



Dealing With Bailiffs

Rights of Entry

The first entry into a property must be “fair” and “unforced”. A bailiff cannot use force to enter your property - unless they have previously gained entry. *(Except bailiffs from the collector of taxes or H.M. Customs & Excise who can; on a second or subsequent visit, get a warrant to gain entry. Bailiffs collecting Magistrates court fines can also use force to gain entry when reasonable and necessary)*

However a bailiff can enter through an unlocked door or climb through an open window. Once in a property a bailiff can break down internal doors.

Unless any of the above applies you do not have to let the bailiffs into your home.

Bailiffs can charge to cover the costs of their actions. Even if you do not let them in they may still be able to charge for certain costs they have incurred.

The rules for charging for distress are varied and laid down by law.

Once they have gained entry to your house a bailiff will normally select and mark goods with a view to taking and selling them at a later date, this is called **seizing**. A bailiff may claim to be able to levy upon goods by putting a notice through your door stating “All goods therein” but they have lost this argument when the issue has been tested in court.

Levying distress is also known as distraining or impounding. The bailiff actually takes over ownership of the goods with a view to selling them. Again the bailiff has to gain entry and seize the goods to do this. The bailiff can either, take the goods away, take “Closed Possession” or more commonly take “Walking Possession”.

A **Walking Possession Notice** is a notice which the debtor signs agreeing that the goods are now in the control of the bailiff and agreeing to pay the bailiff an amount for continued use of the goods.

To be valid it MUST be signed in the presence of the bailiff.

If the bailiff has gained entry you will have little alternative but to sign the Walking Possession Notice if you do not want the goods to be seized immediately. If a bailiff has not entered your property and properly seized and levied the goods you should not sign a Walking Possession Notice. A Walking Possession Notice should never be signed by anyone who is not the debtor nor should a Walking Possession Notice be signed which has been posted through the letterbox.

A bailiff attending without a van is unable to seize any but the most mobile goods (including motorcars) and therefore could take “Closed Possession” and remain with the goods until a van arrives, but this is very rare.

Goods Exempt from Bailiff Action.

County Court Bailiffs and Bailiffs collecting Council Tax arrears cannot distrain upon “such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of that person and his family; such tools, goods, vehicles, and other items of equipment as are necessary to that person for use personally by them in his employment, business or vocation”.

In addition to the above Bailiffs collecting Council Tax arrears cannot seize the main form of cooking, fridges, freezers, essential room heaters, dining table and chairs, washing machine, vacuum cleaner, iron, any items of a personal nature with a nominal or nil cash value, toys primarily for the use of any child and goods required for the care or upbringing of a child who is a member of the debtor’s household, medical aids or medical equipment, anything which is

required for safety reasons in the home and any goods bought on a Social Fund Loan.

Bailiffs instructed by the Magistrates' Court **can** seize furniture and household equipment, but not clothing, beds and bedding. All bailiffs can only remove goods belonging to the debtor and no bailiff can take fixtures and fittings from a property because these are part of the property itself.

Complaints against Bailiffs

If you wish to make a complaint you should contact the court which has instructed the bailiff to act. There are various Codes of Practice that bailiffs should follow.

In the case of bailiffs collecting Council Tax arrears you should contact the Revenues & Benefits Service, Revenues Section. The Council has a Code of Practice that contains Bailiffs' Guidelines. Bailiffs should comply with these. The basic principles of the Council's council tax recovery are:

- A Firm but fair approach.
- Recovery based on ability to pay.
- A willingness to make sensible and fair payment arrangements.
- Consider the needs of the individual and advise of any available council tax reductions.

The Trading Standards Department can also deal with complaints about bailiffs. Bailiffs collecting for rent or council tax must be certificated and are obliged to show their certification card upon request. Complaints about the conduct of a certificated bailiff should also be reported to the County Court at which they were certificated.

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If you are unable to comply with the bailiffs request for payment, and you do not want to run the risk of having your goods removed; you should normally refuse the bailiff voluntary entry, and not sign any Walking Possession agreement they may leave. You may still get charged bailiffs costs even if the bailiff does not gain entry. You will incur further costs if it is for council tax.

It is important to start to make affordable payments straight away, for the debt and costs, because failure to do so could result in a hearing for committal before Magistrates. In most cases Magistrates can only commit a person to prison if that person has refused or neglected to pay.

For a Warrant of Execution from the County Court you can apply to suspend the warrant and/or vary the order. Seek further advice on how to do this.

If the bailiff has gained entry - check seizure is correct. If so try to negotiate as far as possible. Try to ensure that bailiffs are following their relevant Codes of Practice and/or Guidelines. Remember basic goods should be left, and removal of goods may follow if no payments are arranged or arrangements to pay are not kept up. In any case try to get the party issuing the warrant to withdraw it. You may still incur charges if the warrant is withdrawn.

Further information can be obtained from Bolton CAB, or National Debtline.