

Dealing with

Bailiffs



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The day the bailiffs came to call...

“ A month ago there was a loud knock on my door. When I opened it, I was faced by two blokes who said they were bailiffs from the council. They said I owed £520 council tax from last year and they wanted “to come in and talk about it”.

I had read somewhere that it was a mistake to let bailiffs in, plus the house was a mess, so I said I would rather talk about it on the doorstep. They clearly didn't like this. The tall one said: “You are advised to let us in. It's only fair to tell you that if you don't, we can get the police to help us break in if you won't co-operate”.

I panicked. I did not want to break the law, and the thought of

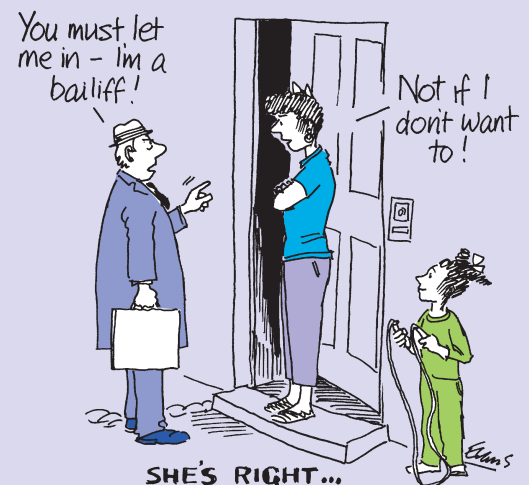
people breaking in and the police coming around was terrible. I told them I was very sorry about the arrears. I explained that my husband had left two weeks before, and he had always taken care of the council tax. I wondered if I should try to borrow the money, and who I could go to for a quick loan.

Then my sister arrived. She could see I was starting to cry, and told the bailiffs to clear off. They left, but they said that because I was making them come back, they would add even more to my debt.

My sister told me to go to my local advice agency the next day. I had to wait a while to be seen, but it was worth it. They wrote letters to the council and the

bailiffs. After a few letters and phone calls, the council agreed to take small amounts from my Income Support to pay off the debt. I don't have to hide behind the door anymore. **”**

Christine, Rotherham



Lessons from Christine's story

There are 5 points from Christine's experience that it is useful to remember, in case you have bailiffs at your door.



- **Don't let bailiffs in** unless you don't mind if they take your belongings to pay the debt. If the bailiff is there because of unpaid council tax or unpaid bills, the bailiff can only come in if you let them in, or if they have come in and claimed some of your belongings on an earlier visit and told you when they would come back to pick them up. If the bailiff is there to collect income tax or a criminal fine, he can, in certain circumstances, use 'reasonable force' to get in.
- **The police don't chase debts.** Debts aren't usually a criminal matter, which is what the police deal with. Sometimes bailiffs suggest that the police are on

hand to help them break into your home to take your belongings, they aren't. Don't feel intimidated by them. The police should only attend to prevent violence.

- **It is never a good idea to get into more debt** to pay an old bill. Christine might have resorted to a 'back street lender', or one of those companies that say they don't ask questions before lending. These sorts of lenders usually charge huge rates of interest, which will just increase the size of your debt. It's far better to get proper money advice and support – which you can get for free at your local advice agency.

- **If you have debts from household bills** (such as phone, gas or electricity bills), you should tell the company if someone else is also responsible for them, even if they no longer live with you. Christine's husband was equally responsible for the council tax arrears.
- **Don't feel you have to sort everything out yourself!** Your local advice agency can often get a better result for you because they know the law, and will not be intimidated by false threats.

Introduction

People run into debt for all sorts of reasons. Usually you'll find the companies you owe money to be fairly reasonable as long as you stay in touch with them and show a willingness to repay your debts. However, you might find yourself faced with a bolshy debt collection company who won't accept your offers of repayment, or you may realise that you've been ignoring letters you shouldn't have.

If things get really bad, they might try to make you to repay your debt by taking your possessions – they will send a bailiff to do this. Normally, you don't want the bailiff to take your things to sell at auction, as they are likely to sell for far less than it will cost to replace them, and you have to pay a fee for the privilege. It usually works out as a very expensive way to pay a debt. Exactly what your rights are to refuse depends on what the debt is.

If you run up a debt on a credit card or an overdraft, the company will often use a debt collection agency to try to recover the money you owe. **Remember** – a debt collector is **not** a bailiff; they can make phone calls, write letters and even call at your home to try to arrange regular payments, but they have no right to come in or to seize goods. If the debt collectors fail, a credit company may take you to the county court if you still don't pay up.

If the court decides you should pay up, they will make a County Court Judgment against you, and can send County Court bailiffs round. They should give you 7 days warning of a visit, which gives you time to pay up if you can. If you are not in, or pretend you aren't, they may keep coming back until you open up – or the creditor may take other action to make you pay (you may have to go to court). Luckily it's possible to apply to the court to stop the bailiffs and to pay by installments – contact

the court or your local advice agency for details.

If your debt is with the council – for example, for non-payment of council tax – the case goes to the Magistrates Court. If the court decides you must pay up, the council can send private bailiffs round. The council must send you a letter giving 14 days notice of a bailiff visit. Legally, they can come at any time of day or night but the National Standard recommends that they come only between 9am–7pm.

If a magistrates court convicts you of an offence and fines you, it can send private bailiffs to collect the fine if you don't keep up with payments. They will try to recover the fine as a lump sum. They have the power to use force to gain initial entry to your home (though they should only do this as a last resort after repeated failures to get in by other means).

If you get a letter...

If you get a letter telling you that bailiffs are going to come to your house you should take action urgently. Don't just wait. The bailiffs charge fees to come to your house and these will be added to your debt.

What should you do?

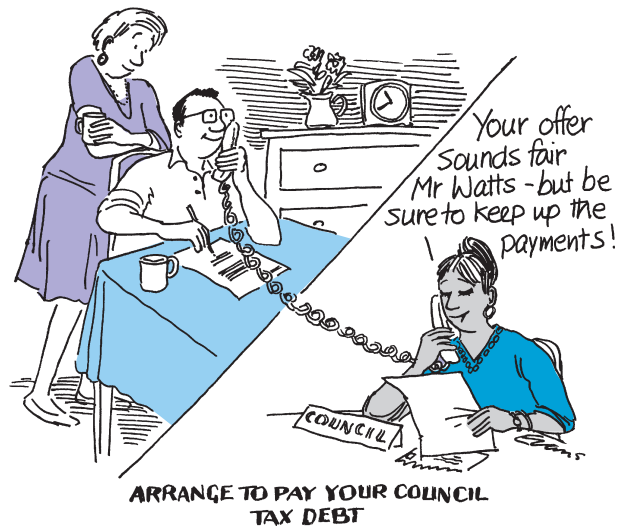
Call the organisation you owe money (for example the council tax department) and ask them to take the debt back from the bailiffs – make an offer to pay them, whatever you can genuinely afford, but not more. Write a letter to them saying the same thing. If you do not think you do owe all this money, or if somebody else is equally liable, tell them straight away.

If your debt is with the council, in order to balance their budget, they will want you to clear your debt by the end of the financial year (31 March) – do your best to meet this date. Some councils have written policies telling you when they will pass debts to bailiffs, and when they will take them back. Ask your council if they have a policy like this. Many councils allow people on benefits to pay small weekly amounts to clear arrears.

If you have a bank account, offer to pay by direct debit, but make sure you have enough in the account to pay off the debt at the time it is due.

If your debt is unpaid Council Tax, one way you may have more money to pay it off is to reduce the amount you are paying out on other 'non-priority' debts. See our 'Dealing with debt' guide for more details.

If you are receiving Income Support or Income-based Jobseeker's Allowance, you may be able to ask for direct deductions to be made from your benefit. This can be done for council tax, mortgage, rent, and service charges arrears, as well as debts to gas, electricity and water suppliers. These deductions are taken at a fixed sum – at the time of writing, £2.90 a week. If it is Council



Tax arrears, even if you don't want direct deductions from your benefit, you should be able to make small weekly installments. If the court has fined you or made a compensation order, direct deductions from your

benefit can be made and would usually be at £5 a week.

Send a copy of your letter to the bailiffs. If possible, you should also contact your local advice centre.

If they knock on your door...

Can I stop them coming in? Yes! Most bailiffs have no more power to come into your home uninvited than the weird man who lives across the road. The only time a bailiff could have the right to use 'reasonable force' to get in to your home would be if they are collecting unpaid criminal fines. Bailiffs collecting all other debts can only come in if they can do so without using force. This is called "gaining peaceful entry" and includes:

- being invited in by a responsible adult;
- climbing through a window that is open;
- jumping over a fence to get to your back door; or
- opening an unlocked door to come in.

It does *not* include:

- being asked in by a young child;
- breaking windows, doors or locks; or
- pushing past people to get inside or preventing you from closing the door on them.

If you think bailiffs will be coming, ask an advice agency to give you a letter you can show the bailiffs so they know you are getting expert advice. The letter may say that the agency has advised you not to let the bailiffs in. You might feel safer passing the letter to the bailiffs through the mailbox, rather than opening the door.

Remember, just because bailiffs can't get into your house, it doesn't mean they cannot get your belongings – bailiffs can seize a car parked in the street without your permission, as long as they are certain it belongs to you.

What to do

Don't get too alarmed! Not all bailiffs will give you a hard time, or act in a threatening way. Many will be fair and polite to you. Unfortunately, you do need to guard against the bad – and you never know which type will turn up at your door.

- If you can, make sure there is someone else at your home as a witness when the bailiffs come. This may help any bad bailiffs behave properly. Or, if you have a camcorder handy, you can take a film of the bailiff's visit. The only danger with this is that they will know you have a camcorder, which they may like to get their hands on, to help clear your debt! If you've borrowed the camcorder, make this clear – some proof that it belongs to someone else will help.
- Tell everyone at your home that bailiffs might be calling, and that they should check who is there before answering a knock at the door. Lock windows and doors to stop bailiffs getting in.
- When they come, be polite but firm. Make it clear that you know your rights, you won't be intimidated, and you are not going to let them in. If they need to show you ID, they can pass it through the letter box.
- It's up to you whether you come to an arrangement with the bailiff to pay. But it is advisable to get advice before agreeing to anything, unless you are sure you want to proceed.
- Call the police if the bailiffs are threatening or very aggressive.
- If you think bailiffs have broken the rules or treated you badly when they visited you, consult an advice agency. See 'Complaining about bailiffs' for more about what action to take.

If the bailiffs don't get money from you to pay your debt, or don't get your belongings to sell to pay it, it doesn't mean that action to make you pay the debt will stop. There are other ways they can make you pay up. The company you owe may be able to get deductions from your wages if you are working, or deductions from your Income Support. Exactly what they can do depends on the type of debt you owe. In council tax cases, you can go to prison if you simply refuse to pay. So, it is important that you keep trying to arrange a payment schedule, even after the bailiffs have gone. Don't ignore the debt. Take advice now!

What if they do get in?

If bailiffs get in legally – if you let them in or they came in through an open window or door – they will usually make a list of your stuff and then ask you to sign a payment agreement, called a 'Walking Possession Agreement'. This lets you keep your belongings as long as you stick to the agreement. If you do not stick to your payment arrangement, the bailiff can return, force entry into your home, and take the stuff on the list.

They cannot take your basic household goods (such as your washing machine or fridge, clothing, or bedding), clothing, bedding or things you use to make a living (such as tools, or a computer). They can't take things that belong to someone else but can normally take things you own jointly with someone else. The proceeds of the sale of jointly owned goods have to be divided between the owners, so only half can go to pay your debt.

If they got in illegally – if they forced their way in or were let in by a child, do not sign a Walking Possession Agreement or let them take your possessions. Explain to them that you know your rights, that they have broken the law and respectfully ask them to leave. Do not be intimidated by them. If necessary, call the police. When they've gone make a complaint, or consider legal action – see page 6.



What they can charge

Some bailiffs take advantage of the fact that few people know what they can and can't be charged for and, according to an undercover reporter for the BBC, bumping up charges and charging for visits that never actually occurred happens frequently. Always check what you have been charged for, and question any visits that sound unlikely. The *National Standard* requires bailiffs to issue a notice every time they do something for which they charge you a fee. Ask to see copies of the notices that go with any suspicious visits or other fees.

How much bailiffs are allowed to charge, and for what, depends on the type of debt they are collecting (see below). When the bailiffs come round they should give you a copy of their scale of charges. If they don't, ask for one. You should definitely also ask, in writing, for a breakdown of what the bailiffs are charging you. You can use this to check that you are not being overcharged.

If you think you have been overcharged, or are unsure if the charges are correct, get help from an adviser. You have a number of options for challenging fees, including asking a judge to decide if the fees are fair and correct.

County Court Judgements

Bailiffs enforcing County Court Judgments can charge you £35 if the debt you owe is less than £125. If it is more, they can charge you £55. They can't charge you for anything else unless some of your belongings have to be sold.

If they take your belongings to sell them, they can also charge you 'reasonable expenses' for taking and storing of your stuff. You can also be charged auctioneer's expenses and the costs of valuing your goods prior to sale.



Council Tax

Bailiffs collecting Council Tax are not allowed to charge you for letters, but they can charge for 2 visits (£24.50 for the first, and £18.00 for the second). They can't charge you for any more than two visits (unless you owe Council tax for more than one year, then they can charge you for two visits per year). If they take your stuff they can also make a 'levy charge' for their time and effort. The amount depends on the size of your debt: the more you owe, the higher the charge. The rules are complicated – but as a rough guide, if you owe less than £100 it's £24.50, if you owe £500 it's £40.50, if you owe £2000 it's £78.

They can also charge £12 for making a Walking Possession Agreement and, if you have not kept to the agreement, they can charge you for hiring a van to take your belongings away. This must be in line with normal van hire rates. Bailiffs cannot bring a van to your home and try to charge you for it before they get a 'walking possession agreement' – although many dodgy bailiffs will try this.

They can also charge 'reasonable costs' for selling your stuff.

If they have taken your stuff away, but don't sell it (because you have since paid up) they can charge you either £24.50 or up to 5% of the total they were collecting, whichever is the largest. If they never removed your stuff they cannot charge you this fee – although this is also something dodgy firms will try.

Be suspicious of anything not mentioned here – in particular anything called an 'enforcement' fee. If they do charge you more, get help from an advice centre.

Rent or child support

If your debt is for rent or child support – you can check the rate of charges at the Department of Constitutional Affairs website www.dca.gov.uk/enforcement/enfrev01/repac.htm.

Road Traffic fines

Bailiffs collecting money owed for parking fines can charge you £10 for sending you a letter telling you that the bailiffs will come round, only if the date it is sent is before the bailiffs visit.

If they take 'walking possession', or actually take your goods away, they can charge for 'levying distress' – this is £28 if you owe less than £100. If you owe more than that the fee goes up. The rules are complicated – as a rough guide, if you owe £200 it's £56, if you owe £500 it's £72.50, if you owe £1000 it's £100.

If they come round but can't do anything – for example, because you don't let them in – they can charge you reasonable costs of the visit. These cannot be more than the amounts they could charge if you had let them in, and they can only charge you for the first three visits. However, many firms will charge you for the cost of bringing a van on each visit, even if you haven't made a 'walking possession agreement'. Most firms make multiple attendance charges, increasing the amount you owe, often by hundreds of pounds. These can be challenged on the basis that they are disproportionate to the original debt and also because, if there has been no entry to the premises, it is not known if you have anything which could justify the addition of such large extra expenses. If these charges are high, get advice from your local advice centre.

If they take 'walking possession' they can also charge you 55p a day for the first 2 weeks, and 5p a day after that. And if they actually take your stuff they can charge you expenses for taking them, storing them, and valuing them. As well as covering their expenses, if they sell your stuff at an auction they can charge 15% of the total amount your stuff was sold for or 7.5% if it was auctioned from your home.

Criminal fines

There is no national scale of fees for bailiffs enforcing magistrates' courts fines. But you should still check if what you are being charged is right. Contact the magistrates' court – they will have the local scale and you are entitled to see them if you ask. A few firms work all over the country and their fee scales have been published. Broadly the fees charged are like those for council tax and road traffic penalties – you will be charged for visits, for the seizure of goods, and for the cost of vehicles calling at your home. As with all bailiff fees, you should only be charged for work that was necessary and that was actually done, and all charges should be reasonable. It can be an offence for magistrates court bailiffs to charge too much, so seek advice.

How to complain



Having bailiffs turn up at your door is often upsetting. But bailiffs should always treat you with respect, and they must always keep to the law. If the bailiffs have entered your house illegally, charged overly large fees, taken things that were exempt or not yours, lost or damaged your stuff, seized things worth far more than the debt, sold things below their market value, or not followed the proper procedure, you should complain.

Clearly, no one, including a bailiff, is allowed to be violent to you. If a bailiff is violent when they visit, you should call the police straight away or as soon as possible afterwards. They can be charged with assault, just like anybody else.

Compensation

You may also be able to get compensation for how you have been treated. For this, you might need to take legal action against either the bailiffs or the authority that sent them. A legal adviser should be able to help you decide who you should seek compensation from, work out if you're entitled to legal aid, and how you should do it. Contact your local advice agency if you are thinking of doing this.

Who to complain to

Complaints about the actions of a bailiff should be made to the bailiff firm and the legal body or authority that uses them.

If your problem is about County Court bailiffs collecting a debt with a bank or a business, you make your complaint to the Manager of the County Court.

If it's bailiffs collecting Council Tax, complain to the Council.

If the bailiffs were sent to collect criminal fines, complain to the Clerk of the Justices of the Magistrates' Court.

What to do

Write a letter to the Bailiffs and the authority that uses them (see box above). Explain what happened and give details, for example, if you or other people in your home felt threatened by the bailiff's behaviour. Give times and dates of any incidents. Keep a copy of the letter, and make a note of the date you sent it. It can be a good idea to send a copy of the letters you write and receive to your local Councillor or Member of Parliament (MP).

If your complaint is not dealt with after the first letter, write again explaining why you are not satisfied, and what you want done. If you don't get a response to your first letter within a reasonable time (a month, say), write again, repeating your first complaint and adding that you have not received a reply to first letter.

If you are not happy with the response to your second letter, you may decide that there is no point in writing again. But don't give up! You may have several other options.

If the problem is with bailiffs sent by the council, give the council a ring; some councils have procedures that say who you can take your complaint to if you are unhappy with the council's response. If they don't, you could visit your local councillor. If he/she agrees that the council hasn't dealt with your complaint properly (or at all!), they can write on your behalf, or take your case up personally with

the council department you are complaining about.

If this does not work, you should consider making an application to a local government ombudsman. A local advice agency may be able to help you with this. The ombudsman will investigate your case and may award compensation or order to council to issue an apology and put matters right. You will have to show the ombudsman that you have given the council a 'reasonable opportunity' to resolve the complaint, which means that you must wait at least 12 weeks between making your first complaint and contacting the ombudsman. The ombudsman you must contact depends on where you live:

- In England, contact the Local Government Ombudsman on 0845 602 1983, or visit www.lgo.org.uk.
- In Wales, contact the Local Government Ombudsman Wales on 01656 661 325, or visit www.ombudsman-wales.org.

If the problem is with private bailiffs you should also consider making a complaint to the county court that licensed the bailiff. A bailiffs' license is granted on the basis that the person is 'fit and proper' and knows the law, so if they have abused their position and acted against the law you should tell the court. Even if you don't go ahead with making a complaint, this is sometimes a useful thing to threaten when asking the bailiff to deal with your complaint seriously. There is a special complaints

form which can be found on the Court Service website (www.hmcs.gov.uk).

You could also complain to a bailiff's professional association (you can do this as well as taking any of the other types of action – though this may just make things complicated for you). You can only complain to an association that the bailiff is a member of – their letterhead should tell you this. This could be the Association of Civil Enforcement Agencies (ACEA) or the Enforcement Services Association (ESA). Contact ACEA on 01242 241456, or see their website www.acea.org.uk. ESA can be called on 0117 907 4771 or see their website www.ensas.org.uk.

Getting help

For online advice, or to find out where to go for help:

Citizens Advice

Find a CAB

www.citizensadvice.org.uk

Online CAB advice

www.adviceguide.org.uk

Community Legal Advice

For advice over the phone or help to find a local service

0845 345 4 345

www.communitylegaladvice.org.uk

National Debtline

Helpline: **0808 808 4000**

www.nationaldebtline.co.uk

Or look for your local advice centre in the Yellow Pages

Jargon buster

Bailiff – Somebody legally authorised to recover specific debts by taking goods and property of the same value and selling them.

Creditor – The company or body you owe money to.

National Standard (full name National Standard for Enforcement Agents) – The government's guidance for how bailiffs should behave. It is a voluntary code and not enforceable by law.

Ombudsman – The body responsible for investigating and addressing complaints made by individual members of the public.

Walking Possession Agreement – This is the payment agreement you may make if they have entered your home. It enables you to keep your belongings if you keep to the new payment arrangement. If you do not, the bailiff can return, force entry into your home, and take the stuff on the list.

This information is produced by Advicenow. Other guides include:

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- Dealing with discrimination at work
- Working parents (or parents to be)
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- Unfair dismissal
- Is that discrimination?
- Homeless and young?
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- How to get good asylum advice
- Support for asylum seekers in the UK
- How to handle an interview under caution
- Turned down for DLA/AA? Think you're not getting enough?
- Claiming compensation
- 10 steps to sorting out your debts
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The information in this guide applies to England and Wales only.

The law is complicated and every case is different. Get advice.

Written by Advicenow, Walthamstow Citizens' Advice Bureau and Blackfriars Advice Centre.

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If you have any comments on this guide, please email us at feedback@advicenow.org.uk



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