





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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Civil court judgments and orders

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Road traffic penalties

An adviser may encounter three different types of order being enforced by taking control of goods:

- High Court judgments (see here);
- county court judgments (see here);
- road traffic penalties (see here).

High Court judgments

The High Court uses **High Court enforcement agents** (bailiffs) to enforce the following judgments by taking control of and selling goods:

- High Court judgments of any amount;
- county court judgments over £5,000 for debts that have not arisen from an agreement regulated by the Consumer Credit Act 1974 (see here);
- county court judgments between £600 and £5,000 for debts that have not arisen from an agreement regulated by the Consumer Credit Act 1974 if the creditor chooses to transfer them to the High Court for enforcement.

High Court enforcement officers are private enforcement agents. They have similar powers to county court enforcement agents, but are preferred by some creditors because, being private, they are considered more effective. They are authorised by the Lord Chancellor, rather than holding a county court certificate like other private enforcement agents. However, their staff are probably also certificated enforcement agents.

County court judgments

HM Courts and Tribunals Service (HMCTS) employs **county court enforcement agents** in each county court hearing centre, responsible for enforcing all warrants in that court's area. The agent may enforce the following judgments by taking control of and selling goods:

- all judgments based on agreements regulated by the Consumer Credit Act 1974;
- all judgments under £600;
- any other judgment up to £5,000, unless the creditor chooses to transfer it to the High Court for enforcement.

Road traffic penalties

Local authorities may use **private enforcement agents** to enforce unpaid orders for road traffic penalties – eg, parking charges, congestion charges and traffic violations. Any sum payable is recoverable by a warrant of control as if it were payable under a county court order and is also regulated by the Civil Procedure Rules. ¹

¹ Part 75 CPR

Commercial rent arrears

Private landlords cannot use enforcement agents to take control of goods for rent arrears in residential properties. They must use repossession proceedings (see Chapter 13).

If there are rent arrears for *commercial* premises (eg, shops, offices and factories), landlords can initiate taking control of goods without preliminary court action. This process is called 'commercial rent arrears recovery'.

The following principles apply.

- The exact nature of the business tenancy is not important. However, the lease between the landlord and tenant must be in writing.
- Only commercial premises are covered. If any residential accommodation is attached, such as a flat over a shop, the commercial rent arrears recovery process cannot be used and other remedies must be sought.
- Only rent in the narrow sense of the term may be recovered in this way. If the lease also makes provision for payment of service charges, insurance and other costs and these fall into arrears, these must be enforced by other means, such as forfeiture proceedings.
- The commercial rent arrears recovery process only applies to current tenancies. If the lease has been terminated, the procedure is not available.
- A minimum amount of arrears, equivalent to seven days' rent, must be due before a landlord can instruct enforcement agents. However, as most commercial leases are payable quarterly

or perhaps monthly, this restriction is unlikely to be relevant.

- A client can set off against their rent arrears any amounts owed by the landlord for breach of the lease (such as disrepair) that have been the subject of a successful claim for damages. If this is the case, they can apply to a court to cancel, or delay, commercial rent arrears recovery.

Provided the above conditions are met, the landlord can issue a 'warrant of control' (see here and here) to an enforcement agent. Thereafter, the process is identical to all the other debts described in this chapter.

Other debts

Local taxes

Debts to HMRC

Magistrates' court orders

Child support maintenance

Many public bodies have a statutory power to take control of goods if money is owed to them.

Local taxes

Both council tax and business rates are enforceable by taking control of and selling goods. **Local authority officers** or **private enforcement agents** are used, provided they are certificated.

Debts to HMRC

HMRC can take control of goods to collect any unpaid taxes (both income tax and indirect taxes such as VAT), class 1 and 4 national insurance (NI) contributions and overpayments of tax credits. A **private enforcement agent** may attend, but only to assist and advise.

Magistrates' court orders

Taking control of goods may be used by magistrates' courts as a way of enforcing orders for unpaid civil debts (ie, tax and NI contributions) and damages, as well as compensation orders, costs and fines, including those from the Crown Court, Court of Appeal and Supreme Court. Many courts restrict the use of warrants of control to fines and fixed penalty offences (eg, for driving offences) or to sums under £100 to £150.

Magistrates' courts use either their own **civilian enforcement officers** or firms of **private agents** to collect unpaid fines. These bailiffs are appointed by HMCTS.

Child support maintenance

The Secretary of State for Work and Pensions can take control of goods to collect arrears of child maintenance due to the Child Maintenance Service under a magistrates' court liability order.

Private enforcement agents are used.

The enforcement of child support arrears in this way was challenged by a non-resident parent on two grounds. ¹ He argued that use of agents could prejudice the welfare of the children in his household and that it was a violation of Article 8 of the European Convention on Human Rights (protection of home and family life). The Court of Appeal rejected both his arguments and confirmed that the arrears were an unpaid debt and it was reasonable to seek to enforce its recovery. There was already a charging order against his home and the court decided it was preferable for the family to face the loss of non-essential household items than to face the loss of their home.

1 *Brookes v SSWP and CMEC* [2010] EWCA Civ 420