
Please note, much of this information relates to taking control of goods.

Breaking entry using a locksmith (Magistrates' courts fines only)

- If you owe an unpaid fine "Sum adjudged" the bailiff can enter using a locksmith.
- Paragraph 18(b) of Schedule 12 of the Tribunals Courts and Enforcement Act 2007. Bailiffs fees are not part of the "sum adjudged". The sum adjudged is the sum you were fined by the court.
- Paragraph 15(1) of Schedule 12 of the Tribunals, Courts and Enforcement Act 2007 requires the bailiff to apply to a court for a warrant to enter and search for goods.
- The procedure for a bailiff to apply for a warrant of entry is given in Rule 10(c) of the Criminal Procedure (Amendment) Rules 2015.
- Civil liability for wrongful or unlawful bailiff action resides with the creditor, Paragraph 7 of the Taking Control of Goods: National Standards 2014

Forced entry

- A debtor can lawfully resist a bailiff without a valid warrant from entering the home if entry is being made against his will, *Vaughan v McKenzie* [1969] 1 QB 557
- A door left open is an implied license for a bailiff to enter, *Faulkner v Willetts* [1982] Crim LR 453.
- A person standing back to allow the bailiff to walk through, but the bailiff must not abuse this license by entering by improper means or by unusual routes, *Ancaster v Milling* [1823] 2 D&R 714 or *Rogers v Spence* [1846] M&W 571
- A power to enter premises by breaking it open, exists for the execution of High Court and County Court debts at business or commercial premises, but not premises partially occupied domestically.
- Or at any premises where an enforcement agent is enforcing criminal penalties if the debtor is willfully refusing to co-operate. Paragraph 60 of the Taking Control of Goods: National Standards 2014.
- A power to re-enter premises by force applies to residential and business premises where a controlled goods agreement is in place and the goods remain on the premises but the debtor has failed to comply with the repayment terms of the controlled goods agreement and the debtor has been given notice of the enforcement agent's intention to re-enter. Paragraph 61 of the Taking Control of Goods: National Standards 2014
- Provided a bailiff enters a property peacefully and without breaking in, he can break open internal doors inside the property, *Lee v Gansel* [1774] 1 Cowp 1
- A bailiff entering through an unlocked door can break the lock if the door is subsequently locked while still inside, *Pugh v Griffith* [1838] 7 A&E 827
- A debtor can remove right of implied access by displaying a notice at the entrance, *Lambert v Roberts* [1981] 72 Cr App R 223.
- Placing such a notice is akin to a closed door but it also prevents a bailiff entering the garden or driveway, *Knox v Anderton* [1983] Crim LR 115 or *R. v Leroy Roberts* [2003] EWCA Crim 2753
- A person (from 2014 onwards – without a warrant of control) having been told to leave is now under a duty to withdraw from the property with all due reasonable speed and failure to do so he is not thereafter acting in the execution of his duty and becomes a trespasser with any subsequent levy made being invalid and attracts a liability under a claim for damages, *Morris v Beardmore* [1980] 71 Cr App 256.
- If the bailiff has already started to make a levy, he can no longer be made to leave and he cannot be he can no longer be made to leave and he cannot be assaulted, *Southam v Smout*

[1964] 1 QB 308.

- Ringing a doorbell is not causing a disturbance, *Grant v Moser* [1843] 5 M&G 123 or *R. v Bright* 4 C&P 387 nor is refusing to leave a property causes a disturbance, *Green v Bartram* [1830] 4 C&P 308 or *Jordan v Gibbon* [1863] 8 LT 391
- Excessive force must be avoided, *Gregory v Hall* [1799] 8 TR 299 or *Oakes v Wood* [1837] 2 M&W 791 or Paragraph 60 or 61 of the Taking Control of Goods: National Standards 2014
- A debtor can use an equal amount of force to resist a bailiff from gaining entry, *Weaver v Bush* [1795] 8TR, *Simpson v Morris* [1813] 4 Taunt 821, *Polkinhorne v Wright* [1845] 8QB 197.
- Another occupier of the premises or an employee may also take these steps: *Hall v Davis* [1825] 2 C&P 33.
- If a bailiff enters a property and makes a noise and disturbs the peace it is lawful for the occupier to eject him and if he refuses to leave the police may be called, *Green v Bartram* [1830] 4C&P 308 or *Shaw v Chairtirie* [1850] 3 C&K 21
- A bailiff may not encourage a third party to allow the bailiff access to a property (i.e. Workmen inside a house or a police officer), access by this means renders everything that follows invalid, *Nash v Lucas* [1867] 2 QB 590
- Contrast: A bailiff may climb over a wall or a fence or walk across a garden or yard provided that no damage occurs, *Long v Clarke & another* [1894] 1 QB 119
- A debtor can lawfully use reasonable force in removing a bailiff without a levy that has refused to leave, the bailiff resisting is the person guilty of a breach of the peace, *Green v Bartram* [1830] 4 C&P 308.
- If police are present, the bailiff is the person that police should arrest, *Foulkes v Chief Constable of Merseyside Police* [1998] 3 All ER 705 and section 26(5) of the Criminal Justice and Courts Act 2015.
- If a bailiff jams his boot into a debtor's door to stop him closing, any levy that is subsequently made is not valid: *Rai & Rai v Birmingham City Council* [1993] or *Vaughan v McKenzie* [1969] 1 QB 557
- If a bailiff refuses to leave the property after being requested to do so or starts trying to force entry then he is causing a disturbance, *Howell v Jackson* [1834] 6 C&P 723 – but it is unreasonable for a police officer to arrest the bailiff unless he makes a threat, *Bibby v Constable of Essex* [2000] Court of Appeal April 2000.
- *Vaughan v McKenzie* [1969] 1 QB 557 if the debtor strikes the bailiff over the head with a full milk bottle after making a forced entry, the debtor is not guilty of assault because the bailiff was there illegally, likewise *R. v Tucker* at Hove Trial Centre Crown Court, December 2012 if the debtor gives the bailiff a good slap after refusing a request to remove their foot from the door aperture.
- If a person strikes a trespasser who has refused to leave is not guilty of an offence: *Davis v Lisle* [1936] 2 KB 434
- A bailiff rendered a trespasser is liable for penalties in tort and the entry may be in breach of Article 8 of the European Convention on Human Rights if entry is not made in accordance with the law, *Jokinen & Jokinen v Finland* [2009] 37233/07 and paragraph 28 of the Taking Control of Goods: National Standards 2014

Bailiffs and windows

- Enforcement agents must only use a door or usual means of entry to enter premises, Regulation 20 of the Taking Control of Goods Regulations 2013, or paragraph 59 of the Taking Control of Goods: National Standards 2014

Bailiffs and use of keys

- A bailiff cannot put his hand in a hole (e.g. a cat flap or letterbox) in order to pull back a bar or fastening to open the door or window because this amounts to burglary and trespass, *Ryan v Shilcock* [1851] 7 Exch 72

- The use of a landlord's key to gain entry is unlawful, *Miller v Curry* [1893] likewise if the key is found but is not in the lock, entry would be unlawful, *Welch v Krakovsky* [1919]
- Improper use of keys to gain entry is illegal, *Alford v Thrupp* [1906] 67 EG 226
- If a key is in the lock, the bailiff may gain entry using the key, *Ryan v Shilcock* [1851] 7 Exch 72

Bailiffs and improper conduct

- Unfit behaviour on the part of the bailiff or an assistant is illegal, abuse of position or improper conduct can all lead to revocation of a certificate:
- Deceiving a debtor, *Mutton v Sheppard* [1905] 66 EG 806
- Presenting himself in public in police livery without the words "POLICE", *R. v Michael Allen Northampton Magistrates Court*, October 30 2014
- Illegal Distress, *London Central Meat Co v Rae* [1905] 13 PMR
- Assaulted a debtor, *Woodward v Day* [1894] 2 PMR 753
- Drunk bailiff, *Gurden Re* [1894] 1 PMR 872 or *Villeneuve v Clark* [1890] 33 EG 458

Bailiffs and Warrants of Control

- Enforcement agents must on request show the debtor his identity and his authority to enter the premises. Paragraph 26(1) of Schedule 12 of the Tribunals, Courts and Enforcement Act 2007.
- The bailiff must carry the warrant with him when he attends the debtor's premises, Section 126 of the County Courts Act 1984. (applies to PCN enforcement)
- If a bailiff is named on the warrant but is being executed by another then it is illegal, *Symonds v Kurtz* [1889] 61 LT 559 or *R v Whalley* [1835] 7 C&P 245 or *R v Patience* [1837] 7 C&P 775 but not if there is a mere typo in the bailiffs name, Section 78 of the Magistrates Courts Act 1980 or Section 125 of the County Courts Act 1984
- Bailiffs can only enforce payment of a debt at the address shown on the warrant or writ which is either where the debtor usually lives or carries on a trade or business. Paragraph 14 of Schedule 12 of the Tribunals Courts and Enforcement Act 2007.

Bailiff without a certificate

- A person performing certificated work without a certificate commits an offence. Section 63(6) of the Tribunals Courts and Enforcement Act 2007.
- A person not a certificated bailiff takes control of goods commits an offence under Section 63(6) of the Tribunals Courts and Enforcement Act 2007.
- A person not a certificated bailiff conducting levy is trespass, *Bray v Naldred* [1894] 2 PMR 227, *Hawes v Watson* [1892] 94 LT 191 ;[1890] 29 LJ 556; contrast *Varden v Shread* [1890] 36 EG 449 or 25 LJ 363, *Harker v Browne* [1890] 36 EG 59, [1892] 40 EG 402, *Thomas v Millington* [1894] 2 PMR 472, *Bray v Naldred* [1894] 2 PMR 227 and *Rodgers v Webb* [1912] 20 PMR 186

Taking Control of goods or vehicles

- Enforcement agents should not take control or remove goods clearly belonging solely to a third party not responsible for the debt, Paragraph 10 of the Schedule 12 of the Tribunals, Courts and Enforcement Act 2007 or paragraph 59 of the Taking Control of Goods: National Standards 2014 or the Local Government Ombudsman's decision of 10 July 2012 complaint no 11 007 684 paragraphs 44 & 45. And the fees must be refunded, page 6 and 7 of 11 of the Local Government Ombudsman report on 29 November 2012
- Bailiffs can consider at first sight "prima facie" any goods are the property of the debtor and the burden of proof who owns seized goods lies with the debtor or the owner: *Observer Ltd v Gordon* [1983] – but does not apply to vehicles, paragraph 8 of the Local Government Ombudsman on 10 July 2012 in a report into complaint no 11 007 684 that says it "considers

it reasonable for the bailiff to check ownership with the DVLA”

- Bailiffs must be precise as to what goods are being seized, all goods levies, constructive levies and global levies are not valid. Regulation 14 and Regulation 15 of the Taking Control of Goods Regulations 2013
- Rented goods or goods on hire purchase cannot be taken into control because they do not belong to the debtor, paragraph 59 of the Taking Control of Goods: National Standards 2014 or Paragraph 10 of Schedule 12 of the Tribunals, Courts and Enforcement Act 2007
- Contrast: Debtors have an ‘interest’ in hire-purchase goods and may be clamped. *Reiss Vs. LB Barnet*, Barnet County Court, April 2015 (unreported)
- If a finance company cooperates with a bailiff to transfer a financed vehicle or goods away from the debtor’s possession, the debtor can sue the finance company for breach of contract and recover “consequential damages” to pay for the replacement cost of the vehicle or goods *Hadley v Baxendale* [1854] EWHC J70
- Items such as perishable foods cash (unless in a cashbox because the identical goods have to be restored to the debtor) and loose food items, bedding and clothing are all exempt from levy, *Davies v Property Reversionary Investments Co Ltd* [1929] 2 KB 222 and Regulation 4 of the Taking Control of Goods Regulations 2013
- The levy was made by looking at your goods through a window, the levy is not valid. This is called a “constructive levy”. *Evans v South Ribble Borough Council* [1991]. Constructive levy is defined in Paragraph 2 on Page 5 of this Local Government Ombudsman’s report.
- Bailiffs do not have to physically touch the goods to levy on them, on the other hand, contact with the goods alone does not amount to a seizure, *Halsbury’s Laws Of England* 3rd Ed. [1956], p.55
- Claims for wrongful distress must be made against the creditor, paragraph 7 of the Taking Control of Goods: National Standards 2014
- Bailiffs cannot levy on a caravan occupied by a person, Regulation 5 of the Taking Control of Goods Regulations 2013
- Liability for the care of goods taken into control resides with the bailiff. Paragraph 35 of Schedule 12 of the Tribunals Courts and Enforcement Act 2007 and Regulation 34 of the Taking Control of Goods Regulations 2013
- A levy that includes exempt goods does not invalidate the whole levy, *Canadian Pacific Wine Company v Tuley* [1921] 2 AC417 or *Elias v Pasmore* [1934] 2 KB 164 or *Owen & Smith v Reo* [1934] 151 LT 274
- It is important that ALL enforcement agents should make enquiries about possible insolvencies but it is especially important that officers levying execution should do so, *Balme v Hutton* [1833] 9 Bing 471 or *Cooper v Chitty* [1753] 1 Kenyon 395 or *Dillon v Langley* [1831] 2 B&A 131 or *Garland v Carlisle* [1837] 4 Bing VC 7 HL.
- NOTE: a debtor who is bankrupt has his goods placed in charge of a trustee and therefore is no longer the property of the debtor and cannot be seized. The same is true if the debtor has died because his goods are now in charge of the executor or trustee. Creditor must make a claim against the estate by making representation to the trustee.
- A Controlled Goods Agreement must be clearly particularised, Regulation 15 of the Taking Control of Goods Regulations 2013 and *Jones v Davies* [1892] 40 EG 372

Bankruptcy & insolvency

- Note: Individuals and businesses subject to Individual Voluntary Arrangements (IVA’s)’s Debt Relief Orders (DRO’s) and county court administration orders are substantially protected from recovery action and persons facing enforcement action must notify their practitioner or trustee.
- Property of a bankrupt’s estate vested in a trustee can still be seized especially for the recovery of a statutory debt.
- All enforcement agents are required to make enquiries about possible insolvency, *Balme v*

Multiple debts

- Where enforcement agents have multiple warrants for a single debtor, an enforcement agent must take control of goods, and sell or dispose of these goods, on the same occasion except where it is not practical to do so. Paragraph 7 of the Taking Control of Goods: National Standards 2014
- The Local Government Ombudsman decided in a report into complaint no 11 007 684 against Blaby District Council that multiple levies amounts to maladministration, paragraphs 43 & 46 multiple fee-charging is wholly unreasonable.
- A fee of £75 compliance stage applies to each debt, but only one £235 enforcement stage fee applies. Regulation 11 of the Taking Control of Goods (Fees) Regulations 2014.

Excessive levy

- Paragraph 66 of the Taking Control of Goods: National Standards 2014 reads: Bailiffs should take reasonable care the value of goods levied are proportionate to the debt and the fees.
- Levying on goods or a vehicle having a significantly higher value than the debt and fees being recovered. *Steel Linings Limited, Mark Harvey v Bibby & Co* [1993] EWCA WL 964281
- Regulations are silent about defining an excessive levy, case law remains available for a definition.
- Excessive levy or seizure is wrongful at common law and a debtor may issue a claim for damages or a claim under Statute of Marlborough 1267c.15 – but remember that debtors may have a tendency to over-value their own goods, *Cyril Morgan (Holdings) v Dyer* [1995] 11 CL 193 and *Bhatnagar & Elanrent v Whitehall Investments* [1996] 5 CL 166
- There is case law that has allowed bailiffs to make excessive levied when only one item is available such as a vehicle, but this cannot be used in a defence because Statute of Marlborough 1267 c.15 is a statute, and these cannot be rebuked by a court. Only a new Act of Parliament can repeal a statute.
- Bailiffs have a longstanding duty to conduct a thorough and diligent levy to ensure it is not an excessive levy, *Doe d Haverson v Franks* [1847] 2 C&K 678 or *Mullett v Challis* [1851] 16 QBD 239
- Levies on the entire contents of houses, “global levies” are excessive, *Leyland v Benson & Hartley* [1894] 2 PMR 130 or *Redmond v Ward* [1910] *The Times* May 4 3e
- Levying on goods worth 35 and selling them for 5 for a 1 debt is excessive levy, *Josephs v London County Stores & Evans* [1911] 78 EH 170
- A levy on goods worth 175% of the debt would be treated as excessive levy, *Merry v Lovell* [1888] *The Times* November 16 3g QBD
- Goods worth 602 sold for 73 resulted in damages of 350 being awarded, *Webb v Pennell* [1907] *The Times* December 5 10a
- A levy on a single article (e.g. a vehicle) having a value that is more than 300% of the debt being recovered is excessive levy, *Sullivan v Bishop* [1826] 2 C&P 359 11 in goods were levied and valued at 6 but the debtor valued them at 100 and sued, The court awarded 50 reduced to 30 on appeal, *Lowry v Read* [1889] *The Times* March 9 5b & 33 EG 139
- A slight excess (3.5% over the sum recovered) is not excessive, *Fitzgerald v Longfield* [1850] 7 Ir Jur 21
- If a claim for excessive levy is made, there is no need for the claimant to prove malice on the part of the bailiff, *Field v Mitchell* [1806] 6 Esp 71
- A claim for excessive distress and interference of goods cannot be awarded for both and the claimant must decide one for judgment, *Clarke & Roe* [1954] 4 Ir Ch R 1
- Excessive distress is a wrongful act, *Gawler v Chaplin* [1848] 2 Exch. 593 unless no actual loss results, *Watson v Murray & Co* [1955] 2 QB 1
- If the bailiff is uncertain of the value of a single item and wishes to avoid a claim for

excessive levy then he should take a number of small inventories. *Hutchins v Chambers* [1758] 1 Burr 579 or *Bagge v Mawby* [1853] 8 Exch 64

- A debtor has to show the value of the goods (or vehicle) being taken into control on the first occasion was sufficient to cover the debt and costs, *Lear v Edmonds* [1817] 1 B&A 157
- Second levies are oppressive and excessive and should be avoided. If a second levy is made without good reason the debtor can claim damages, *Lear v Caldecott* [1843] 4 QB 123

Debtors having no goods of value

- Enforcement agents should be aware of circumstances where no goods of sufficient value have been identified or the removal of goods would lead to severe hardship for the debtor, the enforcement agent should make the creditor aware of this situation. Paragraph 68 of the Taking Control of Goods: National Standards 2014
- If the debtor's goods do not meet the debt recovered, the bailiff is excused from taking control of goods, or if the fees and expenses of the levy absorb the proceeds of sale the bailiff can make a return of nulla bona, *Dennis v Whetham* [1874] 9 QB 345
- Taking control of goods just to pay the fees of taking control of them is wrongful, *Nargett v Nias* [1859] 1 E&E 439

Exempt goods

- Council tax: Regulation 5 of the Council Tax (Administration and Enforcement) (Amendment) (No. 2) Regulations 1993
- High Court Writs: Paragraphs 9(2) and 9(3) of Schedule 7 of the Courts Act 2003
- Anything else not otherwise prescribed in regulations: Regulation 4 of the Taking Control of Goods Regulations 2013.
- Sofas without the fire safety labels cannot be re-sold commercially. Section 10 and others of the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended in 1989 and 1993) and are worthless. As such, these items fall into the remit of insufficient levy. *Ambrose v Nottingham City Council* [2004] and it is appropriate for the bailiff to abandon the levy following *Dennis v Whetham* [1874] 9 QB 345 and can return nulla bona.
- Items such as perishable foods cash (unless in a cashbox because the identical goods have to be restored to the debtor) and loose food items, bedding and clothing are all exempt from levy, *Davies v Property Reversionary Investments Co Ltd* [1929] 2 KB 222
- The bailiff should invite the debtor to select items to be treated as exempt, *Singer Manufacturing Co v Butterfield* [1902] 114 LT 39; [1905] 13 PMR 963; [1910] 129 LT 578
- A levy that includes exempt goods does not invalidate the whole levy, *Canadian Pacific Wine Company v Tuley* [1921] 2 AC417 or *Elias v Pasmore* [1934] 2 KB 164 or *Owen & Smith v Reo* [1934] 151 LT 274
- Rented goods or goods subject to a hire purchase cannot be seized, *Steel Linings Ltd v Bibby & London Borough of Hammersmith and Fulham* [1993] EWCA WL 964281 or paragraph 59 of the Taking Control of Goods: National Standards 2014

Articles for basic needs

- Are all exempt goods see Regulation 4(1)(b) of the Taking Control of Goods Regulations 2013

Fixtures and fittings

- The test of whether or not an item is a fixture is the purpose and degree of permanence of installation, *Botham & others v TSB Plc* [1996] EGCS 149/ 73 R&CR D1 CA.

Items for trade, work employment or education,

- Legislation defines protected or exempt goods for each type of debt being enforced. Paragraph 11(1)(b) of Schedule 12 of the Tribunals, Courts and Enforcement Act 2007 and Regulation 4 of the Taking Control of Goods Regulations 2013.

Vehicles

- A vehicle used by the debtor for commuting to work is not exempt: *Thompson v Bertie and another* [2007] EWHC 2238 (QB) and House of Lords June 22 2010. Can be defeated because it only applied to high court writs and in any event pre-dates Regulation 4(1)(a) of the Taking Control of Goods Regulations 2013 which makes vehicles used in a person's employment exempt.
- A trade vehicle ceases to be exempt from seizure if there is evidence of use by another person: *Toseland Building Supplies Ltd v Bishop* [1993]. Can be defeated by Paragraphs 9(2) and 9(3) of Schedule 7 of the Courts Act 2003 which does not exclude goods occasionally used by a person other than the defaulter or Regulation 4(1)(a) of the Taking Control of Goods Regulations 2013 or Paragraph 11(1)(b) of the Schedule 12 of the Tribunals, Courts and Enforcement Act 2007
- Vehicles rented or on hire purchase cannot be taken into control, Paragraph 10 of the Schedule 12 of the Tribunals, Courts and Enforcement Act 2007 or paragraph 59 of the Taking Control of Goods: National Standards 2014 or *Steel Linings Ltd v Bibby & London Borough of Hammersmith and Fulham* [1993] EWCA WL 964281
- It is common the value of the seized vehicle may well amount to excessive levy, check also Excessive levy

Levy Abandonment

- Regulation 47 of the Taking Control of Goods Regulations 2013
- *Bannister v Hyde* [1860] 2 E&E 627 If the bailiff levies on goods then leaves the premises without a signed walking-possession agreement is evidence the levy has been abandoned.
- Contrast – *Bannister v Hyde* [1860] 2 E&E 627 – but not if the bailiffs leaves the premises briefly for example “to get a drink”.
- A valid levy and possession taken can be achieved without a walking-possession agreement provided levy is protected from abandonment, *Lloyds & Scottish Finance v Modern Cars & Caravans (Kingston) Ltd* [1968] 1 QB 764

Controlled Goods Agreements

- See Regulation 14 and Regulation 15 of the Taking Control of Goods Regulations 2013
- Bailiffs must be precise and “not vague” as to what goods are being seized, *Wilson v Nightingale* [1846] 8 QB 1034 or *Skene v Midland Railway Co* [1911] The Times, February 28, 3b KBD. Also Regulation 15(3) of the Taking Control of Goods Regulations 2013
- A Controlled Goods Agreement is a license for the bailiff to re-enter the premises, *Hill, Clerk v Ramm* [1843] 5 M&G 789 or Paragraph 61 of the Taking Control of Goods: National Standards 2014
- An unsigned walking-possession agreement is not valid Regulation 15(2) of the Taking Control of Goods Regulations 2013 or *Evans v South Ribble Borough Council* [1992] QB 757
- If the debtor did not sign the walking-possession agreement the levy may be invalid Regulation 14 of the Taking Control of Goods Regulations 2013 or *National Commercial Bank of Scotland Ltd v Arcam Demolition & Construction Ltd* [1966] 2 QB 59
- The walking-possession agreement is invalid if it was signed by a person without the debtor's permission, Regulation 15(2)(b) of the Taking Control of Goods Regulations 2013 or *Lumsden v Burnett* [1898] 2 QB 177
- A walking-possession agreement signed by a debtor's 13 year old daughter is manifestly worthless, *Lloyds & Scottish Finance Ltd. v Modern Cars & Caravans (Kingston) Ltd* [1966] 1 QB 764 or Regulation 14(1)(a) of the Taking Control of Goods Regulations 2013.
- A walking-possession agreement is void if it was signed under duress or a misrepresentation is made or pressure exerted upon a person to coerce that person to perform an act that he ordinarily would not perform, *Barclays Bank v O'Brien* [1994] 1 AC 180 House of Lords
- A spouse cannot sign a walking-possession agreement for the other: *H v Sandwell MBC*

[1992] Legal Action August P15. Held by Magistrates that process was irregular so far as the other spouse was concerned.

- A Notice of seizure or the walking-possession Agreement must be clearly particularised, *Jones v Davies* [1892] 40 EG 372 or Regulation 15 of the Taking Control of Goods Regulations 2013.
- A valid levy and possession taken can be achieved without a walking-possession agreement provided levy is protected from abandonment, *Lloyds & Scottish Finance v Modern Cars & Caravans (Kingston) Ltd* [1968] 1 QB 764

Re-attending premises containing controlled goods

- Mode of entry Regulation 20 of the Taking Control of Goods Regulations 2013
- Using reasonable force Regulation 28 of the Taking Control of Goods Regulations 2013 and paragraph 61 of the Taking Control of Goods: National Standards 2014
- A bailiff with a valid walking-possession agreement can re-enter the property by force, *Lavell v O'Leary* [1933] 2 KB 200 or *Watson v Murray* [1955] 2 QB 1 or Paragraph 61 of the Taking Control of Goods: National Standards 2014
- Re-entry may be forced but with the minimum of force and the bailiff should avoid acting in a matter that may constitute a breach of the peace, *R. v Lockwood* [1856] The Times April 23 10f QBD.
- Bailiffs can break into homes provided they have a valid levy over the goods contained inside and has previously entered the same property peacefully – *McLeod v Butterwick* [1996] 3 All ER 236, [1996] 1 WLR 995. Bailiffs cite this judgment in their defences after breaking into homes. Easily defeated in court if the bailiff has an invalid levy or there is a procedural impropriety with the original debt.
- The debtor previously allowed the bailiff into your home to make that levy in respect of the same debt: *Brintons Ltd v Wyre Forest District Council* [1977] QB 178.
- If a debtor deliberately avoids the bailiff having a valid levy, the bailiff may only force re-entry by appointment with an order signed by a judge. *Khazanchi & Anor v Faircharm Investments Ltd & Ors* [1998].
- In order to effect forced re-entry in light of the above High Court Case, the bailiff must give prior notice under Regulation 25 of the Taking Control of goods Regulations 2013 that he will be re-attending on a specific day and time frame to remove previously seized goods. Should the debtor choose to ignore the notice and go out or refuse entry to the bailiff, the above case supports the right of the bailiff to force entry for the purpose of removing previously seized goods.

Removal of goods and vehicles

- A trade vehicle ceases to be exempt from seizure if there is evidence of use by a third party: *Toseland Building Supplies Ltd V Bishop* [1993]. Defeated by Regulation 4(1)(a) of the Taking Control of Goods Regulations 2013
- Once An Inventory Is Made On Controlled Goods Agreement, the bailiff cannot add to it later. If such items are taken the debtor can sue for damages, Regulation 15 of the Taking Control of Goods Regulations 2013
- Bailiffs cannot retrospectively levy vehicles after seizing them: *Evans v South Ribble Borough Council* [1992] QB 757
- A person removing an illegal wheel clamp is not guilty of criminal damage, *R. v Ali* Bromley Magistrates Court [2011] unreported April 18 2011, and a person who pushes a illegal clamping away from the clamp while it is being removed is not guilty of assault.
- There must be a delay between seizure and removal, especially vehicles, *Culligan v Simkin & Marston Group Ltd* [2008].
- Regulation 9 of the Taking Control of Goods Regulations 2013 prescribes a maximum of 12 months (if issued before 06 April 2013) and Regulation 6 prescribes a minimum of 7 clear

days.

- Removing goods in your absence unless it is by appointment or a judge has given permission, is unlawful – paragraph 36 of the Judge’s summing up in the case of *Khazanchi & another v Faircharm Investments Ltd & another* [1998]
- Removing goods not taken into control (not listed on a Controlled Goods Agreement) is wrongful, *Bishop v Bryant & Others* [1834] 6 C&P 484 or *Sims v Tuffs* [1834] 6 C&P 207.
- See also the Theft Act 1968 and the debtor can take court action to claim damages, *Davies v Property & Reversionary Investments Co Ltd* [1929] 2 KB 222
- The creditor is liable to the owner of the goods (including vehicles) if they are damaged while in possession of the bailiff, Paragraph 7 of the Taking Control of Goods: National Standards 2014
- Paying the liability direct with the creditor (or challenge it) using whatever steps needed only avoids bailiffs fees that have not been incurred up to the point the debt is paid.
- When you have paid the creditor before the enforcement agent started any enforcement stage you must notify the bailiff in writing under paragraph 59(2) of the Act. It revokes any further fees liabilities thereforward.

Removing and sale of goods and vehicles

- Bailiffs must only take goods in accordance with the appropriate regulations or statute. Paragraph 62 of the Taking Control of Goods: National Standards 2014
- Goods cannot be removed more than 12 months from the date of the Controlled Goods Agreement. Regulation 9(1) of the Taking Control of Goods Regulations 2013.
- Goods cannot be removed less than two days clear after the debtor has defaulted on the agreement. Regulation 25(1) of the Taking Control of Goods Regulations 2013.
- Vehicles: a minimum of two hours must elapse before it can be removed. Regulation 18(5) of the Taking Control of Goods Regulations 2013 and as written notice to the debtor (that is not necessarily the owner or keeper) must be given, regulation 18(4).

Bailiff’s Fees

- Prescribed in the Schedule of the Taking Control of Goods (Fees) Regulations 2014.
- A bailiff commits fraud under Sections 1 to 5 of the Fraud Act 2006 if he charges for work he has not done, HM Government in the House of Lords April 20 April 2007, and the police cannot treat such complaints as a civil matter.
- Charges that go beyond the standardised fee schedules should require the Court’s sanction to be certain the fees are lawful, *Bernard Loynes v Beswicks Solicitors* [2010] Queens Bench Division.
- Bailiffs cannot charge a VAN fee, “ATR” fee or “porterage” without a levy on goods. Paragraph 62 of Complaint numbers 95A01890 and 95A04826 against London Borough of Ealing the Local Government Ombudsman decided the bailiff is not entitled to charge a van fee when no goods have been levied.
- Van fees must be the actual cost of using the van. *Flanagan v John Crilley & Sons* [1987] Birmingham County Court, unreported, Adviser Magazine No. 7 p29
- Fees for doormat levies are not allowed, charging a fee to levy on goods of insignificant value e.g. a doormat, page 6 of 11 of the Local Government Ombudsman report on 29 November 2012 or Regulation 15 of the Taking Control of Goods Regulations 2013.
- Bailiffs cannot charge a fee for using a wheel clamp: *Culligan v Simkin & Marston Group Ltd* [2008] because there are no costs or disbursements involved in using a wheel clamp already in the bailiffs possession. The Schedule of the Taking Control of Goods (Fees) Regulations 2014
- Bailiffs cannot charge multiple fees for multiple debts at the same address on the same vehicle or goods. Paragraph 69 of the Taking Control of Goods: National Standards 2014 and regulation 11 of the Taking Control of Goods (Fees) Regulations 2014

- The Local Government Ombudsman decided in a report into complaint no 11 007 684 against Blaby District Council that multiple levies is Maladministration, paragraphs 43 & 46 multiple fee charging is wholly unreasonable.
- The bailiff can only charge one fee regardless of the number of warrants involved at the same location: Glasbrook v David & Vaux [1905] 1 KB 615 or Throssell vs. Leeds City Council [1993] but can make separate charges for levies at different locations, Wells ex parte The Sheriff of Kent [1893] 68 LT 231
- Paying the liability direct with the creditor (or challenge it) only avoids bailiffs fees that have not been incurred up to the point the debt is paid. Regulation 4(3) of the Taking Control of Goods (Fees) Regulations 2014
- Levying on somebody else's goods or on the wrong vehicle: The fees must be refunded, page 6 and 7 of 11 of the Local Government Ombudsman report on 29 November 2012
- A High Court Enforcement Officer is not entitled to claim "Rule 12" costs and disbursements for gain, the House of Lords 03 November 2009
- A business (HCEO firm) can reduce costs by standardising its charges provided it is not in an unreasonable way, Bernard Loynes v Beswicks Solicitors [2010] Queens Bench Division
- When the debtor pays the sum then no further enforcement steps can be taken: Paragraph 58 of Schedule 12 of the Tribunals, Courts and Enforcement Act 2007
- When enforcement action has ceased, the bailiff cannot enforce the recovery of fees. Guideline 31 of the Taking Control of Goods: National Standards 2014
- The bailiffs choice of remedy or court is not the exclusive remedy: Steel Linings Limited, Mark Harvey v Bibby & Co [1993] EWCA WL 964281. This entitlement is a statutory right provided under Section 15 of the County Courts Act 1984.
- A debtor can opt to recover the bailiffs fees paid under protest in a civil court claim, Veale v Atwood [1833] The Times February 2, 5g, CP or section 15 of the County Courts Act 1984.
- Magistrates Court fines. There is no direct contractual relationship on defaulters and the enforcement company, and the company bears the risk of running the service if he is unable to recover the fine. Elias, LJ presiding in JBW Ltd v Ministry of Justice [2012] EWCA Civ 8.
- Unlawful bailiffs fees are recoverable, regulation 3 of the Taking Control of Goods (Fees) Regulations 2014 or Day v Davies [1938] 2 KB 74
- The council, and not the bailiff, is liable for refunding unlawful bailiffs fees, Paragraph 24 of complaint number 12 005 084 by the Local Government Ombudsman 13 March 2013, and paragraph 44 confirms you can also make a formal complaint and claim damages, disbursements and compensation if the council is malfeasant. Ditto Paragraph 7 of the Taking Control of Goods: National Standards 2014

Bailiffs and liabilities

- Regulation 34 of the Taking Control of Goods Regulations 2013. Bailiffs are liable for damage to goods and vehicles while in their possession.
- Also applies to vehicles. Regulation 18(7) of the Taking Control of Goods Regulations 2013 Paragraph 7 of the Taking Control of Goods: National Standards 2014 the creditor is ultimately responsible for the enforcement agents acting on their behalf.
- The bailiff is liable for any unlawful damage caused to property even if it was an accident: see this judgment or Regulation 34 of the Taking Control of Goods Regulations 2013 and Paragraph 35 of Schedule 12 of the Tribunals, Courts and Enforcement Act 2007 and Paragraph 63 of the Taking Control of Goods: National Standards 2014.
- The bailiff is liable if he damages your business reputation: Skidmore v Booth [1834] 6 C&P 777
- Damages are not limited to the immediate pecuniary losses occasioned by the distress (the action of taking control of goods) but extend to damages for annoyance and injury to credit and reputation in trade, Smith v Enright [1894] 69 LT 724
- Bailiffs have a duty to protect the creditor AND the debtor as well as having a duty to protect

the poor from abuse and should normally err on the side of caution and generous treatment of debtors, *Taylor v Ashworth* [1910] 129 LT 578 or *Harrison v Mearing* [1843] The Times May 10 8b Exch or Paragraphs 19 to 31 of the Taking Control of Goods: National Standards 2014

Bailiffs and the police

- If a police officer arrests a debtor to benefit an enforcement agent acting unlawfully, the officer commits an offence under section 26(4) of the Criminal Justice and Courts Act 2015.
- If a police officer fails to arrest an enforcement agent committing an offence, the officer commits an offence under section 26(5) of the Criminal Justice and Courts Act 2015.
- There must be very good reasons for arresting a debtor on the grounds of preventing a breach of the peace, only a serious and imminent threat justifies arrest, *Foulkes v Chief Constable of Merseyside Police* [1998] 3 All ER 705
- A debtor can lawfully use reasonable force in removing a bailiff that has refused to leave, the bailiff resisting is the person guilty of a breach of the peace, *Green v Bartram* [1830] 4 C&P 308 and if police are present, the bailiff is the person that police should arrest, *Foulkes v Chief Constable of Merseyside Police* [1998] 3 All ER 705
- By common law police officers owe to the general public a duty to enforce the criminal law, 1968 CA Lord Denning re: *Commissioner of Police of the Metropolis, Ex parte Blackburn* [1968] 2 QB 118
- A bailiff may not encourage a third party to allow the bailiff access to a property (i.e. Workmen inside a house or a police officer), access by this means renders everything that follows invalid, *Nash v Lucas* [1867] 2 QB 590
- If a police officer is in attendance and assists the bailiff to gain entry or persuades the debtor to open the door then any levy the bailiff makes is void and the debtor can sue for damages. *Skidmore v Booth* [1834] 6 C&P 777
- If a police officer arrests a debtor after throwing a bailiff off the premises who had refused a request to leave, the officer is guilty of false arrest because no offence was committed and the bailiff was there illegally: *Green v Bartram* [1830] 4 C&P 308.
- A police officer must arrest a bailiff for breach of the peace if he places the debtor in fear of violence or harm if that offence is made in the presence of that officer, *R v Howell (Errol)* [1982] 1 QB 427.
- A police officer must apprehend and arrest the party that is threatening violence, *Redmond-Bate v Department of Public Prosecutions*, The Times July 28 1999, Lord Justice Sedley
- If a bailiff causes a disturbance but does not make a threat, it is unreasonable for the police to arrest him. *Bibby v Constable of Essex* [2000] Court of Appeal April 2000
- When a government department publishes “guidelines” on how it should operate, then those guidelines must be followed unless contrary legislation is provided. Demonstrated in paragraph 29 and onwards in the judicial review *R v South Western Magistrates’ Court* [2013] EWHC 64 (admin)
- The courts must never appear to approve of an unlawful action against a debtor no matter how unsympathetic his record, *R v Purdy* [1974] 1 QB 288, 1 QB 292F