

“ Plain speaking legal advice ”

Recovering Money Through a Bailiff

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*Frankie Tierney explains why creditors and debtors need advice
before dealing with bailiffs*

Many commercial landlords will breathe a sigh of relief that the Government's plans to replace the remedy of distress look likely to be shelved. The remedy has been an effective (though its critics might say a draconian) way of recovering rent arrears without going to court, with the landlord gaining priority over other creditors, having the opportunity to seize third party goods and the tenant being left with very few options to challenge the remedy.

With landlords less likely in the current climate to want to forfeit a lease, simply because they run the risk of not finding another tenant, the remedy of distress is a very useful stick to wave at unreliable tenants.

The Government has instead turned its attention away from distress and on to bailiffs, indicating that it will shortly be consulting on and reforming the way bailiffs operate. With more people owing money to creditors there is the increased chance that bailiffs will be used more frequently to recover sums. Many landlords and tenants are unclear as to what bailiffs can and cannot do. So what powers do they possess?

There are various types of bailiffs – county court, certificated and private bailiffs – all collecting different types of debts owed.

What's often misunderstood is the bailiff's right of entry. Bailiffs only have a right of peaceful entry, which means that they can walk in through an open door or window or climb over fences and gates provided they do no damage. If you refuse them entry they cannot force their way in.

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If you let a bailiff in (and this could be just to discuss matters privately rather than on the doorstep), then they are entitled to find and seize goods in the property to the value of the debt. Once inside a bailiff can break open any locked cupboard or door. Often they will identify the goods to seize on the first visit and then return on a later date to remove them, if you have given the bailiff peaceful entry on the first occasion you cannot refuse them access when they return. If you do, then they can force entry on to the premises.

The goods to be seized are identified verbally by the bailiff or by marking such goods, a process known as ‘levying distress.’ The goods once seized will be sold at public auction to pay off the debt. It’s worth knowing that there are goods bailiffs are not permitted to seize, these include clothes, bedding, and tools used for employment/work.

Bailiffs will gain their authority from a County Court judgement, an admitted debt or some other legal mechanism that entitles the creditor to be paid the money they say is due. Bailiffs must tread carefully, if they don’t have the authority then both the bailiff and the creditor can be subject to injunction proceedings in the County Court.

If you are being pursued by bailiffs and you believe that the debt is not owed and is not the subject of a County Court judgement then seek legal advice straightaway. This may enable you to avoid taking expensive injunctive action later on to prevent the seizure of goods or to recover the goods after they have been seized by the bailiff. Similarly, if you are considering using a bailiff to recover a debt owed to you, then it’s sensible to obtain professional advice before instructing the bailiff, so you know your exact legal position.

If you would like to discuss any of the issues raised in this article contact Frankie Tierney at frankie.tierney@herrington-carmichael.com or call 01276 686222

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