



The current regulation of bailiffs

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A bailiff is someone authorised to collect a debt on behalf of a creditor. A creditor is someone who is legally owed money. Bailiffs and enforcement officers generally recover money in respect of a debt by seizing goods from the debtor. Where goods are seized, the debtor usually has the opportunity to pay the debt and recover his goods, but if he does not do so, the goods may be sold by the bailiff in public auction. The money recovered is passed onto the creditor. Bailiffs are only entitled to seize certain types of goods, and are not entitled to remove some basic necessities.

A bailiff must be legally authorised to collect the debt on behalf of the creditor. This authority is normally known as a 'warrant' (or 'warrant of execution') if the bailiff is recovering money owed under a County Court judgment. Bailiffs used by the Magistrates Court to collect unpaid council tax, outstanding fines, compensation or unpaid maintenance will be acting on either a 'distress warrant' or a 'liability order' issued by the Magistrates Court.

The law relating to bailiffs is fairly complex, since regulation currently depends upon the type of bailiff that has been employed. This note outlines the different types of bailiffs and enforcement officers, their powers and any relevant limitations to these.

A separate Library note, '[Crime and Courts Bill \[HL\] - reform of bailiffs](#)', SN/HA/6230, provides a summary of the problems identified with the current regulatory system for bailiffs and the background to bailiff reform. It also provides an outline of the Government's proposed reforms as set out in its consultation paper, '*Transforming bailiff action*', published on 17 February 2012. Importantly, it considers the new bailiff provisions contained in the *Crime and Courts Bill* (under the general heading '*enforcement by taking control of goods*'), which seek to amend Part 3 and Schedule 12 of the *Tribunals Courts and Enforcement Act 2007*. Once these changes are made, the Government has stated that it intends to bring Part 3 into force and with it a new framework for the regulation of bailiffs.

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1 What is enforcement action?

Creditors are entitled to collect what they are owed. Enforcement action is taken when a debtor fails to pay a debt or negotiate a reasonable instalment payment regime with the creditor. Once there is a judgment order in their favour, a creditor has several enforcement options available to them depending on the type of debt. For example, the creditor can ask for:

- An attachment of earnings order. The court can send an attachment of earnings order to the debtor’s employer. (The order will tell the employer to take money from wages to pay the creditor).
- A legal charge on land or on a property (the creditor can ask for a charge on the debtor’s land or property for the amount that they are owed, if the land or property is subsequently sold the debtor will need to pay the charge before receiving the proceeds).

- A third party debt order can be served on anyone who owes money to a debtor, or holds money on their behalf. (They are usually used to freeze bank or building society accounts).

Creditors normally instruct bailiffs when there is no alternative enforcement option available. A bailiff may be instructed to collect payment of the debt and their costs. This is done by the bailiff seizing the debtor's goods and selling them; using the proceeds to settle the debt and costs. This type of enforcement action is used to recover both criminal and civil debts. It is available for court debt, tax debt, local authority debt as well as recovery for the private individual.

2 Who are bailiffs?

A bailiff is someone authorised to collect a debt on behalf of a creditor. A creditor is someone who is legally owed money. A bailiff must be legally authorised to collect the debt on behalf of the creditor. This authority is normally known as a 'warrant' (or 'warrant of execution') if the bailiff is recovering money owed under a County Court judgment. Bailiffs used by the Magistrates Court to collect unpaid council tax, outstanding fines, compensation or unpaid maintenance will be acting on either a 'distress warrant' or a 'liability order' issued by the Magistrates Court.

In addition to authorisation, a bailiff should provide identification if asked to do so by the debtor. For example, a bailiff collecting for rent arrears must show their certificate from the County Court and a bailiff collecting unpaid council tax must show written authorisation from the local authority.

The term 'bailiff' encompasses a large number of different types of bailiffs and enforcement officers.

2.1 Court bailiffs

County Court bailiffs

Directly employed staff of HM Courts and Tribunals Service are responsible for enforcing County Court warrants of execution. In other words, bailiffs employed by the court recover money owed under a County Court order (known as the 'judgment debt') and any associated costs, by seizing and selling the debtor's goods. They also effect and supervise the possession of property and the return of goods under hire purchase agreements, and serve court documents.

High Court enforcement officers

High Court Enforcement Officers (HCEOs) 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 goods to cover the amount of the debt. They also effect and supervise the possession of property and the return of goods.

2.2 Certificated bailiffs

Certificated bailiffs are granted a certificate by a County Court judge, which lasts for two years and authorises the bailiff to levy distress (i.e. seize goods) anywhere in England and Wales. To obtain a certificate, the applicant must satisfy the judge that he is a fit and proper person to hold a certificate. They must also provide references and a security bond.

Certificated bailiffs can enforce a variety of debts on behalf of organisations such as local authorities, and can seize and sell goods to cover the amount of debts owed. Their certificate enables them, and them alone, to levy distress for rent, road traffic debts, council tax and non-domestic rates. However, they cannot enforce the collection of money due under High Court or County Court orders.

2.3 Private non-certified bailiffs

Non-certified bailiffs are entitled to recover the money owed for a variety of debts by seizing and selling 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.

3 Execution against goods

3.1 Application to the court to enforce a judgment debt

Obtaining a court judgment against a defendant (i.e. the debtor) often does not enable a litigant (i.e. the creditor) to recover money from that person. Defendants often refuse to comply with judgments of the courts. The use of bailiffs or enforcement officers is one method claimants can use to enforce their judgment and recover payment of the money owed.

As indicated above, where a claimant obtains a judgment order in the High Court, enforcement of the order is carried out by enforcement officers (who are independent of the courts), whereas County Court enforcement is usually carried out by bailiffs who are employed by HM Court Service.¹ Blackstone's Civil Practice suggests that enforcement officers, who are remunerated by fees and poundage on money they recover, have a greater incentive than County Court bailiffs and hence have a reputation for being more successful.²

The seizure of goods (legally referred to as 'execution against goods') is a common method of enforcement. In the High Court this is effected through the *writ of fieri facias*, while in the County Courts it is effected by a warrant of execution.³

In the High Court, the creditor has to produce a draft *writ of fieri facias*, a *praecipe* (which is a court document on which a party writes the particulars of a document he wishes to have prepared or issued) and the judgment. The writ is then issued by being sealed under the Rules of the Supreme Court.⁴ It is then served on an enforcement officer pursuant to schedule 7 of the Courts Act 2003. In the County Courts, the creditor has to send a request for the issue of a warrant of execution to the court and the court informs its bailiffs.

In practice, solicitors acting on behalf of the claimant in the High Court will prepare the necessary court documents to instruct enforcement officers. In the County Court, either a solicitor or the claimant himself will complete the necessary court documents to instruct a bailiff (often with the assistance of the court clerk).

3.2 How bailiffs enter the debtor's premises and seize goods

A 'warrant of execution' enables a bailiff to enter premises and seize goods to satisfy the amount of the debt and associated costs (this is called levying distress). This is the execution

¹ *Blackstone's Civil Practice 2005*, Sixth Edition, para 76.1

² *Ibid*

³ *Blackstone's Civil Practice 2005*, Sixth Edition, para 76.5

⁴ RSC), ord 46, r 6 in schedule 1 to the *Civil Procedure Rules* (CPR)

of the warrant. However, bailiffs cannot make a forcible entry so they may have to make more than one visit before they are allowed in (see below).

If a bailiff seizes goods, they may take the goods away immediately, but in practice what often happens is that the bailiff and the debtor will come to an agreement known as a 'walking possession agreement'. This means that the debtor has agreed to pay the bailiff a nominal sum per day for the continued use of the goods. This is not permanent and will only give the debtor a few days to try and re-negotiate the debt with the court. If a bailiff has gained entry and the debtor does not want the goods to be removed immediately, this agreement has to be signed. Once a bailiff has taken walking possession, the bailiff is then entitled to use force to take possession of the goods should the debtor later default on, or chooses to ignore, the agreement.⁵

Goods seized by the bailiff must be put into public auction to be sold; the bailiff is under a legal obligation to obtain the best price possible. However, as the goods are second-hand, the value of the goods is only a fraction of their original price. Alternatively, a court may allow the goods seized to be sold privately rather than at public auction. This is called private treaty.⁶

The bailiff is entitled to charge fees, including the cost of removing the goods and the cost of selling them.

3.3 Limits on the bailiff's powers of entry

The HM Courts Service website makes plain that in the majority of cases, bailiffs can only enter a person's home if they are allowed in by the person resident there. If there is nobody there, the bailiff can enter if a door is left unlocked or through a window that is already open.⁷ This is known as 'peaceful entry'. Peaceful entry does not usually include:

- being asked in by a young child;
- breaking windows, doors or locks; or,
- pushing past people to get inside a property⁸

In certain limited circumstances, bailiffs may be able to break into business premises if there is no living accommodation attached and they believe seizable goods are inside. They can also enter if the bailiff has previously been allowed in and is returning to a person's house to collect goods to be sold. A bailiff may also be allowed to break into a property where someone has unpaid criminal fines.

3.4 Limits on a bailiff's powers to seize goods

A bailiff cannot seize goods belonging to anyone other than the person named on the distress warrant. For example, the bailiff cannot take goods which belong to the defendant's partner. A bailiff cannot seize goods subject to a hire purchase or rental agreement (however, goods on credit sale can be seized because they are deemed to belong to the debtor).

Any goods which the bailiff takes must be likely to fetch money at auction. Bailiffs will not remove goods if they think that they will not fetch enough to pay something towards the warrant after the cost of removing and selling them at auction has been paid.

⁵ McLeod v Butterwicks [1996] 1 WLR 995

⁶ <http://www.hmcourts-service.gov.uk/infoabout/enforcement/bailiffs/how.htm>

⁷ Nixon v Freeman (1860) 5 H & N 647, Long v Clarke [1894] 1 QB 119, CA

⁸ http://www.advicenow.org.uk/fileLibrary/pdf/bailiffs_0805.pdf

By law, bailiffs cannot generally take:

- items or books which the defendant needs for his job or business, such as tradesman's tools or other equipment necessary for personal use in employment or business (however, a bailiff acting for Poll Tax, Council Tax, VAT and Tax may be able to do so);
- essential household items which the defendant and his family need (such as clothing or bedding);⁹
- items which are leased, rented or are on hire purchase agreements; or
- goods which may have already been seized by bailiffs acting under another warrant

By law, bailiffs also cannot take:

- cars which are bought on hire purchase; or
- equipment which does not belong to a business (for example, office furniture, machinery and vehicles which may be leased)¹⁰

Where someone believes that they do not owe all or part of the money claimed by the bailiff, they need to contact the organisation claiming the money (e.g. the local council, child support agency or the Magistrates' Court). Where the organisation concerned has told the bailiff or enforcement officer that the debtor owes this money, it is not up to the bailiff or enforcement officer to decide that they do not.¹¹

If the bailiffs are unable to recover sufficient money to repay the debt, the debt will normally pass back to the creditor for further action. The action taken will depend upon the type of debt. For example, in council tax cases the debt may be returned to the council, which could in some cases, eventually result in the imprisonment of the debtor. Other creditors (for example, private individuals) may decide to pursue other enforcement action such as an 'attachment of earnings order' to get deductions from the debtors wages (if they are working) or a charging order on the debtor's property (if they own their home).

4 Complaints about bailiffs

4.1 Complaints about the behaviour of a bailiff

Where a person wishes to complain about the conduct of a bailiff, it is advisable to first seek proper legal advice either from a Citizens Advice Bureau (CAB), Law Centre or solicitor.

It is important to note that any dispute about the debt itself is a matter for the creditor or the court alone. The enforcement agent does not have the authority to withdraw the debt enforcement action. That is a matter for the creditor and/or the court.

Complaints may be made about the behaviour of bailiffs, for example if they have been unduly aggressive, rude or threatening. A complaint may also be made if 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. A debtor

⁹ County Courts Act 1984, s89(1) and Supreme Court Act 1981, s 138(3A)

¹⁰ <http://www.hmcourts-service.gov.uk/infoabout/enforcement/warrant/bailiff.htm>

¹¹ http://www.hmcourts-service.gov.uk/infoabout/enforcement/bailiffs/complain_debt.htm

should inform the bailiff if any items in their property are rented, hired, leased, or belong to another person (proof of ownership may be required).

Where a bailiff has levied illegally, the debtor, or owner of goods, may be able to sue to recover compensation. Such claims will often be in the County Court, and could involve claims for:

- Trespass to land, where a bailiff entered the property unlawfully; or,
- Trespass to, or wrongful interference with, goods, where there has been a direct, forcible seizure of goods. The main claims relating to wrongful interference will come under the tort of conversion (briefly, misappropriation of another's goods constitutes conversion). These include an illegal sale of goods; an illegal detention of goods depriving a person of their use or possession; and, wrongful destruction, where there has been a negligent loss or destruction of goods.¹²

Other remedies that may be open to the debtor, or owner of goods, are to apply for an injunction (for example preventing the bailiff from selling goods) or to apply for *Replevin* (which is an obscure remedy to recover goods that have been illegally seized).

Complaints can be made if bailiffs have levied irregularly, or excessively. A bailiff levies irregularly where he seizes the correct goods, but the procedures followed were not correct (e.g. the bailiff sells goods after the debtor has paid the debt). A bailiff has levied excessively if the value of the goods seized is obviously more than the amount of the debt. If more money is raised at auction than the debt, (this includes the fees, the cost of removing goods and the cost of selling them), the balance should be returned to the debtor. There will not be a claim if there were no other goods for the bailiff to take.¹³

Before commencing any court proceedings, a party should seek independent legal advice.

4.2 Who to complain to

The method of launching a complaint would generally depend upon the type of bailiff or enforcement officer encountered.

HM Courts Service recommends that if the complaint is about a County Court bailiff, the complainant should write to the court manager of the County Court concerned, giving their name, address, the case number and warrant number. The court manager should then investigate the complaint and write to inform the complainant as to what action will be taken.¹⁴

A complaint about a High Court enforcement officer can be made to the High Court Enforcement Officers Association which is responsible for promoting higher standards within the profession. Information about the association's complaint procedure can be obtained from the following address or website:

The Chairman Complaints Committee
High Court Enforcement Officers Association
P.O. Box 180
Winsford

¹² John Kruse, *Bailiffs Powers A Debtor's Guide*, Second Edition, 2003

¹³ Ibid

¹⁴ http://www.hmcourts-service.gov.uk/infoabout/enforcement/bailiffs/complain_bailiff2.htm

Cheshire
CW7 2WP
Email: complaints@hceo.org.uk
Website: www.hceo.org.uk

A complaint about a certificated bailiff should be addressed either to the firm the bailiff works for or the organisation that employed the bailiff to act on its behalf. Some of these organisations (for example HM Revenue and Customs and local authorities) have complaints procedures in place and information on how to complain can be obtained from them. For instance, the power to enforce council tax debts, non domestic rates and traffic debts rests with the relevant local authority. Most local authorities contract this work out. The responsibility of the process, however, still remains with the contracting local authority. Any complaint therefore can be made to the local authority.

Similarly, the power to enforce Magistrates' Court fines rests with HM Courts and Tribunals Service. However, most of the warrant enforcement is contracted out to certificated bailiffs. As with local authorities, the responsibility of the process still remains with the HM Courts and Tribunals Service and any complaint should be made to them.

Other avenues of complaint include the High Court Enforcement Officers Association (whose details are listed above) or the Civil Enforcement Association (CIVEA) which represents all private certificated bailiffs in England and Wales. All members of the High Court Enforcement Officers Association or the CIVEA are required to comply with their respective associations' code of practice. The codes of practice include the requirement to have in place an 'in house' complaints procedure and to submit to the association's own complaints procedure where necessary. The CIVEA can be contacted at:

CIVEA
513 Bradford Road
BATLEY
WF17 8LL

Tel: 0844 893 3922

<http://www.civea.co.uk/complaints.htm>

It should be noted that there is a minority of enforcement agents who are not members of either association. According to the Ministry of Justice they are usually very small firms or 'one man bands' who invariably obtain most of their work sub-contracting for one of the larger firms. As such, any complaint against them will go to the firm that sub-contracted them.¹⁵

For the complainant, the decision on which avenue to follow may ultimately depend on what remedial action is being sought and the seriousness of the complaint or breach. According to the Directgov website, in the first instance redress should at least be attempted with the enforcement agent involved and/or his employer.¹⁶

¹⁵ Ministry of Justice, '*Transforming bailiff action – How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections*', 'consultation paper CP 5/2012, 17 February 2012, <http://www.justice.gov.uk/downloads/consultations/transforming-bailiff-action-consultation.pdf>

¹⁶ http://www.direct.gov.uk/en/MoneyTaxAndBenefits/ManagingDebt/DebtsAndArrears/DG_10034289

4.3 Bailiff fees

One of the most common complaints about bailiffs is the fees they charge. The current costs regime for enforcement agents is complex. Each enforcement power brings with it a different costs structure. There are some legislative provisions (such as those relating to road traffic offences), other provisions exist only within contractual arrangements drawn up between the enforcement agent company and its clients.