

BAILIFFS/ENFORCEMENT AGENTS

WHAT IS A BAILIFF / ENFORCEMENT AGENT?

A Bailiff / Enforcement Agent is someone who works on behalf of your creditors (or the courts). They are now called Enforcement Agents, and any paperwork that they give you will use this term. Their role is to repossess your goods when you have defaulted on a payment arrangement, and they can also be used to repossess your home or to enforce certain arrest warrants.

Enforcement Agents can only be used for certain types of debts. These include: council tax and business rates, parking penalties, County Court Judgments (CCJs), High Court Judgments, Magistrates' Court fines and Compensation Orders, child support, maintenance, income tax, national insurance (NI), VAT, and business rent.

There are several types of Enforcement Agent and it is important to find out what debt the Agent is collecting for, as the rules and the law are slightly different in each case.

Certificated/Private Bailiffs - Empowered to take control of goods to recover rent arrears, Council tax, Business rates and parking fines.

County Court Bailiffs - Deals with enforcing orders granted through the County Court, eg CCJ's or Court Summons for a sum of money or orders for possession of the property

High Court Bailiffs - If a creditor has a County Court Judgment of more than £5000 (including costs) they can transfer the judgment to the High Court for enforcement - unless the debt is regulated by the Consumer Credit Act, as these can only be enforced through the County Court.

Magistrates Court Bailiffs - Mainly deal with money owed in criminal offences.

Some creditors use debt collectors to get their money back. Debt collectors are not Enforcement Agents, and don't have the same legal powers.

HOW DO I KNOW IF AN ENFORCEMENT AGENT IS COMING?

When the Enforcement Agent receives authorisation to take action against you, they will issue you with a **Notice of Enforcement**.

The Enforcement Agent applies a charge of £75 + VAT for the issue of this notice which is added to the money they are seeking to recover.

This is your official notification that the enforcement action has begun. It will tell you what happens next, and how you can stop the enforcement action. The Enforcement Notice gives you 7 clear days to pay the debt or to reach a repayment agreement with the Bailiffs. If this doesn't happen, the next stage would be for the bailiff to attend your property.

If the Enforcement Agent is enforcing a debt which has gone to either the County Court or High Court, you can apply to the court to have the enforcement action suspended. Where the Enforcement Agent is acting on behalf of the County Court, you'll need to fill in a Form N245 – **Application to Suspend the Warrant / Application to Vary an Instalment Order**. This form can be obtained directly from your local County Court or downloaded from the government website at www.gov.uk. You'll need to complete the form, and make an offer of payment. Instructions on how to complete it are included with the form. You should then send the form, along with the relevant fee to your local County Court.

In the High Court, you will need to apply for a **Stay of Execution** by filling in Form N244. Contact your local Citizens Advice Bureau for further information.

If the Enforcement Agent is collecting for other types of debt, you should contact the creditor and ask that they withdraw the Enforcement Agent and try to come to an arrangement to pay.

WHEN & HOW CAN A BAILIFF CALL?

- Between 6am and 9pm (unless it's for a business that only trades outside of those hours)
- 7 days a week incl. public and religious holidays
- Peaceful Entry
- Entry through unlocked door, shed or garage
- Can't enter if only person in property is child under 16 or vulnerable person

WHAT POWERS DOES THE ENFORCEMENT AGENT HAVE?

Firstly, you do not always have to let an Enforcement Agent into your home.

Enforcement Agents cannot normally use force to gain initial entry to a property.

However:

- They can use any 'peaceable means' of entry e.g. walking in through an unlocked door to your house, garage, shed, etc in such a way as to do no damage.
- Forcing their way past someone at the door is not allowed. (The only exception to this is that Enforcement Agents acting for the Inspector of Taxes can apply for a warrant to force entry on a first visit, but this is very rare).

WHAT CAN THE BAILIFF DO WHEN HE COMES INTO YOUR PROPERTY?

If you let the bailiff in or he gains peaceful entry through an unlocked door, he will be looking to recover the outstanding amount of money from you. You may be able to negotiate a repayment arrangement based on what you can realistically afford, which will need to be agreed by your creditors, but the bailiff will make a Controlled Goods Agreement to give some guarantee to you paying the payments.

How does a Controlled Goods Agreement work?

Step 1:

The bailiff will go round your house and write down any belongings they are allowed to take control of on an Inventory.

The Controlled Goods Agreement must:

- be signed by you or someone with your permission to act on your behalf
- be signed by the bailiff
- if signed by a person with your permission – a copy must be left for you in an obvious place at your premises, or in the case of goods on a public highway delivered in a sealed envelope addressed to you at your home or business premises
- have an Inventory which contains a list of goods the bailiff has taken control of,
- not be entered into by a child under 18 or someone who doesn't have your permission.

Items taken into Control must be clearly listed, so there is no confusion over which items have been taken into control. Therefore there should be a description of the item, the manufacturers name, if applicable, model number if applicable and a serial number where applicable.

Items the Bailiff CANNOT take into Control include –

- Acting on a CCJ, they can't take clothing, bedding, furniture, household equipment, fixtures & fittings or goods necessary to meet basic domestic needs.
- Tools, books, vehicles for use in employment, business or vocation but only up to a value of £1350.

Step 2:

You'll need to come to an agreement with the bailiff about what you can afford to pay to clear the outstanding debt.

To work out what you can afford to offer you need to do an Income & Expenditure, accounting for all essential household costs such as mortgage/rent, utilities, food, transport etc. Do this before the bailiff visits.

Your weekly or monthly offer of payment to the bailiff needs to be something you can afford to maintain - don't let the bailiff force you to make bigger payments than you can manage. You should show the Bailiff your Income & Expenditure to prove what you can afford.

Step 3:

Make sure the controlled goods agreement shows the following information before you sign it:

- Your correct name and address
- The total debt you owe - check the amount is correct
- That the correct fees that have been added
- The repayment arrangement you've agreed to - this needs to show how much you'll pay and how often you'll pay it
- Details of the items taken into control - these also need to be listed on a separate document called an 'inventory'

If you refuse to sign the agreement the Bailiff has the right to remove the goods immediately. They will then be sold to repay the debt.

It is very important that you maintain the payments. If you miss a payment or are late in paying, the bailiff will come back to remove the belongings listed in your agreement. They have the power to force entry to your property this time and can break down internal doors if needed.

Before the bailiff can remove the goods he must issue you with a 'Notice of Intention to Re-enter' as soon as you miss a payment. This gives you 2 full days after the day they give you the notice before they can try to come into your home and remove your things.

If you think you are going to struggle to make a payment, it's important that you contact the bailiff before a payment is missed. You will need to explain what has changed since you made the agreement and what you can now afford to pay.

The Notice of Intention to Re-Enter may still not mean you are about to lose your possessions. Our advice would be to contact the bailiff as soon as possible to discuss if you can re-negotiate the repayments. However the bailiff may not agree and your goods may be removed.

What happens if the bailiff removes my goods?

If the bailiff has taken your possessions into control, and you fall behind with payments, he would have a legal right to remove them, forcing entry if necessary via a Locksmith.

Once the goods have been removed the bailiff will give you a Notice of Sale. This will let you know when and where the goods are to be sold. You will be given 7 clear days to raise the money to get your goods back. However if you can't clear the debt, the Bailiff will proceed to sell the goods at auction or on Ebay.

Once the goods have been sold, you will be notified what was sold and for how much. If the goods exceeded the value of the debt, including fees, you will receive any remaining money back.

Remember a bailiff is only allowed to remove goods that cover the value of the debt including fees.

- An Enforcement Agent who has gained peaceful entry to the property can use force to open internal doors and cupboards, and can return to the property in the future and enter using force if peaceful entry is denied.
- Once the Enforcement Agent has gained access to the property, they can seize any goods which belong to the debtor – although there are some general exceptions including tools, goods and vehicles used personally in employment, up to a value of £1350. Exceptions also include clothing, bedding, furniture, household equipment and provisions as necessary to satisfy the basic domestic needs of a family.
- The Enforcement Agent is not allowed to take goods that don't belong to you, or those subject to Hire Purchase (HP) or Conditional Sale agreements. The Enforcement Agent has the right to assume the goods in the property belong to you. If they do belong to someone else in the property, that person will need to prove this with receipts. You may be able to ask a Solicitor to sign and witness a Statutory Declaration if there is no proof goods are owned by a third party. Solicitors usually charge a fee for doing this and you should contact them to find out the charges.

The Enforcement Agent can take goods which are jointly owned by the debtor and another person – but if they are eventually sold, they must pay the other person their share of the proceeds.

WHAT IF THE BAILIFF IS ON MY DOORSTEP NOW?

Do I have to let them in? – Providing the bailiff isn't there for a debt that they can force entry for and has not been in your property before, then you don't have to let them in. Ensure that you keep all doors locked, including garage and shed doors.

Please see the list below to find out if the bailiff has a legal right to force entry to your property.

If you have a vehicle - If the car is parked on your driveway or the public road, the bailiff has the right to clamp it and potentially remove the vehicle. If the vehicle is parked on private land such as a neighbour's drive, the bailiff would not be able to seize the car.

DEBTS THAT AN ENFORCEMENT AGENT CAN FORCE ENTRY FOR INCLUDE:

- CSA arrears
- Criminal driving offences (e.g. speeding fines, fines for non-payment of road tax, no insurance)
- Criminal police fines (e.g. drunk & disorderly, assault, possession of drugs)
- Evading public transport payments
- Truancy fines
- VAT debts
- Magistrates Court fines for criminal offences
- Environmental Agency fines

DEBTS THAT BAILIFFS CANNOT FORCE ENTRY FOR

- County Court Judgments (CCJ's) for debts covered by the Consumer Credit Act such as unsecured loans, credit cards, catalogues, pay day loans, store cards and overdrafts
- Brighthouse debts – household goods on Hire Purchase
- Parking Charge Notices
- Congestion charge
- Council Tax debts
- Business rates

WHAT FEES CAN BAILIFFS CHARGE?

COUNTY COURT BAILIFF FEES

Compliance stage £75

- This is charged at the point when the creditor instructs the bailiff to take action against you
- It covers things like preparing and setting up accounts, confirming your personal details, sending out the Enforcement Notice, the initial contact and negotiating with the you, processing payments received and general admin

Enforcement Fee £235 (+7.5% if over £1500)

- This covers taking control of goods, from initial visit through to the decision to remove goods. This includes identifying, valuing and taking control of belongings. The Enforcement Notice must be enforced within 12 months. Please note if the bailiff hand delivers the Enforcement Notice, they will combine both Compliance and Enforcement fee and you will be charged £310.

Sale/Disposal Fee £110 (+7.5% if over £1500)

- This covers removing and selling the belongings that were taken into control at the previous stage.

HIGH COURT BAILIFF FEES

- **Compliance £75**
- **First Enforcement stage £190 (+7.5% if over £1000)**
- **Second Enforcement stage £495**
- **Sale £525 (+ 7.5% if over £1000)**

COMPLAINTS

Sometimes a bailiff may do something wrong, or act beyond their powers. You can complain if their behaviour has been unduly aggressive, rude or threatening, or if they have taken control of goods illegally. This could be because they have taken control of goods which should not have been seized. When this happens, there are various ways to make a complaint:

STEP ONE

In the first instance, you should try complaining to the Enforcement Agent's firm.

STEP TWO

If this doesn't remedy the matter, you can take the complaint to the creditor, as the Enforcement Agent is acting as their agent. Check to see if the creditor has a formal complaints procedure, and any codes of practice.

STEP THREE

If the complaint is still not resolved, you can take the matter to the Enforcement Agent's professional or trade organisation. All have the power to discipline the Enforcement Agent, including exclusion from membership – and they can award compensation.

Since April 2014 all Bailiffs have to be certified.

- This means that they are granted a certificate following application to a County Court.
- They must be:-

A 'fit and proper person' to hold a certificate and possesses sufficient knowledge of the law of distress

And they must lodge in Court a bond or deposit of £10,000, or have an insurance indemnity for this amount.

You can find out which Court the Bailiff is registered at by using the following link: www.certificatedbailiffs.justice.gov.uk

You may consider taking action against the Enforcement Agent in the County Court. Sometimes the issue of a claim can prompt the Enforcement Agent into settling without the need and expense of actually having to attend court.

If you'd like further help, please contact our Advice Team on 0800 917 7819.

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