

# Bailiff Problems - know your rights

## Introduction

A visit from a bailiff can be a very frightening and distressing experience. This explains what a bailiff can and cannot do if they visit your home and what your rights are.

This section gives general information on bailiffs only. If you need more information, help or advice you should contact Ashley Park Debt Solutions or your nearest Citizens Advice Bureau or advice centre as soon as possible

### **What is a bailiff?**

A bailiff is someone authorised to collect a debt on behalf of a creditor. A creditor is someone you owe money to. There are different types of bailiffs - e.g. county court bailiffs, certificated bailiffs and private bailiffs who can be used to collect different types of debts. These include county court judgements, unpaid council tax, magistrates court fines, unpaid maintenance to the Child Support Agency and outstanding rent.

Different bailiffs have differing powers to collect debts. However, there are certain rules that apply to all bailiffs. Unless stated otherwise, the following information applies to any bailiff.

### **Can anyone be a bailiff?**

Yes, providing they have legal authority to carry out their actions. Some creditors prefer to use certificated bailiffs to collect their debts. "Certificated" means that the firm of bailiffs has provided references to the county court and the bailiffs they employ are considered to be 'fit and proper' persons. Bailiffs collecting rent arrears and road traffic penalties must be certificated. It is worth remembering that both men and women can be bailiffs!

### **What 'legal authority' must a bailiff have?**

A bailiff must be legally authorised to collect the debt on behalf of the creditor. The 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.

If you are in arrears, creditors will sometimes send representatives to your home to try and negotiate repayments with you. These people might be called 'counsellors', 'collectors' or 'advisers'. They do not have powers to enter your home and seize your goods.

**How do I know it is a bailiff at my door?**

Bailiffs should provide identification or authorisation if you ask them to. Bailiffs collecting for rent must show their certificate from the county court if you ask them to. Bailiffs collecting unpaid council tax must show written authorisation from the local authority. See also 'Will I get advance notice of a bailiff visit?'

**Can a bailiff call at night or on a weekend?**

Only bailiffs collecting rent are obliged to call between sunrise and sunset, all other bailiffs can call at any time of day or night.

However most bailiffs should call at a 'reasonable' time, either during normal office hours or between 8.00 a.m. or 8 p.m.

**Can a bailiff force his/her way into my house?**

Most bailiffs do not have the right to force their way into your home to seize your goods. The only exception is that bailiffs from the Collector of Taxes (Inland Revenue) can get a warrant to force entry, but this is very rare.

All other bailiffs have a right of peaceful entry only. This means that they cannot use force to enter your home, for example, by breaking a window or a door. However, they can enter your property through an open door or window (front and back) and can climb over fences and gates, but cannot break them down.

You do not have to let a bailiff into your house. A bailiff cannot force their way past you if you answer the door. If all your doors and windows are securely closed they will not be able to gain peaceful entry to your house unless you let them in.

Bailiffs are well aware of their limited powers and may use a variety of different means to gain entry peaceably. They may attempt to walk in as soon as a door is opened. They may ask if they can use your telephone to check if an arrangement is satisfactory with their office. They may simply ask you if you would prefer to discuss matters inside. You do not have to go along with any of these methods.

**Can I be arrested or imprisoned for not letting a bailiff into my house?**

No. If a bailiff is accompanied by the police, they are only there to prevent a breach of the peace. You cannot be arrested for refusing to allow a bailiff into your home.

You cannot be imprisoned for not paying your debts. However, non-payment of council tax, child maintenance or magistrates court fines can lead to imprisonment if you 'willfully refuse' to pay. This means that the magistrates must be satisfied that you have the money but choose not to pay. You should be required to attend a magistrates court means enquiry hearing before this is decided. This gives you the chance to explain why you have not paid.

**If a bailiff does gain peaceful entry to my house what will they do?**

Once gaining entry to your home, a bailiff will usually try to find and seize any goods of value belonging to the person who owes the debt or who is named on the warrant.

Once in the house the bailiff has the right to go into all rooms and can break open any locked door or cupboard inside your house. If the bailiff gains peaceful entry s/he has the right to call again and enter even without your permission, i.e. s/he can break in and remove your goods.

Any attempt to remove a bailiff from your property once they have gained peaceful entry is assault and you could be taken to court for it.

Once in the house, a bailiff will attempt to seize your goods in order to sell them off at public auction to raise money to pay the debt that you owe. The bailiff will make clear an intention to seize various items, either verbally, or by attaching a mark to them, or by touching them. This is sometimes called levying distress or distraining upon goods.

Once the bailiff has seized goods, they have a number of options. They can either remove items they have seized immediately from the property to be stored and eventually sold at public auction. Alternatively, they can leave someone on the premises to guard the items that have been seized or, in the case of bailiffs collecting rent, secure items that have been seized in your home. These last two options are very rarely used.

The most likely outcome is that the bailiff will ask you to sign a 'walking possession agreement'.

**What is a walking possession agreement?**

A walking possession agreement means that the goods that have been seized now legally belong to the bailiff and can be removed at any time. However, s/he will allow them to remain in your home and you can continue to use them providing you keep your side of the agreement, e.g. you make agreed payments.

In order for a walking possession order to be valid, a bailiff should have gained peaceful entry to the property and seized the goods. It is not enough for a bailiff to list items that they have seen through a window and push a walking possession order through the letterbox for you to sign and return. You should never sign a walking possession order in these circumstances. There is a daily charge for a walking possession order that you must pay, on top of the original debt you owe if they are sold. Remember that goods will be sold at public auction and typically will sell for about 10% of their original value. This means that if you owe £50, a bailiff will probably try to seize goods to the value of at least £500.

A bailiff must only seize goods that belong to the person who owes the money, although any goods in the house can be seized for distress or rent. In practice, many bailiffs will attempt to seize any goods of value at a house they visit - it will be up to the individual to prove ownership afterwards. If you have receipts showing someone else bought the goods then you should show the bailiff these.

### **Are there any goods that the bailiff cannot seize?**

Bailiffs (except bailiffs acting on behalf of the magistrate's court - see below) cannot seize the following goods:

- tools, goods, vehicles and other items of equipment necessary for use by you in your employment, business or vocation;
- clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of you and your family

Bailiffs acting on behalf of the magistrates' court cannot seize the following goods:

- clothing, beds and bedding tools of the trade
- basic domestic needs of the family would normally include fridge, cookers, freezers, but may not include video recorders, second TV's, jewellery, washing machines, stereos or microwave cookers.

### **Can I hide goods?**

It is not unlawful for you to remove goods from your house or hide them before a bailiff visits unless the bailiff is distraining for rent. Remember that a bailiff, having gained peaceful entry, can return at any time and if s/he believes that goods have been removed or hidden prior to their visit, this is likely to happen. For what to do if a bailiff visit is imminent - see below.

### **What if the bailiff does seize goods that do not belong to me?**

If a bailiff seizes goods that are subject to a Hire Purchase agreement, seek advice urgently. Goods on HP do not belong to you until you make the final payment, but there may be circumstances in which they can be seized.

If goods have been seized wrongfully, then the owner of the goods can apply for them to be returned. You will need to get further advice about this.

### **Will I get advance notice of a bailiff visit and fees?**

From 1 April 1998, local authorities must send you a letter giving 14 days notice of a proposed bailiff visit to collect council tax. County court bailiffs must issue a warning notice allowing 7 days for you to pay.

### **Do I have to pay the bailiff's fees?**

The fees that bailiffs can charge for recovering money vary. There are fixed fees for bailiffs collecting council tax; for example, from 1 April 1998 fees for the first

visit by a bailiff are £20 and £15 for a second visit, where no levy or seizure is made.

All bailiff fees (with the exception of magistrates' court bailiffs) can be looked at by the county court to see if they are reasonable or excessive. This is known as 'detailed Assessment'. If you think that the bailiff's fees are excessive you should get further advice about this.

### **What should I do if a bailiff is about to visit my home?**

Remember you do not have to let a bailiff into your house or flat. If you make sure that all doors and windows are locked, the bailiff will not be able to gain access to your home. If they cannot get in, they cannot lawfully seize goods. A bailiff may call a number of times to try and gain entry. Eventually they will return the warrant to the court or local authority if they are unable to gain entry, or you do not have enough goods to pay off the debt and fees.

Secondly, get the matter out of the hands of the bailiff and back to the county court, local authority or creditor. The next paragraph tells you how to do this.

If the debt is an unpaid county court judgment you can apply to the court to stop ("suspend") the warrant and vary the installments you were ordered to pay by the court. You can apply to do this on form N245, available from the court. The form asks for details of your income and outgoings with a few personal details such as whether you work. You will have to pay a fee at the court (currently £35), unless you are getting income support, income-based jobseeker's allowance or tax credits\*. You may have to show proof that you are receiving these benefits.

(\*You must have a gross annual income of £14213 or less and receive both working tax credit AND child tax credit, or working tax credit with a 'disability element' or a 'severe disability element'. Your tax credit award notice will contain this information)

The fee can also be waived if you are on a low income and payment of the fee would involve undue financial hardship. Applications for a fee reduction or waiver are dealt with entirely on an individual basis according to circumstance and there are no precise guidelines about when a fee should or should not be reduced or waived. In either case you must complete Form Ex160 and send or take it to the court with the N245.

Some county courts may refuse to suspend a warrant of execution until a walking possession agreement has been signed. This goes against guidance issued by the Lord Chancellors Department and if it happens to you seek further advice.

If bailiffs are collecting unpaid council tax it is often difficult to negotiate installment payments with the bailiff or the local authority until the warrant is returned or withdrawn from the bailiff. However, you should try to negotiate

installment payments with the local authority and encourage them to withdraw the warrant from the bailiff. It is important to make clear that although you are unwilling to let the bailiff in, you are willing to make installment payments at a rate that you can afford.

### **National Standards for Enforcement Agents**

A review of bailiff law resulted in a Green Paper in July 2001, 'Towards Effective Enforcement'. A White Paper and legislation have however not followed, and expectations are now that they may not do so for some time.

The national standard (NSEA) has however been put in to place, taking up some points from the review of bailiff law.

The NSEA is endorsed by a range of central and local government departments and the bailiffs' trade bodies, all of whose members should comply with it.

### **Enforcement agents should:**

- Carry out their duties in a professional, calm and dignified manner. This includes dressing appropriately and acting with discretion and fairness.
- They must not misrepresent their powers or abilities, or discriminate on grounds of gender, sexual orientation, age, ethnicity, race or religion
- Produce identification and authorisation on request
- Communicate clearly and provide information (on charges etc) promptly
- Have arrangements for translation services and provision of information in large print, Braille etc
- Provide procedures for identifying and dealing fairly with vulnerable debtors such as people who are elderly, disabled, those who have been bereaved recently, lone parents, pregnant women, unemployed people, and people with language difficulties.

### **The conduct of levies**

- 'Unlawful force' should not be used to enter any premises
- If the Police are called to deal with a breach of the peace, their presence must be explained including that they are not there to help with the levy
- If the only person present is or appears to be under 18, the agent must depart, but may ask when the debtor will be home. If the only persons at home are children under the age of 12, the agent must simply leave.
- Bailiffs should avoid so far as is practicable avoid disclosing the purpose of their visit to anyone who is not the debtor. Relevant documents should be left in a sealed envelope addressed to her/him
- Visits should ideally only be made between 6am and 9pm (or any time that the debtor is conducting business). Visits should not take place on Sundays, Bank Holidays, Good Friday or Christmas Day, unless

- legislation or a Court permits this. Respect for other religions and cultures should be upheld, and visits avoided on appropriate festivals and holidays.
- Goods that are clearly those of a child should not be seized
  - Bailiffs should take all reasonable steps to satisfy themselves that the value of goods seized is proportional to the debt and charges owing
  - When goods are removed, receipts should be given to the debtor
  - Debtors must be notified of fees on each visit and of the fees that will be incurred if further action takes place
  - Copies of the NSEA should be available from the offices of the agencies, from the agents on request and if possible from the creditors themselves
  - There are no sanctions for non-compliance with NSEA but agents are required to operate complaints and disciplinary procedures.