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Debt Advice Handbook 15th edition

Description

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?

It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?

The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?

Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

Properties

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Civil recovery

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In recent years, many people have been threatened with county court action by civil recovery agents for the recovery of losses allegedly incurred by retailers, following allegations either of theft by employees or shoplifting by customers – in many cases involving goods of relatively low value. Although in some cases the person has been charged and prosecuted for a criminal offence, in many cases there has been no police involvement and, in most shoplifting cases, the goods have been recovered undamaged and able to be resold by the retailer.

The legal position

As well as being a criminal offence, shoplifting is a ‘tort’ (civil wrong).

It is a basic principle of the law of tort that a creditor can only take action if it can prove that the client’s wrongful conduct caused the damage for which compensation is claimed.

Special features

Civil recovery agents typically demand damages for ‘wrongful actions’ and threaten to issue proceedings to recover:

- the value of goods stolen but not recovered; *and/or*
- staff time investigating and/or dealing with the incident; *and/or*
- administration costs; *and/or*
- apportioned amounts for general security and surveillance costs.

Claims for time, administration and a proportion of security costs are often based on a sliding scale of fixed costs, with the amount claimed rising in direct proportion to the value of the goods involved.

In one case, a circuit judge decided that there are recoverable amounts for: ¹

- the loss of value and/or profit of items not recovered from shoplifters;
- specific, direct costs incurred in apprehending shoplifters;
- physical damage caused by shoplifters in the course of the theft or their apprehension;
- personal injury caused by a shoplifter to a security person;
- diversion of a member of staff, such as a cashier, from their usual duties to chase and capture shoplifters.

The judge said that to successfully claim for staff time, the retailer must establish that the staff were 'significantly diverted from their usual activities', there was 'significant disruption to its business' or there was loss of revenue generation. However, when observing, apprehending and dealing with shoplifters, security staff are, in fact, not diverted from their usual activities, but actively engaged in them and doing exactly what the retailer paid them to do. In these circumstances, no claim for time can be made.

The judge also said that claims for administration and apportioned security costs cannot be made unless the retailer can show that they were attributable to the activities of the shoplifter. No claim can be made if the amount spent by the retailer would have been the same regardless of whether the shoplifter had stayed at home or shoplifted at another retailer's premises.

¹ *A Retailer v Ms B and Ms K*, Oxford County Court, 9 May 2012. See also R Dunstan and G Skipwith, '(Un)civil recovery', *Adviser* 142.

Checklist for action

Advisers should take the following action.

- Check liability, including the damage claimed by the retailer.
- If the retailer has taken county court action, see Chapter 11. Although these are 'small claims', representation at any hearing is advisable (see here).
- If the client chooses not to challenge liability, assist them to choose a strategy from Chapter 9, because this is a non-priority debt.

Fines

The legal position

Special features

Checklist for action

Fines are the most common form of punishment imposed by the magistrates' court or Crown Court for criminal offences.

The legal position

Magistrates' courts can impose fines for criminal offences by a wide variety of legislation. They must consider the means of the defendant 'as far as they are known to the court'. ¹ Maximum amounts are laid down in regulations for each offence.

¹ s35 MCA 1980

Special features

Fines should be distinguished from costs or compensation, which are often also awarded against defendants in criminal actions.

Advisers should consider emergency action if payment of a fine is difficult for a client. **This is a priority debt** (see Chapter 8). Court procedures and enforcement are explained in Chapter 14.

Checklist for action

Advisers should take the following action.

- Consider whether emergency action is necessary (see Chapter 8).
- Check liability, including for any associated enforcement agent's (bailiff's) charges.
- Assist the client to choose a strategy from Chapter 8, as **this is a priority debt**.

Private parking charges

The legal position

Special features

Checklist for action

Many private landowners, including retail parks and supermarkets, allow customer parking on their land subject to terms and conditions and impose charges on motorists who contravene them. Many landowners employ and authorise agents to manage parking and enforce terms and conditions on the land (known as 'car park operators'). It is illegal to clamp or remove a vehicle without lawful authority – eg, by the police, a government agency or local authority. ¹ If a client has a penalty charge notice from the local authority, see here.

Private landowners and car park operators cannot lawfully clamp or remove vehicles. Statutory byelaws relating to airports, ports and some railway car parks may lawfully authorise clamping and removing vehicles.

In most cases, private landowners and car park operators can only enforce parking conditions through:

- affixing a parking ticket to the vehicle containing details of the contravention, how much is due, any discount for prompt payment, how and to whom payment should be made, and details of the dispute resolution process; *or*
- giving the ticket to the driver personally; *or*
- sending a ticket to the vehicle's registered keeper.

¹ s54 Protection of Freedoms Act 2012

The legal position

Section 56 and Schedule 4 of the Protection of Freedoms Act 2012 allow the landowner or the car park operator to pursue a vehicle's registered keeper for unpaid parking charges if they either refuse or cannot identify the driver at the time the charge was incurred. However, the registered keeper cannot be held liable if they identify the driver of the vehicle at the time. If the registered keeper provides evidence which is acceptable to the landowner or car park operator (or, in the event of an appeal, to the adjudicator or the court) that the vehicle was stolen at the time of the parking contravention, the registered keeper cannot be held liable.

Special features

The registered keeper is only liable for unpaid parking charges if the driver:

- entered into a contract to park the vehicle on private land and has contravened its terms and conditions; *or*

- trespassed by parking on private land where signs showed charges for unauthorised parking.

A driver who parks in a car park with clear signage setting out the terms and conditions of the parking facility is deemed to have accepted these conditions and entered into a contract. The terms and conditions must be sufficiently displayed throughout the car park, particularly at all entrances. The charges payable for failing to comply must be clearly stated – eg, for not displaying a valid permit. The terms and conditions must not be unfair and the penalty charges payable should be proportionate. Caselaw indicates that the courts consider charges of up to £100 reasonable. ¹

If the landowner or car park operator is a member of an accredited trade association (the British Parking Association or the International Parking Community), it can ask the Driver and Licensing Vehicle Agency (DVLA) for details of the registered keeper on the grounds it has a 'reasonable cause' to seek that information to enforce unpaid parking charges. ² If a parking ticket was fixed to the vehicle at the time of the contravention or given to the driver, the landowner or car park operator must wait 28 days before seeking details of the registered keeper from the DVLA if there is no response to the parking ticket. If the contravention is detected remotely (eg, by cameras), the landowner or car park operator can apply immediately to the DVLA for the registered keeper's details.

If a request is made by a body that is not a member of either of the above trade associations, the DVLA decides whether there is a 'reasonable cause' on a case-by-case basis.

Once the landowner or car park operator has the registered keeper's details, it sends a notice to them (known as a Notice of Parking Charges (NoPC) to distinguish them from the penalty charge notices issued by local authorities) for either payment or the driver's details so it can pursue the unpaid parking charge. The registered keeper has 28 days from receipt of the notice to provide the driver's details, pay the parking charge or appeal.

If the registered keeper fails to do any of these things, the landowner or car park operator may begin proceedings in the county court to recover the unpaid parking charge from them. If the registered keeper provides the driver's details, the landowner or car park operator must pursue the driver since the registered keeper is no longer liable. Such proceedings may include a claim for a 'reasonable sum' not exceeding £70 for debt recovery fees. The recoverability of such fees has been the subject of both successful and unsuccessful challenges in the county court, but none of these cases have currently reached the higher courts, so it remains a grey area. There seems to be no reason why the pre-action protocol for debt claims should not apply to proceedings for recovery of an unpaid parking charge due under a deemed contract. On the other hand, where the client was charged for being a trespasser, the pre-action conduct practice direction would apply instead (see here).

In the case of hire vehicles, the hire company must provide details of its contract with the hirer

(which invariably makes the hirer liable for any parking charges) to the landowner or car park operator within 28 days of receiving the notice to avoid liability.

Parking tickets issued by members of a trade association must contain details of the arrangements for the resolution of disputes or complaints. Representations must be made in the first instance to the landowner or car park operator, who may decide to cancel the ticket, reduce the charges or reject the representations. If the registered keeper is not satisfied with the response, the landowner or car park operator must offer them access to an adjudicator at the Independent Appeals Service. The appeal must be submitted within 28 days of the notice of rejection (this time limit can be extended in exceptional circumstances). This process is free to the registered keeper. The whole process can be conducted online (although there are facilities for appeals to be conducted on paper by post). If the registered keeper's appeal is successful, the landowner or car park operator must cancel the parking ticket.

Landowners or car park operators who are not members of an accredited trade association are not required to have an appeals process, so any disputes that cannot be resolved informally must be dealt with in the county court.

The Parking (Code of Practice) Act 2019 provides for a mandatory single code of practice for all private car park operators, including a new independent appeals service. The draft code was published in February 2022, but was withdrawn in June 2022 due to a legal challenge by parking operators to the levels of charges and additional fees permitted and is no longer being proceeded with. Instead, The Private Parking Sector Single Code of Practice (v.1) (created jointly by the British Parking Association and International Parking Community and available at: tinyurl.com/4c2db8y8) came into force on 1 October 2024 and is largely based on the Government's draft code.

1 *Parking Eye v Beavis* [2015] UKSC 67; *Vehicle Control Services v Mackie* [2017] SC DUN 24 (decision of the Scottish Sheriff Court in Dundee)

2 Reg 27(1)(e) Road Vehicles (Registration and Licensing) Regulations 2002 No.2742

Checklist for action

Advisers should take the following action.

- Check whether the landowner or car park operator is a member of an accredited trade association and, if so, check for compliance with its code of practice.
- Check whether the client has any grounds to make representations or to appeal (see

popla.co.uk).

- Check if a breathing space application would be appropriate (see here).
- Otherwise, assist the client to choose a strategy from Chapter 9, as this is a non-priority debt.

Traffic penalties

The legal position

Special features

Checklist for action

Many traffic penalties, particularly parking charges and other fixed penalty notices such as bus lane contraventions and the London congestion charge, are recovered by local authorities using the county court under Part 75 of the Civil Procedure Rules.

Note: if the client has received a parking ticket or demand for payment from a private car park operator, see here.

The legal position

The current legislation is the Traffic Management Act 2004, which came into force on 30 March 2008. The enforcement authority (either the local authority or Transport for London) issues a penalty charge notice which gives the registered owner 28 days to pay. **Note:** generally, the registered keeper is responsible for paying any penalty charge, regardless of who was driving the vehicle at the time, although a prior change of ownership would be a defence so long as the DVLA confirms this. If payment is made within 14 days, the amount due is reduced by 50 per cent.

Traffic penalties (usually imposed under the Road Traffic Regulation Act 1984) registered in the magistrates' court for enforcement as fines are priority debts (see here). Penalty charges recoverable through the Traffic Enforcement Centre in Northampton, outlined below, are non-priority debts. ¹

¹ Part 75 CPR

Special features

The statutory provisions for challenging traffic penalties are complex. There is valuable information on the London Tribunals website at londontribunals.gov.uk and on the Traffic Penalty Tribunal website at trafficpenaltytribunal.gov.uk.

If payment is not made within 28 days, the enforcement authority issues a 'notice to owner' and the client has a further 28 days to pay the full amount or make representations on specified grounds. The enforcement authority has 56 days in which to respond. If the client's representations are rejected, they have a further 28 days to appeal. The grounds for appeal are the same as the grounds for representations. If the appeal is rejected (or any recommendation to the enforcement authority to withdraw the penalty charge notice is not accepted), the client has a further 28 days to pay. If the appeal is withdrawn before a decision is made, the time limit is 14 days.

If the amount due is unpaid, the penalty is increased by 50 per cent and a charge certificate is issued. If the amount due is not paid within 14 days, the enforcement authority can register the charge certificate for enforcement in the county court. The authority can then collect the debt as if it were a county court judgment but, as it is not required to obtain a county court judgment to enforce the debt, the pre-action protocol for debt claims does *not* apply (see here).

Once the penalty charge has been registered in the county court, it is passed to enforcement agents (bailiffs) for collection by taking control of goods (see Chapter 14). If the enforcement agent cannot collect the debt, the local authority can then use other county court enforcement methods. In practice, local authorities appear not to do so, preferring to leave the warrant with the enforcement agents for the full 12 months (although the court can extend this period).

A traffic penalty enforced through the county court does not have the sanction of imprisonment for non-payment, but the county court has no power to suspend enforcement agent action (see here), nor can it make an instalment order to prevent enforcement action.

If the client claims not to be liable to pay the penalty on one of the specified grounds:

- the penalty charge has been paid; *or*
- the client did not receive the notice to owner; *or*
- the client made representations to the local authority but has not received a response; *or*
- the client appealed against the local authority's decision to reject their representations but has had no response from the adjudicator,

they should complete the form of statutory declaration (PE3) or the witness statement (TE9) which accompanies the court order registering the charge. This must be returned to the court before the end of the 21-day period beginning with the date the order was served. The court can extend this time limit if it considers it reasonable. The court will revoke the registration of the penalty charge (although the local authority can begin the process again) and any warrant of control is automatically cancelled. The local authority/enforcement agent should cancel any fees charged. 1

There are two potential liabilities for having no **road tax**. One is being the registered keeper of an unlicensed vehicle (criminal) and the other is late renewal of the licence (civil). Both arise under the Vehicle Excise and Registration Act 1994. The civil penalty is imposed under section 7A and the criminal offence under section 31A.

The section 31A penalty can be registered in the magistrates' court for enforcement. It is then recoverable as if payable under a conviction and is treated as a fine (see Chapter 15).

The £80 penalty under section 7A is recoverable as a debt due to the Crown – ie, by civil proceedings (see Chapters 11 and 12).

In certain circumstances, the client can complain to the Local Government and Social Care Ombudsman (in England) or the Public Services Ombudsman (in Wales) (eg, if there was a failure to consider compelling reasons for cancelling the penalty charge), but they are usually expected to use the appeal procedure where appropriate, unless there are exceptional reasons not to do so. ²

The ombudsman can consider a complaint about the reasonableness of any action of enforcement agents acting for the local authority, but does not usually consider the level of bailiffs' costs. ³

¹ r70.8 CPR. See also 'Complaint against Harrow LBC' (*Adviser* 181 abstracts) and Complaint against Bury MBC, Local Government and Social Care Ombudsman, 16 00 1003.

² See P Madge, 'No waiting', *Adviser* 68, and T Redmond, 'Parking complaints', *Adviser* 108

³ Complaint against Redbridge London Borough Council (*Adviser* 162 abstracts). See also lgo.org.uk/make-a-complaint/fact-sheets/transport-and-highways/parking-enforcement.

Checklist for action

Advisers should take the following action.

- Consider whether emergency action is necessary (see Chapter 8).
- Check if a breathing space application would be appropriate (see here).
- Check liability for the debt and any associated enforcement agent's (bailiff's) charges. Consider whether there are any grounds for making representations and/or a complaint.
- Assist the client to choose a strategy from Chapter 9, as this is a non-priority debt.

Please be aware that welfare rights law and guidance change frequently. This page was printed on Friday, October 17, 2025 and may go out of date.