raised an eyebrow or two!

In sentencing Gabriel March Granado for fraud offences involving 40,000 items of mail in the early 1970s the judge may have been overly generous in her discounting. Granado, a Spanish postman, was sentenced to 384,912 years. His sentence was eventually reduced to 14 years and 2 months.

In 1993, the Tulsa state prosecutor appealed the sentences given to Allan McLaurin and Darron Anderson for kidnapping and a series of assaults including the use of a deadly weapon. The appeal was successful and the original combined sentences of 6,475 years were increased to a total of 32,500 years. There's no record of any discount being offered.



Arrested for attacking his ex-girlfriend, Steven Cranley, 24, was declared by doctors to have difficulty coping with rejection and was thus ordered by Judge Rhys Morgan to refrain from *“a romantic relationship of an intimate nature with a female person”* for three years. During that time, he received counselling, but half-way through his sentence, he again assaulted a female acquaintance (a different one) and was sentenced to two years in jail.

When Jennifer Langston, 27, of Butler, Pennsylvania, was convicted of causing the death of Glenn Clark by dangerous driving, she was sentenced to only 30 days in jail and ordered to carry a photo of Clark so that she could reflect on her actions. When the picture provided by the victim's mother turned out to be that of Clark in his coffin, Langston protested. However, Judge George Hancher insisted, and Langston was forced to carry the photo with her for five years.

In 2005, Painesville Municipal Court Judge Michael A. Cicconetti sentenced Michelle Murray, to spend a night in the woods without water, food or entertainment as part of her punishment for abandoning 35 Kittens. On Sept. 19, park rangers found the kittens abandoned in two parks in Mentor, Ohio. They had little trouble in tracing the kittens back to Murray as they were all wearing identification collars.



In 2008, Colorado Judge Paul Sacco hailed as a success a new form of punishment for people who go to court for being too noisy -- an hour of listening to Barry Manilow or the theme tune from the children's TV show *“Barney and Friends.”* The judge decided to try something new after noticing that violators brought before his Colorado court for playing their stereos too loudly, or disturbing neighbours with band rehearsals, kept doing it again.

In 2016, after pleading guilty to escape, assaulting two emergency workers and damaging property, Shane Jenkins was sentenced at Bristol Crown Court to custody – for a period of 50 minutes. Jenkins made good use of the time by writing letters of apology to the officers and his ex-partner.