

Bailiffs and the work they do

Expert knowledge means success

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Note: This publication has not been updated since it was last published. Some of the hyperlinks may have changed and may need updating. In addition, some of the information in this publication may be out of date.

Introduction

A bailiff is an officer of the sheriff and thus of the court. The bailiff carries out the court's orders, such as taking goods belonging to a debtor (someone who owes money to another party) and selling them to get money to pay the debts. The bailiff can also personally deliver (called "service") court documents on people.

Bailiffs and enforcement officers are authorised to remove and sell a person's possessions in order to pay money owed to a person or organisation. They also conduct evictions and can arrest people.

Bailiffs and enforcement officers have differing roles. Detailed information on their responsibilities and how they work is provided within the leaflet *EX345 About Bailiffs and Enforcement Officers* available at:

www.hmcourts-service.gov.uk/HMCSCourtFinder/GetLeaflet.do?court_leaflets_id=261

The Directory of High Court Enforcement Officers contains names of enforcement officers in England and Wales who have been authorised to execute High Court writs under the provision contained in Section 99 and Schedule 7 of the Courts Act 2003. Directory of High Court Enforcement Officers – available at: www.hmcourts-service.gov.uk/docs/infoabout/enforcement/Directory-of-High-Court-Enforcement-Officers-November-2007.doc

Who are Bailiffs and Enforcement Officers?

Bailiffs and enforcement officers are people authorised to remove and sell a debtor's possessions in order to pay the money owed to a person or an organisation. They also conduct evictions, and arrest people.



County Court Bailiffs — are employed by Her Majesty's Courts Service (HMCS) and are responsible for enforcing orders by recovering money owed under a county court judgment. They can seize and sell the debtor's goods to recover the amount of the debt. They can also affect and supervise the possession of the property and the return of goods under hire purchase agreements and serve court documents.

Civilian Enforcement Officers (CEOs) Magistrates' Courts — are employed by HMCS and are responsible for enforcing magistrates' court orders. They can seize and sell the debtor's goods to recover the amount owed under a fine and community penalty notice. They can also execute warrants of arrest, committal, detention and distress issued by a magistrates' court under any one of a range of statutes, including those covering the enforcement of fines and community penalties. A CEO can execute such a warrant anywhere within England and Wales.

Enforcement Officers — (High Court) are appointed on behalf of the Lord Chancellor and are responsible for enforcing court orders by recovering money owed under a High Court judgment, or a county court judgment transferred to the High Court. They can seize and sell a debtor's goods to cover the amount of the debt. They can also enforce and supervise the possession of property and the return of goods.

Certificated Bailiffs — enforce a variety of debts on behalf of organisations such as local authorities. They can seize and sell a debtor's goods to cover the amount of the debt owed. They also hold a certificate, which enables them, and them alone, to levy distress for rent, road traffic debts, council tax and non-domestic rates. They cannot enforce the collection of money due under High Court or county court orders.

Non-certificated Bailiffs — are entitled to recover the money owed for a variety of debts by seizing and selling a debtor's goods but cannot levy distress for rent, road traffic debts, council tax or non-domestic rates, or enforce the collection of money due under High Court or county court orders.

New standards for Bailiffs

National Standards to define acceptable behaviour for bailiffs were unveiled by Justice Minister Jonathan Djanogly on 13 January 2012. The voluntary code has been tightened so that people are protected from rogue bailiffs who use unsound, unsafe or unfair methods, while at the same time making sure businesses and authorities can still collect debts fairly.

The updated National Standards outline the minimum standards of behaviour expected of bailiffs and bailiff firms, including:

- Bailiffs must not behave in a threatening manner or use unlawful force to gain access to a home or business;
- Bailiffs should avoid discussing the debt with anyone except the person owing money, and bailiffs must never behave in a way that would publicly embarrass a debtor;
- Bailiffs must withdraw when only a child is present; and
- Bailiffs have a duty of care towards vulnerable people, such as the elderly, people with disabilities, single parents and unemployed people and must use discretion when collecting debts from these groups.

Mr Djanogly also outlined proposals to create a new legally-binding regulatory regime for bailiffs. They include:

- New rules around the modes and times of entry to make it clear when and how an enforcement agent may enter a home or a business;
- Which goods are exempt to make it clear which items an enforcement agent may not take from **someone's home or business premises**; and
- What fees bailiffs can charge for the range of debts that they collect for local government, courts and businesses.

How do bailiffs and enforcement officers recover monies owed?

- They can seize and sell goods to cover the amount of a debt and costs owed by a debtor. This is called 'levying distress';
- They may, initially, contact the debtor by telephone or by letter to give the debtor the opportunity to pay the debt. If the debtor does not respond, or does not agree to pay the debt, they will visit the debtor's premises to seize goods but will not do so if what is owed is paid. The debtor may be able to arrange to pay the debt by instalments;
- If the debtor's goods are seized, they may take them straightaway or leave them at the debtor's premises;
- If they leave the goods with the debtor, this is called 'walking possession'. This means that unless the debtor keeps to the arrangement to pay, they have the right to return to the debtor's premises at any time to remove the goods and sell them at public auction. Once they have taken walking possession, the debtor cannot dispose of the goods seized until the warrant is withdrawn;
- They will try to obtain the best price for the debtor's goods if they are selling them at public auction. This price includes the fees that they are entitled to charge, the cost of removing the goods and the cost of selling them.

Note: It is important to remember that auction prices are usually lower than high street prices. The court may allow the goods seized to be sold privately rather than at public auction. This is called 'private treaty'. The debtor should seek advice to see if this will be possible.

The Bailiff

A bailiff is an officer of the sheriff and thus of the court. The bailiff carries out the court's orders, such as taking goods belonging to a debtor (someone who owes money to another party) and selling them to get money to pay the debts. The bailiff can also personally deliver (called "service") court documents on people.

Fees charged by Bailiffs or Enforcement Officers

County Court Bailiffs — the fees charged by the county courts for using the bailiffs will be added to the amount owed. Any additional costs for removing and selling goods will be added to the amount owed by the debtor.

Civilian Enforcement Officers (CEOs) Magistrates' Courts — are not allowed to charge more than the amount the debtor is fined. However, additional costs for removing and selling goods may be added to the amount owed by the debtor.

Enforcement Officers (High Court) — are entitled to charge fees and add them to the money owed by the debtor.

Certificated and non-certificated Bailiffs — are entitled to charge fees and add them to the money owed by the debtor.

Certificated Bailiffs — collecting council tax, community charge, distress for rent, road traffic debts and non-domestic rates, should leave a copy of the fee scales that they can charge with the debtor when they visit the debtor's premises.

Bailiffs and enforcement officers are not allowed to charge more than the amounts stated for that piece of work in the scale of fees.

There is no statutory scale of fees for bailiffs enforcing magistrates' courts fines. A debtor can contact the magistrates' court direct and ask for the agreed scale of fees that bailiffs can charge.

Legal regulation of bailiffs

A major legal overhaul of the bailiff industry was announced on 17 February 2012 by the Justice Minister Jonathan Djanogly. The MoJ said that for far too long there has been no formal protection against aggressive bailiffs and the government is determined to stamp out rogue practices by introducing a number of legal reforms. The MoJ has now launched a consultation which sets out how ethical activity should be enshrined in law so bailiffs can continue to enforce the payment of debts and fines.

This consultation will set out proposals to:

- prohibit the use of force against a person with safeguards to protect children
- remodel and clarify the complaints process available to the debtor
- create minimum entry standards and certification process to ensure bailiffs are fit to operate
- set out when and how a bailiff can enter a property
- set out to whom and under what circumstances reasonable force to enter premises will be available
- make clear which items an enforcement agent may not take from someone's home; and
- make clear what fees bailiffs can charge for the range of debts that they collect for local government, courts and businesses.

Bailiffs play an important role in both the economy and the justice system and without them creditors would not be able to lend and the effectiveness of the courts would diminish. The government has already been discussing the consultation details with both the public advice sector and the bailiff industry to ensure the measures proposed are clear and workable.

Source:

www.justice.gov.uk/news/press-releases/moj/pressrelease170212a.htm

Complaints about Bailiffs and Enforcement Officers

How does a debtor complain about the debt?

If a debtor thinks that they do not owe all or part of the money, they should contact the organisation that is claiming the money from them e.g. your local council, Child Support Agency or the magistrates' court.

The organisation concerned has told the bailiff or enforcement officer that the debtor owes money, and it is not up to the bailiff or enforcement officer to decide otherwise. The debtor should make sure that they have the relevant account number or reference number to hand when they contact the people or organisation who is claiming the debt.

How does a debtor complain about the fees they have been charged?

If the debtor thinks that the fees charged by the enforcement officers (High Court) are too high, they can apply to the High Court for a detailed assessment of the fees. This means that the court will decide if the fees charged are reasonable or not.

If the debtor thinks that the fees charged by a certificated or non-certificated bailiff are too high, they can apply to the county court for a detailed assessment of the fees. This means that a district judge will decide if the fees charged are reasonable or not. Detailed assessment applies where the fee scale does not set a fixed amount to be charged.

The debtor will need to pay an application fee to have the bailiff's fees assessed. But, in certain circumstances, the debtor may not need to they may be entitled to fee concession. For further information, or to apply for a fee concession, ask court staff for a copy of the combined leaflet and form *EX160A - Court fees - Do I have to pay them?* This is also available from any county court office, or a copy of the leaflet can be downloaded from www.hmcourts-service.gov.uk.

Detailed assessment does not apply to Magistrates' Courts' bailiff fees.

The debtor should seek advice from a Citizens Advice Bureau, an Independent Advice Centre, a solicitor or a law centre before going to court. If the debtor loses, they may end up paying even more than the original debt.

How can the debtor complain about the conduct of the bailiff or enforcement officer?

A complaint can be made if:

- The bailiff or enforcement officer's behaviour has been unduly aggressive, rude or threatening;
- They have levied illegally. This means that they have levied on goods, which cannot be seized;
- The law on what can and what cannot be seized differs depending on the type of debt owed. The debtor should tell the bailiff or enforcement officer about any items of property that are rented, hired, leased or belong to another person.
- They have levied irregularly. This means that the correct goods have been seized, but the procedures followed were not correct e.g. the bailiff sells the goods after the debtor has paid the debt;
- Note: The debtor must keep in touch with the bailiff while he is dealing with the debt.
- The bailiff has levied excessively. This means that the value of the goods seized from the debtor is more than the amount of the debt, or that the debtor has paid an excessive amount to the bailiff. If more money is raised at auction than the debt, (this includes the fees, the cost of removing the goods and the cost of selling them), the balance should be returned to the debtor. A levy is not excessive if there are no other goods that can be seized.

Note: It is important to remember that auction prices are usually significantly lower than high street prices.

The new Regime

As from 1 April 2004, a new regime for High Court enforcement came into effect in England and Wales. Previously, enforcement of High Court writs of *fiery facias* and Writs of possession (collectively known as 'writs of execution') was carried out in the name of the High Sheriff for each bailiwick. (A 'bailiwick' being the area under the jurisdiction of the High Sheriff, these areas being roughly equivalent to the pre-1974 county boundaries).

From 1st April 2004, all this changed. Incoming High Sheriffs who took office from that date are removed from their obligation from enforcing these High Court writs.

Instead, High Court writs of execution are now being enforced by "enforcement officers" appointed and assigned to districts by the Lord Chancellor or his nominated delegate. A directory containing a list of all those appointed as enforcement officers, and the postal districts to which they have been assigned is available at: www.hmcourts-service.gov.uk/docs/infoabout/enforcement/Directry-of-High-Court-Enforcement-Officers-November-2007.doc

What happens after a complaint is made?

A copy of the complaint will be sent to the certificated bailiff who has to respond in writing within a certain time. If no reply is received within the time limit, or the judge is not satisfied with the certificated bailiff's response, the bailiff will be summoned to appear before the judge.

The debtor will be informed of the date of the hearing and may attend the hearing and make a statement if so desired.

If the debtor wishes to attend the hearing but cannot travel to the court where the hearing will be heard, he/she may apply to that court for the hearing to be transferred to a court with jurisdiction to issue bailiff certificates nearer to them.

If the judge is satisfied with the bailiff's response, the debtor will be informed of the judge's decision.

What can the judge do?

After the hearing, the judge may take the following action:

- Order that compensation be paid to the debtor. This means that the judge will award the debtor a sum of money;
- Cancel the bailiff's certificate. This means that the bailiff will no longer be entitled to levy distress for rent, road traffic debts, council tax or non-domestic rates; or
- Dismiss the complaint.

What else can the debtor do?

The debtor may be able to take court action or appeal against the bailiff's action. This depends on the kind of debt owed and what has happened. The debtor should seek advice from a Citizens Advice Bureau, an Independent Advice Centre, a solicitor or a law centre before going to court. If the debtor loses, they may end up paying even more than the original debt.

The debtor may have to pay a fee in the High Court or the county courts. Details of this and what to do if the debtor cannot pay all or part of the fee can be obtained from any county court office.

What can and cannot be seized?

Goods which can be seized

The bailiff can only seize goods which belong to the debtor. However, the bailiff can seize goods, which are jointly owned even if the other joint owner is not the debtor.

Goods which cannot be seized

The bailiff cannot seize the following:

- Goods which belong to another person;
- Fixtures and fittings;
- Goods on hire-purchase;
- Goods which are rented.

If the bailiff is collecting a County Court Judgement debt, Council Tax, or Community Charge the following goods cannot be seized:

- Such clothing, bedding, furniture, household equipment or provisions as are necessary for satisfying the basic domestic needs of the debtor and his/her family.
- Such tools, books, vehicles, and other items of employment as are necessary to the debtor for use personally in their employment, business and vocation.

If the Bailiff is collecting a **Fine**, the following goods **cannot be seized**:

- The clothes and bedding of the debtor and his/her family.
- The tools and implements of the debtor's trade.

Aggressive bailiff tactics outlawed

Laws to tackle aggressive bailiffs will be introduced next year in England and Wales, the government announced on 25 January 2013. Vulnerable people will be protected from aggressive bailiffs but businesses will still be able to collect debts fairly under new laws to clean up the industry announced by Justice Minister Helen Grant who said the crackdown was badly needed.

Until now there has been insufficient legal protection against aggressive bailiffs but that will change with the new laws and a mandatory training and certification scheme which they must pass before going into business. Bailiffs who do not follow the rules will be barred from the industry.

Bailiffs have been un-regulated and this has allowed a small minority to give the industry a bad name. Too many people in debt have had the additional stress of dealing with

aggressive bailiffs who often charge extortionate fees. The new laws will clean up the industry and ensure bailiffs play by the rules or face being prevented from practising. They will also make sure businesses and public bodies can collect their debts fairly.'

The Government is taking action following a consultation last year on aggressive bailiffs. As a result:

- The law will be changed to ban the use of force against debtors and stop bailiffs entering homes when only children are present;
- Bailiffs will not be able to visit debtors at night – they will only be allowed to enter between 6am and 9pm;
- An amendment in the Crime and Courts Bill will amend Part 3 of the Tribunals, Courts and Enforcement Act to prevent bailiffs from using force against people;
- The Government will commence Part 3 of the Tribunals, Courts and Enforcement Act 2007 and introduce secondary legislation which will cover the following: when and how bailiffs can enter properties and what goods they can seize; ban bailiffs from entering when only children are present and from entering repayment plans with children; introduction of fixed fees, mandatory training and a certification process;
- Landlords will be banned from using bailiffs to seize property for residential rent arrears without going to court.

In 2012, the Government updated National Standards for Enforcement Agents and guidance for people in debt on Gov.uk which served as a reminder to bailiffs and creditors of their responsibilities. These changes will protect people in debt from rogue bailiffs and ensure creditors have a better understanding and more confidence in the process being carried out on their behalf.

The changes will be made by enacting parts of the Tribunals, Courts and Enforcement Act 2007 and creating new laws through the Crime and Courts Bill. The Bill is currently progressing through Parliament.

Further Information

This guide is for general interest - it is always essential to take advice on specific issues. We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

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Publication issued or updated on: 25 January 2013

Ref: 523



Acknowledgement:

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