





## The content

# 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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## Regulation and complaints

If a client is unhappy about the conduct of an enforcement agent (bailiff), they can threaten or take court action, or make a complaint. **Note:** many enforcement agents now have body-worn video cameras that record all visits to premises. Ask the enforcement agency to check the footage and request a copy to view yourself. This may resolve a dispute without any further action being necessary. If an enforcement agency operates a policy setting out how it will implement the use of body-worn video, the agency will be expected to ensure that its staff then act in accordance with that policy and may be sanctioned if they fail to do so. <sup>1</sup>

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<sup>1</sup> King's Lynn & West Norfolk Council (19 014 987)

## Taking court action

In the past, if a warrant was invalid or there had been a procedural error, threatening county court action could help a client negotiate or have the enforcement process withdrawn. However, it is no longer possible to initiate a small claim on the basis that the enforcement agent's misconduct constituted a trespass and so invalidates the entire enforcement process and associated costs. Instead, a client can apply on Form N244 to the appropriate court for an order awarding damages or the return of goods. <sup>1</sup> Given that the application is not heard under the small claims procedure, you should be aware that clients are at risk of having to pay costs if their application is unsuccessful.

You should always check whether any goods taken into control are exempt or belong to a third party (see here and here).

The fact that a person has settled a debt to stop further bailiff action does not mean that they have thereby waived any grievance over the conduct of the case. A debtor is still entitled to complain and it is the duty of the enforcement agent, and of the creditor using that enforcement agent and liable for their conduct, to investigate thoroughly. <sup>2</sup>

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<sup>1</sup> Sch 12 para 66 TCEA 2007

<sup>2</sup> LB Waltham Forest (19 009 473)

## Complaining to the enforcement agency

If there is a problem, always first complain to the enforcement agency (bailiff company) itself. Find out who the complaints manager is and write to them directly. Contacting the individual enforcement agent is rarely useful, other than to agree a 'stay' on recovery.

Enforcement agencies have a duty to deal with complaints promptly under their trade body complaints procedures and under *Taking Control of Goods: national standards*. In addition, if they are acting for a public authority, such as a local authority or government department, the enforcement agents should also be treated as 'public authorities', with all the duties this implies. For example, they should give reasons for their decisions, so that if they refuse to treat a person as vulnerable, they should explain why.

## Complaining to creditors

The term 'enforcement agents' emphasises the legal fact that they act as an 'agent' for a creditor, exercising the creditor's enforcement powers on their behalf. Creditors, such as local authorities, are therefore responsible for what their agents do and should investigate complaints against them seriously.

The fact that a case has been passed to enforcement agents does not divest the creditor of overall responsibility for the case. The creditor is liable for the enforcement agents' actions and it is also still expected to monitor cases and to deal with representations made directly to it rather than to the agent. <sup>1</sup> For example, in a case where a debtor complained of an enforcement agent's threatening and bullying manner, the Local Government and Social Care Ombudsman (LGSCO) found against the local authority, which issued an apology and paid compensation of £100. This was done despite the fact that there was no hard evidence of what the enforcement agent had actually said; rather, the award was made because of the way the authority had handled the case. It had not followed its own complaints procedure and had, moreover, tried to direct the debtor to the Traffic Enforcement Centre to resolve his complaint over the enforcement agent's alleged actions (a wholly inappropriate and irrelevant remedy). The LGSCO nonetheless reminded the council that it 'maintains responsibility for the actions of the agents working on its behalf'. <sup>2</sup>

Although it is always worthwhile contacting the enforcement agents to complain about their actions, it may be unproductive if the point at issue is whether they should have been instructed at all or if the terms of repayment set by the contract with the creditor are impossible for the client to meet. For instance, council tax contracts often require the enforcement agent to collect within three months. In such cases, the agents are bound by their contract with the creditor to enforce the warrant issued to them, and other than asking them to 'stay' the action while negotiations are carried out, little else may be possible.

*Taking Control of Goods: national standards* requires creditors to act proportionately when

using enforcement agents. This includes their decision to use taking control of goods as an enforcement measure and what terms of repayment they consider to be acceptable. The guidance emphasises that enforcement agents act as creditors' agents and that a creditor is legally liable for the agents. Creditors are also required to operate clear controls and complaints procedures. They should therefore always be notified about wrongful acts by their enforcement agents, because this may help bring pressure to bear in individual cases and may lead to improved monitoring more generally. Direct contact with a creditor is particularly important if the personal circumstances of the client are at issue. A complaint may be made about either the incorrect use of legal powers or a failure to follow a code of practice.

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- 1 Plymouth City Council (18 013 949); Liverpool City Council (18 010 221)
  - 2 Cumbria CC (20 011 503)

## Complaining to a professional organisation

If a complaint to an enforcement agency is not dealt with satisfactorily, a complaint could be made to the enforcement agents' professional or trade organisation – the High Court Enforcement Officers Association and the Civil Enforcement Association (see Appendix 1). This can be particularly effective in cases of poor administration and customer care by enforcement agencies. However, when making a complaint, remember that these bodies exist to promote their members' interests and are not entirely independent or impartial.

The complaints procedures can be found on the associations' websites.

Both organisations also have disciplinary codes.

Serious breaches of professional ethics or of procedure may lead to an investigation and a penalty being imposed on the enforcement agent, such as being excluded from membership and, as a result, from the profession (although this is rare).

A complaint could also result in at least an apology and perhaps compensation, such as a refund of fees.

The Civil Enforcement Association also has a code of practice regulating members' business practices, which may be of some assistance.

## Complaining to the ombudsman

Most creditors for whom enforcement agents act are public sector bodies and are subject to

supervision by an ombudsman. If a creditor's own complaints procedure fails to produce a satisfactory outcome for the client, a complaint can be made to the LGSCO, or Public Services Ombudsman for Wales, the Parliamentary and Health Service Ombudsman or to the Adjudicator's Office (about HMRC).

In the case of local authorities, before a complaint is made to the ombudsman, the case can be taken up by the local authority's monitoring officer. This person is usually the chief legal officer and it is their duty to consider whether there has been maladministration or whether the local authority has acted unlawfully. It can sometimes be helpful to refer a case to the monitoring officer if the department in question is unwilling to intervene or negotiate, but you believe its enforcement agents have acted unlawfully. The starting point for damages awards from the ombudsman seems to be from between £100 and £200 for an incident such as a wrongful clamping or a mistaken visit or notice. <sup>1</sup> In one case in which a computer fault led to two enforcement agent visits to a person's premises, the agents refunded the enforcement fee plus £503 compensation and the council cancelled a further liability of £189. **Note:** the LGSCO recently confirmed that it has no power to stop an enforcement agent practising and that the proper venue for such proceedings is by means of a certification complaint in the relevant county court (see here). <sup>2</sup>

There are certain cases in which the ombudsman will not intervene. For example, if a person challenges a penalty charge notice, they will be directed to do that through the appropriate tribunals; if a person alleges that the enforcement agent damaged their car during clamping or removal (for example), that should be pursued by means of a county court claim for damages rather than an ombudsman complaint. <sup>3</sup>

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<sup>1</sup> Transport for London (19 019 769); Sandwell MBC (19 015 543); Calderdale MBC (20 003 079); Transport for London (20 006 412); LB Ealing (20 003 221)

<sup>2</sup> Nottingham City Council (20 003 520)

<sup>3</sup> LB Brent (20 004 923)

## Court proceedings

If a complaint has been unsuccessful, court proceedings can be initiated against the enforcement agents to recover a client's goods or obtain financial compensation. Because of the risk of costs linked to these claims, the most appropriate form of court action for many clients may be to complain against the enforcement agent's county court certificate. This can be done if the enforcement agent's conduct has indicated that they are not a 'fit and proper person' to hold a

certificate or do not have an adequate knowledge of the law. <sup>1</sup> The client should apply to the court on a simple complaint form (Form EAC2). There is no fee and the client is not liable for any costs, unless the judge thinks that their grievance was unfounded and an 'abuse of court process'. <sup>2</sup>

**Note:** although High Court enforcement officer staff may hold county court certificates, the High Court enforcement officers in charge of the company do not. They are authorised by the Lord Chancellor and there is no independent judicial oversight of the conduct of enforcement officers comparable to that in certification.

Even though High Court enforcement officers are authorised to act by the Lord Chancellor and other enforcement agents hold certificates from county courts, in the opinion of the Court of Appeal, these enforcement officers should all be regarded as 'officers of the court' and will be held to the high standards that this implies. In a 2020 judgment, the judges warned that the courts will not permit enforcement officers to act in a way that, although lawful and in accordance with enforceable rights, do not accord with the standards that society expects to govern the conduct of the court or its officers. The court does not permit its officers to act in a way that would be clearly wrong or improper for the court itself to act. That includes acting unfairly or improperly and taking steps that disrupt the orderly process of enforcement or that undermine the restrained and proportionate approach to the collection of debts which the legislation aims to encourage. <sup>3</sup>

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<sup>1</sup> The Certification of Enforcement Agents Regulations 2014 No.421

<sup>2</sup> r84.20 CPR

<sup>3</sup> *365 Business Finance Ltd v Bellagio Hospitality & T Handa* [2020] EWCA Civ 588

## Regulation and complaints

In the absence of a statutory regulator for the enforcement sector, the Civil Enforcement Association has established the Enforcement Conduct Board to perform this role as a voluntary body. It is presently formulating its business plan, collecting data, developing ideas for a new and binding national code of practice and developing an accreditation scheme for enforcement agencies. These measures are likely to be implemented from 2024 onwards.

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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.

