



Devon & Cornwall Police

Building safer communities together

Mr J Dee

Freedom of Information Unit
Force Headquarters
Middlemoor
EXETER
EX2 7HQ

17 October 2013

Our Ref: 5710/13

Tel: 01392 452204

Dear Mr Dee

I write in connection with your request for information which was received by this office on 09/10/2013.

Following receipt of your request searches were conducted within the Criminal Justice Department to locate information relevant to your request. I can confirm that Devon & Cornwall Constabulary hold the information you have requested.

I have today decided to disclose the located information to you in full.

Please find the attached document, Record 1, which is a copy of the **Devon and Cornwall Police Guidance (WP13) – Attending Premises with Bailiffs**

Should you have any further inquiries concerning this matter, please write or contact quoting the reference number above.

Yours sincerely

Steve Hawkins
Assistant Freedom of Information Officer

Complaints

If you are not satisfied with the service you have received in relation to your request and wish to make a complaint or request a review of our decision you should write to the Head of Information Management, Information Management Department, Devon & Cornwall Constabulary, Middlemoor, Exeter, EX2 7HQ, Devon.

If you are not satisfied with the outcome of your Force complaint or review, you may apply directly to the Information Commissioner at Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, telephone 01625 545700.

DEVON AND CORNWALL POLICE GUIDANCE – WP13
ATTENDING PREMISES WITH BAILIFFS

Version dated: 08/01/2010

1. AUDIT IDENTIFICATION

- 1.1 This guidance has been drafted and audited in accordance with the principles of Human Rights legislation and the Race Relations (Amendment) Act 2000. Under the Freedom of Information Act 2000, the document is classified as OPEN.

2. GUIDANCE STATEMENTS/INTENTIONS

- 2.1 This document is designed as a reference point for officers when dealing with bailiffs and other officers of the court legally authorised to collect a debt on behalf of a creditor.
- 2.2 The document gives officers guidance on their role when attending premises with bailiffs, and for their information also provides summaries of the rules bailiffs should follow when lawfully conducting their business.
- 2.3 Contents:
3. [Introduction](#)
 4. [Procedures](#)
 5. [Determining Criminal Liability](#)
 6. [Review](#)
 7. [Appendix A](#) – Range of Bailiffs and Enforcement Officers
 8. [Appendix B](#) – Bailiff Rules: Gaining Entry to Premises
 9. [Appendix C](#) – Bailiff Rules: Inside Premises
 10. [Appendix D](#) – Right to Gain Entry – Unpaid Magistrates' Fines

3. INTRODUCTION

- 3.1 The usual authority of a bailiff is a warrant issued by a County Court to recover goods or monies owed, or goods to the value of monies owed, from a debtor. The alternative authority officers will likely experience is a distress warrant or liability order issued by a Magistrates' Court.
- 3.2 The Constabulary's involvement with regard to the policing of bailiffs – as with any other civil dispute - is to prevent a breach of the peace from occurring, or to attend and prevent an incident when a specific criminal offence has occurred or is likely to occur.
- 3.3 These instances will largely be confined to: disputes by debtors over a bailiff's entry to their premises when executing a warrant or liability order; the lawful conduct of the bailiff when entering and inside the premises; and any criminal/illegal activity committed by either a bailiff or debtor.

3.4 Further Guidance on Bailiffs is available in the Appendices, and:

The National Standards for Enforcement Agents, which are advisory and not mandatory minimum standards for bailiffs. Available at: <http://www.dca.gov.uk/enforcement/agents02.htm>

The Association of Civil Enforcement Agencies' Code of Conduct and Good Practice for Bailiffs is Available [here](#).

4. PROCEDURES

- 4.1 When first called to a scene, or if attending a scene with a bailiff by prior arrangement, a constable should be satisfied of:
- a. The bailiff's identity and status,
 - b. The authority on which the bailiff has or seeks to enter the premises; including any relevant documentation which gives the bailiff the power to enter the premises,
 - c. The fact that the bailiff has located the correct premises or correct debtor.
- 4.2 Advice for bailiffs is that they should always, upon request, produce relevant identification, such as a badge or ID card, together with a written authorisation to act on behalf of the creditor.
- 4.3 If a bailiff or court officer is unable to provide evidence of identity, status, authority or power, and is causing a breach of the peace or committing an offence, the police constable should prevent the bailiff from entering the premises, or if already on the premises, should remove the bailiff/court officer at once, with due regard to Section 3 of the Criminal Law Act 1967 or Section 117 Police and Criminal Evidence Act 1984 as appropriate.
- 4.4 If the documentation is in order, the constable should remind the bailiff that entry must be obtained without force, except in the circumstances highlighted in Appendix B. N.B. Bailiffs can take goods from outside the premises such as a debtors car on a driveway (if they have a clamping order), or garden equipment.
- 4.5 Constables should be aware of their duty to keep the peace. If there is a sufficiently real and imminent threat of a breach of the peace, the constable should be very careful when determining who is acting unlawfully, then act accordingly by arresting the prime culprit of the potential breach, with due regard to necessity, or using his/her discretion to diffuse the situation. It is vital to remain impartial to determine whose conduct is unlawful.

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- 4.6 However, it is not the responsibility of the Officer to act as an arbitrator between the bailiff and the debtor, nor to determine the rights and wrongs of the issue, and in no way should the officer assist in the seizure of any goods.

5.0 DETERMINING CRIMINAL LIABILITY

- 5.1 When determining that there is a sufficiently real and imminent threat of a breach of the peace, which may justify an arrest, the officer must decide whose conduct is causing that breach.
- 5.2 If the bailiff were hindered in any way whilst acting lawfully and reasonably in the course of their duties, then that would constitute a breach of the peace by those causing the obstruction.
- 5.3 If a debtor is present when a bailiff is entering and levying distress, he/she could face arrest and criminal liability if:
- a. They forcibly exclude the bailiff from his/her premises should they have gained peaceful entry. N.B. This could result in subsequent forced re-entry by the bailiff, as outlined in Appendix B.
 - b. They conceal or remove goods that have been allocated as the subject of distress during an earlier visit (this is known as 'Walking Possession'). N.B. in other cases a debtor is well within his/her rights to conceal or remove goods in order to avoid distress.
- 5.4 However, should the bailiff be acting unreasonably or unlawfully whilst gaining entry, whilst inside the premises, or so to provoke the debtor, then that could be considered unlawful on their part.
- 5.5 Police constables should also be aware that in very rare cases a bailiff's persistent and frequent actions or demands for payment may constitute harassment under Sec. 40 of the Administration of Justice Act 1970.
- 5.6 If other elements exist, such as a bailiff threatening or using violence to gain entry, or assault or criminal damage by either party, then other powers of arrest should be considered.

6.0 REVIEW

- 6.1 The contents of this guideline will be reviewed annually by the Commander, Criminal Justice Department.

7.0 APPENDIX A – RANGE OF BAILIFFS AND ENFORCEMENT OFFICERS

7.1 County Court Bailiffs:

Enforce money owed under county court Judgement debt.

- **Power:** can Seize and sell goods, effect and supervise the possession of property and the return of goods under hire purchase, and serve court documents.

7.2 High Court Enforcement Officers:

Enforce money owed under high court judgement, or judgement transferred from county court.

- **Power:** Can seize and sell goods, & enforce and supervise the possession of property and the return of goods.

7.3 Civilian Enforcement Officers (CEO's are employed by Her Majesty's Court Service (HMCS)):

Enforce Magistrates' Court Orders, fines and community penalty notices.

- **Power:** can Seize and sell goods to recover amount of money owed under a fine and community penalty notice. Under certain statutes, have the power of ARREST, committal, detention and distress.

7.4 Certificated Bailiffs:

Enforce debts on behalf of a variety of organisations, including magistrates' courts and local authorities.

- **Power:** They can seize and sell goods to cover the amount of debt. They hold a certificate, which enables them (only) to levy distress for rent, road traffic debts, council tax, non-domestic rates, and debts of Child Support Agency, Inland Revenue, Customs & Excise (VAT), and Magistrates Court Fines. They cannot enforce monies owed under High/County Court Orders.

7.5 Non-Certificated Bailiffs:

Enforce debts owed to a variety of organisations.

- **Power:** are only entitled to seize the goods that are subject of the to the particular debt being pursued, e.g. a car bought on credit when the payments have not been made.

7.6 The above list is not substantive, and there are a few other people/organisations that have similar powers to bailiffs. These include Landlords enforcing rent and Collectors of Taxes who enforce unpaid Income Tax and National Insurance.

7.7 In Devon & Cornwall, HMCS contracts the civil enforcement agency 'Marston' (a certificated bailiff) that works on its behalf with regard to executing warrants of distress in respect of certain non-payment of fines. They are not contracted

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to execute warrants of arrest, this is undertaken by CEOs and Devon & Cornwall Constabulary.

8.0 APPENDIX B – BAILIFF RULES: GAINING ENTRY TO PREMISES

- 8.1 The actions of a bailiff lawfully entering a premises and seizing and selling goods to cover monies owed by the debtor, including the bailiff's fees, is called 'levying distress'. The term 'distress' used on its own generally means the procedure for bailiffs just to 'seize' goods; this may not necessarily involve removing and selling the goods.
- 8.2 The basic rule for Bailiffs is that entry should be without force, and therefore, entry will usually be peaceful. However, power to enter premises by force exists for the execution of warrants of distress to enforce criminal penalties e.g. Bailiffs recovering unpaid magistrates' court fines (see Appendix D). This power should only be used to the extent that it is reasonably required and only after the debtor has been warned that the power exists and the consequences of a wilful refusal to co-operate.
- 8.3 To gain peaceful entry, the bailiff can walk through an open door, open an unlocked door, climb through an open window, and even climb over a wall or fence, provided no damage is caused in so doing.
- 8.4 The bailiff cannot, however, break open a closed but unfastened window or door, open a closed latched window, or use a locksmith to open a door. Use of a landlord's key is also illegal. They cannot force their way past someone at a door, or wedge their foot in a doorway to prevent the door being closed. The protection against forced entry extends to all buildings physically attached to the living premises.
- 8.5 Reasonable Force may be used to gain entry in these circumstances only:
- a. A bailiff is executing a magistrate's distress warrant for non-payment of fines (see Para 8.2 and Appendix D).
 - b. A bailiff has once previously entered a debtor's home peacefully, or was forcibly ejected by the occupier after gaining lawful entry, and is returning to levy the goods.
 - c. The officer is a High Court Enforcement Officer and the premises to be entered with force are separate non-domestic premises, which are not connected to the living accommodation, e.g. a workshop or barn. Or, the premises are a third party's house where goods have been taken to avoid seizure by a bailiff. A demand for entry should always be made first.
 - d. More rarely, a Landlord has a County Court Possession order to evict a tenant, or requires entry to a stranger's premises and has an oath

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sworn by the Magistrates to the effect that there are grounds for believing goods have been fraudulently removed to those premises.

- e. Or, an Inland Revenue Collector enforcing income tax for HMRC has a warrant to force entry.

N.B. A County Court Bailiff must always obtain the permission of a District Judge before a forced entry to separate non-domestic premises, stranger's premises, or when returning for a second time to remove a debtors goods.

- 8.6 With regard to time of calling, only bailiffs collecting rent are obliged to call after sunrise and before sunset. There are no restrictions for when a levy of distress shall commence in respect of unpaid fines, costs and compensation. N.B. The National Standards for Enforcement Agents, which are advisory and not mandatory, highlight that enforcement should only commence at a reasonable time between 6am and 9pm, or during trading hours, excluding Sundays and Public Bank Holidays, unless the court specifically orders otherwise or legislation permits it.

9.0 APPENDIX C – BAILIFF RULES: INSIDE PREMISES

- 9.1 Once inside, the bailiff may break open any door or cupboard to find goods. No demand need be made before breaking a door open, but this precludes unnecessary use of force, for example, if a door is broken despite the debtor's offer to open it.
- 9.2 Bailiffs must only take goods in accordance with appropriate legislation and guidance. They can't take essential items such as clothing, bedding, cookers, fridges, some furniture and tools for trade, and shouldn't take anything clearly identifiable as belonging to a child. They can take non-essential items such as a television.
- 9.3 When levying distress, if the bailiff seizes goods, they may opt to remove the goods or leave them at the premises. If they leave the goods and arrange with the debtor another means of payment, this is called 'walking possession'. Should a debtor fail to pay, as per the agreement, then the bailiff has the right to return to the premises to remove the goods. This may be done with reasonable force.
- 9.4 Bailiffs should not take action at, or in, premises, if the only persons present are considered 'vulnerable people', without consulting the authorising Court or Client, e.g. Local Authority or Government Department, for further instructions. 'Vulnerable Persons' could include those under 18, the elderly, or people with a disability. For elderly persons and those with a disability, it is a matter of judgement on each particular case as to whether the person can be considered 'vulnerable'.

10.0 APPENDIX D - RIGHT TO GAIN ENTRY – UNPAID MAGISTRATES' FINES

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- 10.1 The implementation of the Domestic Violence, Crime and Victims Act 2004 amends the Magistrates Courts Act 1980, and gives Approved Enforcement Agents (AEAs) e.g Marston Bailiffs and Civilian Enforcement Officers (CEOs) (hereafter referred to as "Authorised Officers") additional powers that were not available previously, which include;
- 10.2 The right to gain entry through the use of reasonable force will only apply where there is a warrant of arrest, distress, detention or committal in any criminal matter under schedule 4A of the Act, e.g. in connection with unpaid magistrates' courts fines.
- 10.3 Where a person has been arrested in pursuance of a warrant of arrest, search the detainee for weapons or items that might be used to facilitate an escape or when the authorised officer has reasonable grounds for believing that the detainee may present a danger to himself or others.
- 10.4 Where there is a warrant of distress issued under section 76 of the Domestic Violence, Crime and Victims Act 2004, an authorised officer may enter and search premises for the purposes of executing the warrant, if reasonably required to do so.
- 10.5 It is important to note that these powers are very rarely used and must be used reasonably and proportionately, **and in relation to criminal matters only**, where the occupier is not willing to let them in peacefully.
- 10.6 The Marston Group are contracted to enforce all distress warrants on behalf of HMCS. Should a defendant wish to make a complaint against Marston or one of their bailiffs, complaints should be made in writing and addressed to;

Marston

PO Box 308
Waltham Cross
EN9 1ZN