

Bailiff activity following Coronavirus suspension



TAKING CONTROL
The campaign for bailiff reform

Overview

Taking Control is a coalition of 11 civil society groups campaigning for independent regulation of the bailiff industry and other reforms to ensure fair and appropriate treatment of financially vulnerable people facing debt enforcement.

During the initial national lockdown earlier this year, the Government rightly legislated to suspend bailiff visits, in recognition of the significant public health issues they posed, as well as the risk of harm to financially vulnerable households.

Since then, the Government has written to CIVEA (the enforcement firms' trade association) asking them to ensure bailiffs do not enter premises when conducting visits in areas under tier 2 and 3 restrictions. It put this restriction on a statutory footing for the national lockdown on 17 November. However, the Government has not suspended visits, only entry. Under the current arrangement, in-person visits are allowed in all areas meaning bailiffs can charge a £235 fee despite being unable to enter premises to take control of goods. When we return to a tiered system, restrictions on entry in tiers 2 and 3 will be based on a voluntary agreement.

We have been monitoring bailiff conduct since visits were resumed on 24 August following the five-month suspension due to Covid-19. Our evidence demonstrates that, without independent oversight, voluntary guidance and agreements cannot be relied upon to control bailiff behaviour and protect public health. While the Government's action to legally prevent entry during the national lockdown is welcome, we are concerned about the return to a voluntary approach when this ends, as well as the fact it only covers entry, not visits. **The government must urgently legislate to reinstate a suspension of bailiff visits during national lockdowns and in areas under tier 2 and 3 restrictions.**

What have we been seeing since bailiff activity resumed?

People in financial difficulties were acutely aware of the resumption of enforcement visits by bailiffs. StepChange saw a 652% increase in traffic to their bailiff advice webpages in August as households began to worry about potential visits. Citizens Advice have seen 5,600 clients with over 13,700 issues related to bailiff enforcement since visits resumed.

CIVEA and the Ministry of Justice (MOJ) published welcome guidance ahead of the resumption of bailiff visits. CIVEA's guidance included requirements for additional training to prepare bailiffs for visits during a pandemic, an additional reconnection letter for households facing bailiff action to make them aware of the resumption of activity and to identify any newly arising vulnerabilities. The plan also included a

ban on bailiffs entering premises, which went further than the government's subsequent request for entry to be suspended in tier 2 and 3 areas.

Unfortunately, in the absence of independent oversight or the threat of serious sanctions for non-compliance, this new guidance has not been enough to prevent misconduct. Since the resumption of visits, debt advisers have reported cases of conduct by bailiffs that appears to break existing regulations and standards as well as the additional guidance on visits published by CIVEA and the MOJ. (See Appendix 1). These examples represent a continuation of issues Taking Control coalition members were seeing before the pandemic and are symptomatic of an industry lacking the necessary independent oversight to ensure consistent good practice.

1. Bailiffs misrepresenting their powers

Voluntary National Standards introduced in 2014 state that bailiffs must not 'falsely imply that an action will be taken when legally it cannot be taken.' This was one of the most common transgressions experienced by people who were visited by bailiffs before the pandemic. Polling commissioned by StepChange and Citizens Advice in 2019 found that almost 1 in 6 people (17%) contacted by bailiffs experienced a threat to break in; despite the bailiff not having the power to forcibly enter at the time the threat was made.

In the interests of public health and maintaining social distancing restrictions CIVEA's post-lockdown support plan stated that bailiffs would not enter people's properties at all following the resumption of visits at the end of August. The government then reiterated this in a letter to the trade association asking CIVEA to suspend entry in tier 2 and 3 areas. Despite this, advisers from across the Taking Control coalition have reported numerous examples of bailiffs threatening to enter people's homes since visits resumed in August.

Brianna's story

Brianna was visited by bailiffs collecting council tax arrears following the resumption of visits at the end of August. She said she only received a letter on the day of the visit, not 30 days before. She contacted the council to ask what she should do, and they told her to make a payment arrangement with the bailiffs. She tried to make an arrangement with the bailiff but was told they'd only accept the full £900 debt upfront and that it had to be paid the next day. The bailiff told her that if she didn't pay they could enter her property to repossess goods the next day and that she didn't need to be present for this. Brianna was extremely worried about bailiffs entering her property and taking her goods whilst she was at work.

2. Treating vulnerable individuals unfairly

The 2014 Taking Control regulations state that a bailiff should not take control of goods where a child or vulnerable person are the only people present at a property. This protection is reinforced by the National Standards which make it clear that bailiffs should be trained to identify vulnerabilities and, in cases where vulnerabilities are apparent, they should alert creditors and withdraw from the situation. In spite of this, we regularly saw instances of bailiffs treating vulnerable individuals unsympathetically before the Covid-19 crisis. 7 in 10 respondents to a survey conducted by the Money and Mental Health Policy Institute (MMHPI) said their vulnerability was not dealt with appropriately by bailiffs. The risks posed by Covid-19 mean that numerous groups of people who might not previously have been identified as vulnerable are at acute risk from bailiff contact. Those with some pre-existing conditions

were placed in the ‘shielding’ group, while many others, including all people over 70 years old, were deemed to be clinically vulnerable, requiring extra caution during the first wave of the pandemic.

To reflect this new context, CIVEA’s guidance established several new guidelines around the treatment of vulnerable individuals. These included additional training, the implementation of a pre-visit vulnerability identification phase involving a ‘reconnection letter’ to allow people to flag new vulnerabilities and a requirement to send cases back to creditors where individuals have suffered significant financial impacts as a result of the pandemic. Unfortunately, advisers have raised various examples of these new guidelines not being followed. Thelma, who called National Debtline, experienced bailiffs breaking this guidance.

Thelma’s story

Thelma lives alone in a property but her ex-partner is still registered as living there as the landlord has refused to let her take over the tenancy.

Thelma’s ex-partner has a magistrates’ court fine for domestic abuse, where Thelma was the victim. Bailiffs are aware that this is what the fine is for, but they are still visiting her address. At the end of September 2020, they contacted Thelma and said they intend to force entry and will take any goods she can’t prove ownership of. Thelma also has young children living with her, suffers from anxiety, and has Covid symptoms so is self-isolating. The bailiffs have been made aware of all of this.

3. Using aggressive and intimidating tactics

The guidance on bailiffs behaving aggressively are clear. The National Standards require bailiffs not to act in a threatening manner and to carry out their duties in a ‘professional, calm and dignified manner.’ However, aggressive behaviour by bailiffs was the most common problem seen by advisers before the Covid-19 outbreak. Polling estimates that nearly 2 in 5 people (37%) who were visited by bailiffs between 2016-18 experienced intimidation either on the doorstep or over the phone.

CIVEA’s post-lockdown support plan did not directly add to the existing standards on aggressive behaviour but the MOJ’s additional guidance advised bailiffs not to raise their voice during visits because of the increased risk of infection. Nearly all of the examples provided by advisers since the resumption of bailiff visits involve aggressive, intimidating tactics that contravene the National Standards and the new MOJ guidance. The threat to enter premises despite guidance suspending this action is the clearest example of intimidation being used as an unfair collection tactic. Given the trend of people failing to receive a reconnection letter or receiving a notification of a visit without any information about the Covid-19 guidance, visits can take people by surprise leaving them flustered and unclear on their rights and protections. Jessica called Christians’ Against Poverty when faced with aggressive enforcement. Her experience of a bailiff visit reflects a similar experience to other case studies listed below.

Jessica's story

Jessica is living with her parents who are shielding due to asthma and other health conditions. She was sent standard letters with no mention of Covid-19 measures to ensure a safe visit, and a bailiff has visited the property on several occasions, since the ban on visits was lifted. The bailiff threatened to enter the property and take control of the client's parents' property unless she could prove they were not her possessions. The client raised a complaint to the Head Office about the language used by the bailiff on the phone. The bailiff was informed about the substance of the complaint and subsequently rang the client back to accuse her of making up lies about him and continued to make personal and aggressive insults.

What should the Government do?

We welcome the recent legislation to place a ban on bailiffs entering residential properties in England for the purpose of taking control of goods during the national lockdown. However, the Government stated in March that it was necessary to suspend bailiff visits because pressure from creditors would create the risk of poor practice "which could endanger the health of both enforcement agents and debtors." It is not clear why this risk has not required suspension of visits (not just entry) during the second national lockdown.

As it stands, when we return to a tiered system visits will be allowed in all areas with a voluntary agreement that bailiffs will not enter premises in areas under tier 2 and 3 restrictions. As we have set out here, we have seen issues with how this voluntary approach translates into practice and we are concerned about compliance in the absence of clear regulations banning bailiff visits. In the midst of a public health emergency that has seen millions of households face mounting financial difficulties, the inability of guidance to set and uphold necessary standards of bailiff conduct further escalates the risks of harm to individuals.

1. The government must act urgently to rectify this situation by legislating to suspend bailiff visits during national lockdowns in England, and - when reverting to a regional system - in local authorities under tier 2 and 3 restrictions;
2. In the medium term the government needs to improve oversight of the sector which has such a major impact on the way people in financial difficulty are treated. Government should act swiftly to establish an independent regulator for bailiffs as a long term solution to misconduct.

For further information, please contact Ed McDonagh on Ed.McDonagh@stepchange.org

Appendix 1 - Selection of case studies from advisers since bailiff visits began again on 24 August 2020

Organisation	Example
National Debtline	The client was contacted by a bailiff in mid-November, after the national lockdown in England began. The bailiff said that they were going to get a locksmith and break into her property to take control of goods. The debt is in the name of her ex-partner who does not live with her anymore. She can prove this is the case and has been sending any letters addressed to him back. However, the bailiff has said that this doesn't matter and that she will have to prove in court that the goods they will take are hers. The client has mental health issues and has young children in the property as well.
National Debtline	Client was visited by a bailiff after the national lockdown in England began. The bailiff wanted the debt in full and was unwilling to set up a Payment plan. The bailiff has been threatening to bring a locksmith and to break into the property and has not been understanding of the client's situation, despite her explaining she has only recently started a new job and will not get paid until next week. When the client mentioned she had anxiety, the bailiff agreed to take a lower amount, but this was still unaffordable for her as she had to give him all she had in her bank account.
StepChange	Client has been out of work since March and was in receipt of Personal Independence Payment due to mental health issues. Bailiff left a voicemail on the client's phone advising they would visit later. They have not written to the client to do any vulnerability checks or provide any prior notice of the visit. This has caused the client a lot of stress.
StepChange	The client did not receive a 30 day warning letter or phone call prior to the visit to establish vulnerability. When client called the bailiffs back there was no discussion regarding the client's vulnerability who is suffering from complications from her pregnancy. Bailiffs demanded £1,600 with no discussion of repayment options and advised that they would be taking goods in 24 hours.
StepChange	Client received a call at 8.15pm (it was starting to get dark) to tell her they were sat outside in their car and wanted their money.
National Debtline	Client is due to be visited by bailiff tomorrow for council issued penalty charge notices. They've already visited him in the last few days, and have threatened use of a locksmith (despite never having entered previously).

Citizens Advice	Client visited by bailiffs collecting council tax arrears. She said she only received a letter on the day of the visit, not 30 days before. She contacted the council to ask what she should do and they told her to make a payment arrangement with the bailiffs. She tried to make an arrangement with the bailiff who visited the property and was told they'd only accept the full £900 debt upfront and that it had to be paid the next day. The bailiff told her that if she didn't pay they could enter her property to repossess goods the next day and that she didn't need to be present for this. Client was extremely worried about bailiffs entering her property and taking her goods whilst she was at work. She'd tried to make a payment plan directly with the council but was told it had to be with the bailiffs. She couldn't afford to pay £900 at once and asked if she could pay half now and the rest when she gets paid later in the month. The bailiff refused and asked if she knew anyone who could help her pay the debt now - she didn't know anyone who would be able to lend her that kind of money. Client was worried about contacting the bailiff again to ask for time to get debt advice as she didn't think he would listen. She also tried contacting the bailiff company but couldn't get through.
National Debtline	Client received a letter this morning stating that there will be a bailiff visiting their property with the intention of entering to remove goods tomorrow morning at 7am. There have been no prior visits or Control of Goods Agreement entered into.
StepChange	Both clients are vulnerable and have three children. Bailiffs have told the client that they can force entry into their home to remove goods for a parking fine because they had previously been in the house for a magistrates' court fine. The clients advised the bailiffs of their vulnerability.
StepChange	Bailiff has threatened to phone the Mobility Scheme to get the client's mobility car taken and has said that he has the right to enter the property where the client's son is disabled and self-isolating. Bailiff has also not given clear information regarding his powers or individual's rights regarding the enforcement action.
National Debtline	A vulnerable client received a call from a third party regarding a penalty charge notice for her partner that a bailiff is dealing with it. Client did not receive any notice of a visit from the bailiff. The bailiff was very aggressive towards the client. They didn't enter the property but as a result of the commotion during the visit they woke up the client's youngest son. The bailiff has threatened to take control of the client's vehicle in two days' time.
National Debtline	Bailiffs visited the client's property and threatened to return tomorrow to force entry to the property and remove goods for a council tax debt. The client's daughter has severe mental health issues and has previously been in inpatient psychiatric care. The council are aware of this, though the client had not previously informed the bailiff firm. Client previously had a payment arrangement with them, and thinks she might have missed or been late with a payment because she had to stop work to care for her daughter who was suicidal. She had continued with the payments as much as she could but is now only receiving universal credit.

National Debtline	Client is being pursued by two sets of bailiffs for a magistrates' court fine. She has been able to set up a payment plan with one but the other has been threatening to return with a locksmith and break into the property. This bailiff put his foot in the door to stop it being closed while not wearing a face mask.
CPAG	Client is living with parents who are shielding due to asthma and other health conditions. She was sent standard letters with no mention of COVID-19 measures to ensure a safe visit, and a bailiff has visited the property on several occasions. The bailiff threatened to enter the property and take control of the client's parents' property unless she could prove they were not her possessions. The client raised a complaint to the Head Office about the language used by the EA on the phone. The EA was informed about the substance of the complaint and subsequently rang the client back to accuse her of making up lies about him and continued to make personal and aggressive insults.
Citizens Advice	The client, who is vulnerable because of mental health issues, was aggressively pursued for immediate and full settlement of a council tax debt because of missing payments during the lockdown. The enforcement agent dealing with the debt refused to reinstate an agreed payment plan because the client was just one day over the deadline to contact them to have the plan reinstated. They ignored evidence of vulnerability, and an explanation that the client could not afford to pay all the arrears in one go because they had lost household income during lockdown. They even ignored evidence that an employee from the enforcement agent had advised the client that they were not taking payments during lockdown. This caused a large amount of distress to the client, who was worried that they could not afford to pay so much money at once.
National Debtline	Client is being pursued for a penalty charge notice (PCN). She first heard about this when a bailiff put a notice through her door when she was out. The notice stated that the bailiff was going to return in the evening or over the weekend. The client is vulnerable and has vulnerable people living with her. When she explained this to the bailiff, he was unsympathetic to her. The client may have had notices regarding her PCN before it got to this stage but she is unsure. The client found the bailiff unhelpful and rude.
Business Debtline	The client was visited by a bailiff seeking to recover debts owed by a limited company. The bailiff walked straight into the clients home as the doors were unlocked, to try and seize goods.
Business Debtline	Client was visited by a bailiff who attended the property at 6:20am in the morning. The client's 15 year old son was due to be returning from staying with his Dad that morning so the front door was unlocked. The bailiff let themselves in without warning, leaving the client panicked and worried about how her child would react if they saw the bailiff. The bailiff made a list of goods and threatened the client by saying that if she does not pay they will freeze her bank account and take money from there without her permission.

