



Taking possession:

Councils' use of bailiffs for local debt collection

Focus report: learning lessons from complaints

Contents

Table of contents	Page
Introduction	1
The role of the Local Government Ombudsman	2
The bailiff process	2
Court action or the Local Government Ombudsman?	3
Good practice	4
Costs and fees	4
The fairness of bailiff charges	6
Levying on vehicles	7
Action against vulnerable debtors	7
Complaint handling	8
Recommendations	9
Further information	9

Commission for Local Administration in England

10th Floor

Millbank Tower

Millbank

London

SW1P 4QP

T: 020 7217 4620

F: 020 7217 4621

W:www.lgo.org.uk

Introduction

Bailiffs are a vital part of council debt collection. Councils take 2.8 million enforcement actions each year for local taxation and road traffic debts¹. We appreciate that bailiffs do a difficult and unpopular job, and there are problems with the law as it now stands. We are also clear that if people do not pay their local taxation debts and road traffic penalties they risk recovery action. But when debtors are also under financial pressure it is important that debt recovery action is reasonable, legal and proportionate.

Government has long planned to reform bailiff law. The last Government passed the Tribunal Courts and Enforcement Act 2007, but did not implement the section relevant to bailiffs. In spring 2012 the current Government consulted on how it should implement this legislation. In summer 2013 regulations were laid setting out the procedure that enforcement agents must follow when taking control of goods and, if necessary, selling them to recover a debt. The Government intends to set out rules covering fees, training and certification later in 2013.

The Local Government Ombudsman is finding fault in a higher proportion of complaints involving bailiff action than in other complaints about local taxation or parking enforcement. In 2010/11, 23 per cent of local taxation complaints resulted in the Ombudsman proposing a remedy for the injustice caused, while for those involving bailiffs, 31 per cent required this action. We are also issuing more formal reports about bailiff action (three in 2011/12, compared with none in the previous two years) where problems in individual cases are particularly serious.

Citizens Advice has expressed concerns to us about the actions of bailiffs, in particular the level of charges they make and their behaviour towards vulnerable people.

This Focus Report is based on an analysis of complaints made to us. Throughout the report we make clear our views on some areas of bailiff practice. We have not covered all issues raised in complaints made to us that involve bailiffs, but focused on those we feel result in injustice to the individual. It shows what can go wrong and just how serious the injustice can be for those affected. It suggests how councils and their agents can avoid others suffering in a similar way.

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The role of the Local Government Ombudsman

For nearly 40 years we have independently and impartially investigated complaints about councils and other bodies within our jurisdiction – our services are free of charge.

If we find something wrong, we can ask the council to take action to put it right. What we ask the council to do will depend on the particular complaint, how serious the fault was, and how the complainant was affected.

We have no legal power to force bodies within our jurisdiction to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay compensation
- > take action or make a decision that it should have made before
- > reconsider a decision that it did not take properly in the first place, and
- > improve its procedures so similar problems do not happen again.

The bailiff process

The role of bailiffs, as legal officers, dates back to medieval England. Various people can be referred to as 'bailiffs' and their individual offices and duties vary, but they must have a certificate issued by a court. In summary, their role in debt collection is to enter the property of a debtor and remove and sell their goods to meet a debt. Bailiffs may use this process to recover many types of debt; this report concerns the recovery of council tax, business rates and road traffic debts owed to councils.

Different laws govern bailiff action to recover business rates², council tax³ and road traffic debts⁴, but the process is broadly similar:

- > a court grants an order to the council which allows a bailiff to take action
- > the bailiff may try to contact the debtor by letter to get payment of the debt in full or by instalments
- > if this is unsuccessful, the bailiff will visit intending to seize goods to sell in order to meet the debt and associated costs.

At each stage the bailiff charges the costs and fees which the relevant legislation allows. A bailiff may be directly employed by a council or work for a private firm which the council has contracted to provide services for debt recovery. Either way, the bailiff is acting for the council and so the matter is within the Ombudsman's jurisdiction.

Court action or the Local Government Ombudsman?

If a debtor believes there was an illegal, excessive or irregular levy they can take the matter to court. They can also make a complaint, about a bailiff's conduct or fitness to practice, to the court which issued the individual bailiff's certificate – this is known as a 'Form 4' complaint after the name of the form used. They can also ask a court to decide if the costs were legal, reasonable and applied at the correct point by applying for the court to make a detailed assessment of the bailiff's costs, where the amount is not already prescribed by law. Debtors should seek legal advice before doing this as costs may be awarded against them if they are unsuccessful. When dealing with complaints about bailiff fees, a council could make a complainant aware of these options, if it considered it was appropriate to do so.

The Ombudsman acts under a legal framework which puts certain limits on our powers⁵. We normally expect someone to appeal to a court if they have a right to do so. However, we may decide to investigate if we think there are good reasons why we should. Our test is whether it would be reasonable to expect someone to go to court instead.

Sometimes, we may decide that a complaint is best decided by a court where the law or facts are unclear.

Case study 1: Was a car a 'tool of trade'?

Carol was issued with a parking ticket. The fine was £100, with a 50% discount if it was paid within 14 days. Carol sent a cheque for £50 but it was just over the 14 days before she did so.

Because Carol did not respond to further demands the case was registered at the County Court, but she still did not respond and the council passed the court warrant to bailiffs.

The bailiffs removed Carol's car for the debt and later sold it. After they had taken it she claimed that she used her car for her work as a cleaner, transporting her cleaning materials in it. She said the car was a tool of her trade and so exempt from removal. Carol complained to us about the bailiffs' action.

Carol did not provide any evidence of the car being a 'tool of trade' until after the bailiffs sold the car, but even if she had provided the evidence in time, and the bailiffs had rejected it, we would still have not investigated because the question of whether a car is a tool of trade is best decided in a court.

We may also decide that it is not reasonable for a complainant to take legal action.

Case study 2: Disproportionate fees in comparison to value of goods

Frank had not paid his council tax for three years. His council took legal action and Frank made arrangements to pay, but did not keep them. The liability orders relating to the debts were passed to bailiffs.

A bailiff called on Frank to recover the debt. Frank did not let the bailiff in, so the bailiff took 'walking possession' (an agreement between the bailiff and the debtor to leave goods on the premises while agreed payments are made or a query is resolved) of a doormat and charged £230 in costs. Frank could have challenged the costs in court. We took the view that given the disparity between the value of the doormat and the size of the fees this was unreasonable and so we investigated the case and found maladministration. The fees that had been charged were cancelled by the council.

However, if the debtor has already used their legal right to challenge the bailiff action the law says we cannot investigate⁶.

Good practice

In 2002 the Government issued its National Standards for Enforcement Agents which governs bailiff action. In 2012 the Ministry of Justice issued an updated version setting out what it and those involved in the industry regard as the minimum standards of behaviour⁷. The Civil Enforcement Association (CIVEA) (an independently funded association formed to represent all private certificated bailiffs in England and Wales) has a Code of Conduct and Good Practice Guide⁸. In addition, it is good practice for councils to have a Code of Conduct with contracted bailiff firms, setting out expectations. For example, this may include:

- > compliance with the National Standards for Enforcement Agents
- > the council's recovery process so the bailiff is aware of prior action by the council
- > professionalism and conduct expected of bailiffs
- > training and certification
- > vulnerable debtor procedures
- > removal and sale of goods
- > information to be given to debtors and confidentiality
- > how complaints should be dealt with and discipline
- > council's responsibilities to keep the bailiffs informed.

We would usually view any breach of the National Standards, the CIVEA Code and Guidance (if the firm employing the bailiff were members), or any breach of an agreement with the council, as maladministration.

Case study 3: Excessive 'van fee'

Deborah was in arrears for council tax. The council's bailiffs charged her £250 for a 'van fee'⁹. The council's policy said the maximum charge was £100 without prior approval. As well as refunding the excess charge to Deborah, we asked the council to monitor the fees their bailiffs levied to be able to spot and correct excessive charging.

Costs and fees

A common area of dispute is the costs and fees charged by bailiffs. The regulations¹⁰ set out what can be charged and when. We have found that the way bailiffs explain their fees is often not clear, even when the debtor asks for a breakdown, so the basis of the fees remains obscure.

Case study 4: No explanation for charges

We investigated Joan's complaint about recovering a parking fine. The bailiffs charged £105 for something it called an 'enforcement fee 1', £120 for an 'enforcement fee 2' and £180 for an 'enforcement fee 3' plus VAT. No more detail was given on the statutory form left with Joan.

The council provided us with an explanation of the charges and, once informed by the clear explanation, we decided that Joan had been overcharged by £300 in fees and £60 VAT. The council

agreed to refund this amount.

We have seen cases where bailiffs charge costs with no obvious legal justification. Some bailiffs argue, perhaps with justification, that the levels of fees set no longer cover the costs of their actions. The Government has said it will reform costs and fees, but until then we would expect bailiffs to follow the law as it stands. Examples of unjustifiable charges we have come across include:

- > a debtor charged for the cost of a porter where the 'porter' was in fact an uncertificated bailiff in training and no goods were actually removed
- > a fee charged for debtors breaking an arrangement with the bailiff, and
- > a fee charged to the debtor for the bailiffs having to trace them when the debtor had moved without telling the council or the bailiff.

While we do not approve of debtors breaking arrangements or not providing a forwarding address we cannot see a legal justification for charging these costs. In such cases, we consider the injustice of incorrect charging is remedied by the removal of the costs or a refund where they have already been paid.

We have seen examples where bailiffs have charged for actions they have not taken. For example a 'van fee', better known as a Head C fee,¹¹ which is charged for one attendance with a vehicle with a view to the removal of goods. The Schedule makes it clear that a bailiff can only charge such a fee where they have entered a property and levied on goods but not removed them. Levying on goods without being in a position to remove them, such as posting a notice through the door, is called 'constructive levy' and is illegal.

Case study 5: Inappropriate 'van fee'

The same firm of bailiffs charged two separate council tax debtors – Mark and Tom – for the costs of attending with a van. But the bailiffs had not entered their properties or levied on any goods, and so they were not entitled to make such a charge. When Mark and Tom complained to the council it upheld the bailiffs' right to make the charge. When the cases were subsequently referred to the Ombudsman we asked for the costs to be written off.

We consider it good practice that after every visit a bailiff makes and charges for, they leave a notice with the debtor listing the debt and fees incurred so far. The bailiffs should also have evidence recorded in the notes that they left such a notice. Not to leave the appropriate notice may be viewed by the Ombudsman as maladministration.

Case study 6: Notification of fees for a visit

Barry had council tax debts. The bailiffs claimed they had visited Barry twice, leaving letters and making a charge for this. They then returned and seized a car that did not belong to Barry.

Our investigation found no evidence to show the bailiffs left letters with Barry on either visit. There was no evidence that the bailiffs left an inventory when they seized the car. The notes recorded by the bailiffs were inadequate to show when they visited or what they left Barry.

We asked for the charges to be removed from Barry's account. We also asked the council to monitor the bailiffs' performance to make sure the correct procedures were followed and documents were left in

accordance with the law and best practice.

One particular area of dispute is the fee charged under 'Head H' of the council tax costs schedule, where goods are removed but not sold. Bailiffs often charge this when they take walking possession but do not remove goods, calling it a redemption fee. The Ombudsman's view is that bailiffs should *not* charge this fee when the debtor makes an arrangement and no goods are actually taken.

The fairness of bailiff charges

Councils should form their own view, within the regulations, about what their agents can charge. We appreciate that bailiffs will not wish to see their fee income restricted; as private businesses they are entitled to make a reasonable profit. But where they are acting as the agents of a council, the council is entitled to its own view about how its agents act. Councils need to take account of the reasonableness of their agents' actions, as well as their legality. (See case study 2.)

Some costs and fees are not fixed by the regulations, but described as 'reasonable'. Councils should agree with their agents what 'reasonable' fees would be for particular actions. If the particular circumstance of a case justified it, higher fees might be charged but, in the Ombudsman's view, only with the council's prior approval. This would reduce injustice by providing clarity for debtors about the costs they are charged. It would also make it easier for bailiffs and local authority officers to justify the charges.

Whilst the costs and fees that are described as 'reasonable' in the regulations may be taken to court for a detailed assessment, the Ombudsman may exercise discretion to investigate a complaint where it is not reasonable to expect the complainant to go to court. We have dealt with a number of cases when a bailiff calls with several warrants (the bailiff's authority to collect a debt) and makes a charge for each one. Our view is that, while the law does not prohibit making a charge for each warrant, there may also be a question of whether it is fair to do so.

Case study 7: Multiple charging of a levy fee

Gillian did not pay her council tax for a number of years and arrears built up in the region of £10,000. A bailiff had eight council tax warrants against her for the different years for which she owed council tax.

The bailiff charged first and second visit fees on each warrant totalling £340. The bailiff also added levy fees of £392 for levying eight times on the same goods.

The Ombudsman found the multiple charging of the levy fee to be maladministration in the circumstances. We also found charging £340 for two visits by one bailiff to be disproportionate. The council entered a new contract with its bailiffs preventing multiple fee charging in future.

We expect councils and their agents to consider the reasonableness of their practice in this area in future.

Levying on vehicles

As wider knowledge of their actual powers has increased among debtors, bailiffs have found it harder to gain entry to buildings. One result of this has been an increase in levying on cars and other vehicles parked on drives or outside properties. As long as the car is the property of the debtor (and the levy is not excessive) this is legal. But we have seen cases where the debtor does not own the car in question and the bailiffs have subsequently been reluctant to remove the costs and associated fees charged for the levy on the vehicle.

Case study 8: Levying on the wrong car

Susan fell into arrears with her council tax payments. Bailiffs could not gain access to Susan's home, so took walking possession on a car parked in the road outside the property. They left a levy notice charging £105 costs.

When they returned a week later the car had gone. Susan spoke to the bailiff about paying, but objected to the costs. The bailiffs refused to remove the costs. When we investigated it was clear Susan did not own a car and so the vehicle the bailiffs levied on was not hers.

The bailiffs had not checked that the car belonged to Susan when they levied, had not checked ownership when this was queried and did not see any need to remove the levy fees. We asked the council to tell the bailiffs to remove the costs.

In the past bailiffs could find out within an hour, from the Driver and Vehicle Licensing Agency (DVLA), the identity of the registered keeper of a vehicle. But since early 2012, DVLA checks have taken several days to be processed. Until the ability to make a quick DVLA check is restored, it may be impracticable to check before levying whether a debtor is the registered keeper of a vehicle.

We consider that bailiffs should:

- > in the absence of the debtor, make reasonable efforts to find out if a vehicle does belong to the debtor before levying
- > remove levy and associated fees if it is subsequently proved that the vehicle does not belong to the debtor, and
- > check the vehicle does belong to the debtor before removing it.

Action against vulnerable debtors

The National Standards for Enforcement Agents make it clear that bailiffs should exercise discretion when dealing with those debtors who may be vulnerable. The Standards list those who may be potentially vulnerable, including those with a disability. The Standards do not mention debtors who have mental health difficulties or by virtue of other difficulties may be vulnerable (for example those facing homelessness).

We would expect councils to notify bailiffs where the debtor may be vulnerable. Otherwise, a bailiff may be the first person acting on behalf of the council to meet the debtor. The bailiff may be the first person to realise the debtor is vulnerable. It is essential that bailiffs are alert to possible vulnerability and that they

report any concerns back to the council.

Case study 9: Not taking account of a debtor's mental health difficulties

Belinda had been in and out of hospital with severe depression. She was unable to manage her own affairs and needed help with this from her sister.

A bailiff called to recover a small local taxation debt of less than £75. Despite describing her health problems and showing she was dependent on benefits, the bailiff insisted on levying on goods. Belinda had to visit the bank and pay cash to the bailiffs to prevent this happening. Unknown to the bailiff, Belinda had already paid the debt and only owed the residual court costs which the council had agreed to write off. The council was at fault for not having notified the bailiffs of this. But this does not excuse the bailiffs' actions in levying, despite being aware of Belinda's condition, without checking with the council.

There will be circumstances where recovery action is appropriate against a vulnerable person. But we recommend that when a bailiff or other officer comes across a debtor who, by virtue of their health or circumstances, may be vulnerable they should address the following questions:

- > Does the debtor fall into one of the groups the bailiff considers may be particularly vulnerable?
- > If so, is the 'vulnerability' such that the debtor may be incapable of understanding or defending themselves properly from any proceedings?
- > Even if the debtor can understand the proceedings, do their particular circumstances mean that recovery action at this point would be inappropriate – even if they are not 'vulnerable'?

If uncertain, the bailiff should withdraw and check with the council to see how they wish to continue. Councils may have a protocol about how to deal with such cases and ask their bailiffs to follow it.

Complaint handling

Bailiffs are not acting independently, but on behalf of the council. We have found that councils' handling of complaints made about bailiffs is often poor.

Case study 10: Council not investigating a complaint against a bailiff

Returning to Gillian's case (see case study 7), as well as complaining about the multiple charging of costs, she alleged the bailiffs tried to break in to her house, and had unlawfully levied on cars neither she nor her partner owned.

The council did not investigate but agreed with the bailiffs' response that their actions were lawful. The council did not even consider the allegations of threatening behaviour, but referred Gillian back to the bailiffs. We found this inadequate complaint handling to be maladministration.

Bailiff firms should have their own complaint procedures and it is reasonable that they have an opportunity to deal with complaints about the actions of their employees in the first instance. We do not expect bailiffs to get involved in complaints about the size of the debt the council has asked them to collect; bailiffs should be able to assume that if the debt is wrong the council will tell them. But debtors are entitled to a clear

explanation of costs and fees associated with the recovery of a debt, with reference to the relevant schedule. They should also receive a response to any complaints raised about the actions and behaviour of the individual bailiff concerned.

A complainant who is dissatisfied with the bailiff's explanation could complain to the Civil Enforcement Association, which has its own process for dealing with complaints about members. If still dissatisfied, the complainant could then bring the matter to the attention of the council, the court or, in certain circumstances, to the Ombudsman. But the bailiffs are acting for a council. In our experience the more stages there are in a complaint process the longer it can take, and this acts against speedy resolution of complaints. Often this leads to the injustice of a drawn out process and unnecessary time and trouble for the complainant in having their concerns addressed.

We consider it appropriate that, if dissatisfied with the bailiff's response, the complainant should be able to refer the matter to the council. The council should make such enquiries of the bailiffs it considers fitting, especially where the complainant disputes any statements of the bailiffs, and draw its own conclusions. This will also allow a unified approach as the council can consider any issues with its handling of the recovery of the debt at the same time.

If the complainant is still dissatisfied then they can take the matter to court or complain to the Ombudsman, who will decide whether to exercise discretion to investigate the complaint (if it is not reasonable to expect the complainant to go to court).

Recommendations

For a debtor, the experience of a visit by a bailiff is unlikely to be pleasant. Bailiffs are trying to collect money and will remove goods if they do not receive payment, and charge legitimate costs on top of the debt. To help manage this process for all parties, we recommend that councils should ensure that bailiffs:

- > only charge costs and fees in the schedules to the regulations
- > give details of costs and fees referring to the specific headings in the relevant schedule, or make clear why an alternative sum has been charged
- > agree with councils in advance any areas of possible dispute over interpretation of the cost and fee
- > make proper checks when levying on vehicles, especially when enforcing costs and fees
- > exercise caution when dealing with potentially vulnerable debtors, adopting the approach set out in this report, and
- > handle any complaints received quickly and clearly, with the council taking final responsibility for its bailiff's actions.

Further information

Visit our website at www.lgo.org.uk

If you have a complaint you would like to make about a council you can contact us on: 0300 061 0614.

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- 1 Table 1, Ministry of Justice Impact Assessment on Transforming Bailiff Action consultation, December 2011
 - 2 Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989
 - 3 Council Tax (Administration and Enforcement) Regulations 1992
 - 4 The Enforcement of Road Traffic Debts (Certificated Bailiffs) Regulations 1993
 - 5 The Local Government Act 1974 (as amended)
 - 6 Section 26(6)(c) Local Government Act 1974.
 - 7 www.justice.gov.uk/downloads/courts/bailiffs-enforcement-officers/national-standards-enforcement-agents.pdf
 - 8 www.civea.co.uk/code-of-practice.htm
 - 9 Or 'Head C fee'. See page 6 for definition.
 - 10 Schedule 3 of the Non-Domestic Rating (Collection and Enforcement) (Local List) Regulations 1989, Schedule 5 of the Council Tax (Administration and Enforcement) Regulations 1992 or the Enforcement of Road Traffic Debts (Certified Bailiffs) Regulations 1993.
 - 11 Despite the common name for this fee the 'van' can legitimately be a car or other vehicle.