





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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The powers of enforcement agents (bailiffs) are set out in legislation. ¹ In addition, the Ministry of Justice has published *Taking Control of Goods: national standards* for enforcement agents. This provides minimum standards of business management and best practice in enforcement work, and reinforces and supplements the law. It is an essential tool and reference source for advisers. Copies can be downloaded from gov.uk/government/publications/bailiffs-and-enforcement-agents-national-standards.

The national standards impose a range of duties upon creditors, reminding them that they are responsible for their agents (something that several ombudsman decisions have underlined even more forcefully) and requiring creditors to have systems in place to respond promptly and appropriately when a person is identified as potentially vulnerable or when a payment is received directly from a debtor.

Enforcement agents are expected to observe the highest professional standards. They should not misrepresent their powers, qualifications, capacities, experience or abilities and they should not act in a threatening manner towards debtors and others. They should behave calmly and politely, act with discretion and fairness and should avoid doing anything that might embarrass the debtor. Enforcement agents must observe the Human Rights Act 1998 and the Equality Act 2010 and they should avoid discriminating unfairly on any grounds. They should operate clear

and accessible complaints procedures and, in particular, they should be alert to debtors and other individuals who may potentially be vulnerable (see here).

Enforcement agents are generally under an obligation to maintain strict client confidentiality and to comply with data protection legislation. They should not reveal debtor's details to third parties, even if those persons are also in debt themselves. ²

Although the standards do not include a mechanism for monitoring or enforcing how they are applied, you could raise a failure to comply with them in any complaint (see here).

Some creditors (especially local authorities) may also impose additional restrictions on their enforcement agents and have their own local specific codes of practice that they should follow. If a creditor (especially a local authority) operates some sort of hardship or vulnerability policy or has an anti-poverty strategy, the creditor will be expected to act in accordance with that policy and is very likely to be at fault if it fails to do so. Once the debtor has raised relevant issues, both the creditor and its enforcement agents should consider the information in line with the policy. ³ Long-term health problems or disability do not necessarily mean that a debtor is vulnerable. Debtors will need to show how their conditions affect their ability to pay; equally, though, both the agents and the creditor must show that they gave consideration to these issues and set out reasons for their decisions on the matter. ⁴

Local authorities and bailiffs have been criticised by the ombudsman for failing to keep proper records of interactions with debtors, ⁵ for failing to place an account on hold when this was promised ⁶ and for a creditor failing to tell enforcement agents that a debt had been cleared. ⁷

¹ In particular, Part 3 and Sch 12 TCEA 2007 and TCG Regs

² Lancashire CC (19 015 366)

³ Torbay Council (19 014 581); Cornwall Council (19 011 503)

⁴ Cornwall Council (19 011 503); North Tyneside MBC (19 011 521)

⁵ LB Southwark (21 017 612)

⁶ LB Hackney (21 007 104)

⁷ LB Croydon (21 015 640)

Courts and the enforcement process

Courts now have a more significant role in directing and supervising enforcement conduct than in the past. This applies to all forms of taking control of goods, not just the actions of enforcement

agents enforcing court orders. The High Court oversees enforcement of writs of control, and magistrates' courts supervise aspects of their warrants of control – ie, extending time limits, entry rights and details of sale. Otherwise, the county court regulates the enforcement of all other warrants of control and liability orders - eg, for council tax enforcement.

The Court of Appeal recently expressed the view that all enforcement agents should be viewed as officers of the court and held to a high standard of conduct. Judged on this basis, actions that are legal could be found to fall short of the standard required, perhaps because the action was not fair or completely honest. ¹

¹ *365 Business Finance Ltd v Bellagio Hospitality & T Handa* [2020] EWCA Civ 588

The enforcement notice

Binding the client's goods

Throughout the process of taking control of goods, enforcement agents must serve notices stating what they have done and what it has cost the client. That is designed to ensure greater clarity and openness for clients, and to facilitate payment arrangements by encouraging them to engage more (and sooner) with enforcement agencies. Electronic documents are acceptable. ¹

Documents must be provided at each stage, from the initial enforcement notice to the ultimate stage of removing and selling the goods. The form of many of these notices is prescribed in regulations, and enforcement agents must ensure that the correct document is issued at the correct time and in the correct form. The dating of the prescribed notices is essential, often for their validity and also to help resolve disputes over the timing of actions, and creditors and enforcement agents have been criticised for failing to properly complete documents. ²

An enforcement agent must first serve an enforcement notice on the client, warning that a warrant of control has been issued against them. The notice must be in a prescribed form and must contain specified information. The notice usually gives the client seven clear days' notice of the intended agent's visit.

The notice period of seven 'clear' days does not include the day of service and also excludes any intervening Sundays, bank holidays and public holidays during the period when enforcement action may be taken. However, in certain cases, it is possible for the enforcement agent to apply to a court to reduce the notice period if assets might be vulnerable, but such applications are likely to be rare.

The notice can be served by several means, including by post, fax, email, delivery to the client's premises or by hand. The enforcement agent must protect the debtor's confidentiality when serving notices. They should be placed in sealed envelopes and marked 'private and confidential' when left at shared properties to prevent the disclosure of an individual's financial affairs to third parties. ³ In cases of road traffic enforcement, if the enforcement agents discover that the debtor's address has changed, they must notify the local authority who must apply to the court for the warrant of control to be reissued with the correct address. ⁴ Notices served at incorrect addresses are likely to be invalid, unless the debtor has been deliberately misleading about their address. ⁵

The High Court has confirmed that posting an enforcement notice is perfectly adequate service of the document under section 7 of the Interpretation Act 1978, which confirms addressing, prepaying and posting a letter as proper service. ⁶ In the recovery of business rates, it is appropriate to post documents to the business address – a local authority is not under any obligation to discover or serve at the business owner's home address and there is no duty to email instead of posting. ⁷ Conversely, when a local authority recovering a penalty charge notice discovered that the address they had was out of date, and obtained a newer one, they were found at fault when they neither reissued an enforcement notice by post nor emailed it to the debtor. ⁸

The enforcement agent has 12 months from the date of the enforcement notice to take control of goods. At this initial stage, the client can attempt to negotiate repayments with the enforcement agent, and the legislation encourages bailiffs to come to agreements. If an instalment arrangement is agreed, the 12-month period is renewed every time the client makes a payment and only begins to run from the date of any default. If an enforcement agent fails to take control of goods within the initial year, it is possible to apply to court for a further 12 months' extension, although this is likely to be rare. The Local Government and Social Care Ombudsman (LGSCO) has also confirmed that there must be a 'reasonable period' between an enforcement notice and a visit. ⁹

In cases of commercial rent arrears recovery, a client can apply to court to 'set aside' or postpone the enforcement notice – eg, because of a dispute over the amount demanded as rent or because of allegations that the landlord has not carried out repairs.

Note: notices of enforcement usually run for 12 months from their date of issue to a debtor, and enforcement agents must take control of goods within that period. Regulation 9 of the Taking Control of the Goods Regulations 2013 has been amended to provide that where, on 26 March 2020, there was less than one month remaining on a notice, this time limit will be extended by a period of 12 months. The new regulations further provide for the time limit to be so extended if circumstances arose or will arise at any time when restrictions prevent a person living in the address specified on an enforcement notice from leaving the place in which they usually live

without a reasonable excuse.

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- 1 Doncaster MBC (22 013 320)
 - 2 Thurrock Council (19 014 370)
 - 3 Tamworth BC (19 002 774)
 - 4 Part 75.7 CPR
 - 5 *Miller v CES* (2016)
 - 6 *Bone v Williamson* [2022] EWHC 3158 (KB)
 - 7 Stockport MBC (22 012 539)
 - 8 Buckinghamshire CC (22 001 485)
 - 9 Newcastle CC (22 008 132)

Binding the client's goods

The enforcement notice (or the court warrant or writ issued to the enforcement agents) has the effect of 'binding' all the client's property. This includes all the client's goods, except those that are exempt (see here) or protected (see here). ¹

When goods are 'bound' in this way, they cannot be given or transferred to someone else. If goods are sold when subject to the binding power, the new owner is treated as a co-owner of the goods by the enforcement agent. If goods are transferred or given to someone else, the operation of the warrant is not affected and they can still be taken into control, unless a transfer was made in good faith to someone unaware of the enforcement agent's pending visit.

Note: binding is not the same as taking control of goods. To take control, the enforcement agent must still attend the premises, enter and go through the full process of identifying, listing and securing the goods. The effect of binding is simply to prevent a client wrongfully dispersing their goods after receiving warning of an enforcement agent's visit.

¹ Sch 12 paras 4-6 TCEA 2007. The detailed effect of binding, especially on competing High Court enforcement officers, was examined by the Court of Appeal in *365 Business Finance Ltd v Bellagio Hospitality & T Handa* [2020] EWCA Civ 588.

Entering premises and identifying vulnerability

Time

Place

Method of entry

Identification

As a general rule, enforcement agents acting on lawful instructions can enter premises to take goods. This right of entry also applies to their assistants and to any necessary removal or lifting equipment they bring with them. However, there are rules on how this right should be applied. Due to the coronavirus pandemic, regulation 23 of the Taking Control of Goods Regulations 2013 has been amended to prevent an enforcement agent entering or re-entering premises that include a dwellinghouse at any time when its occupier is prevented by lockdown from leaving the property without a reasonable excuse.

The rules on entering premises also apply when enforcement agents need to re-enter premises – eg, to remove goods or to check that goods are still present.

An enforcement agent *cannot* enter premises, and must not remain on premises, if: ¹

- the debtor is a child under 16 years of age; *or*
- the only people present on the premises are either a child or a ‘vulnerable person’ (including if there are more than one of each or a combination of both).

The legislation does not define who a vulnerable person might be. However, *Taking Control of Goods: national standards* provides some detailed guidance on this, identifying disabled people and people recently bereaved as being among those likely to be vulnerable. ² The enforcement agent must assess the situation they find at the premises and decide whether or not to proceed. Many creditors and enforcement agent companies have guidance and procedures for identifying and responding to potential vulnerability. These must, of course, be observed during the enforcement process, meaning that, if the debtor or a representative flags up a potentially vulnerable debtor, the creditor must take time to respond, probably putting enforcement on hold and asking for more evidence. ³

During the pandemic, creditors and enforcement agents are likely to face criticism and to have their actions challenged and overturned where they fail to respond adequately to claims of vulnerability. If an enforcement agency receives evidence of possible vulnerable status, it must notify the creditor for which it is acting. If enforcement agents are notified of potential vulnerability by debtors they are visiting, they must respond supportively and seek further information and evidence. The same applies to creditors: if they are alerted to the fact that a person is or may be vulnerable, they must make further enquiries and, in particular, consider

whether any adjustments need to be made to their collection procedures under the Equality Act 2010 - eg, by adapting their communications methods to cater for a person's disability. This information must also be passed on to any enforcement agents being used to collect a debt. Creditors can decide whether to continue with enforcement action, and what form of recovery action to use, and when they become aware of a vulnerable debtor they must review the case and decide whether it is appropriate to continue to recover using enforcement agents or whether another means of recovery (such as deduction from earnings) might be more suitable. ⁴

See here for how to refuse an enforcement agent access.

In one 2021 decision by the LGSCO in which a council and its agents were slow to recognise the debtor's status as a vulnerable person because of recent bereavement, the agency fees charged were refunded and an additional sum of £150 was paid in compensation. In another case, of a debtor who was an amputee with mobility problems and who also suffered from heart disease, the LGSCO criticised the council and its agents because they did not take active steps to further investigate the debtor's circumstances nor to consider potential vulnerability when given this information about his health and disability. At the same time, though, the debtor failed to explain what impact his health problems had on his ability to deal with the council or its agent. It will clearly be important for advisers to set out this information clearly and for the council then to properly explore and assess the issues once they have been highlighted. ⁵

If a creditor or agency has a vulnerability policy and fails to follow its own guidelines and processes, it is clearly open to criticism and challenge. In a decision against one city council, the LGSCO was highly critical of the authority when it failed to act upon evidence of mental health problems provided by the debtor, even though its own code of practice required a response. The council was required to send a written apology and to make a payment of £300 to acknowledge the distress and avoidable time and trouble caused to the debtor; the council was also required to review its procedures and guidance to ensure such a situation never arose again. Another local authority was found to have been at fault when it failed to refer a vulnerable individual to its welfare team for advice and assistance, as its own policy had required officers to do.

In a similar case, a London authority was found to be at fault for not following the national standards and for not properly considering the potential vulnerability of a debtor with a severe mental health condition, a failure that had caused him distress. The authority was required to issue an apology in writing, to pay the individual £200 for the distress and inconvenience caused and, thirdly, to share the final decision with the enforcement agency so as to underline to it the importance of referring potentially vulnerable debtors to the council. When the debtor had raised his mental health problem with the agency, he had been told that, as this was the first time the issue had been raised and because a warrant of control had been obtained, the matter 'had gone past the point of dispute'. Instead, he was simply told to make payment to prevent enforcement agents attending his property and incurring further costs. ⁶

Even nine years after the reform of the law, there continues to be a problem with creditors and bailiffs not following their own vulnerability procedures ⁷ and not giving proper consideration to available evidence when deciding whether to issue a warrant or use alternative recovery options, to reissue a warrant to enforce or to agree to instalment payments. ⁸ Bailiff firms have been criticised for not passing details of vulnerable status back to local authorities and for failing to undertake proper assessments of financial circumstances. ⁹

Poor treatment of vulnerable clients has also come in for criticism – eg, a local authority that referred to a debtor ‘making use of your disability’ and bailiffs who were rude and condescending to a person with long Covid. ¹⁰ Another authority was criticised for neither having a vulnerability policy nor adequate procedures for dealing with vulnerable cases in place. ¹¹

1 Reg 23 TCG Regs

2 Ministry of Justice, *Taking Control of Goods: national standards*, April 2014, paras 74, 76 and 77

3 Westminster City Council (15 008 786); Peterborough City Council (17 004 860); Birmingham City Council (17 007 152); Malvern Hills DC (17 015 143); Mendip DC (18 003 107)

4 Sandwell MBC (19 000 625); Medway Council (19 000 773); Birmingham City Council (18 017 200)

5 LB Bromley (19 015 728); North Tyneside MBC (19 011 521)

6 Birmingham City Council (20 008 765); Sandwell MBC (19 021 022); LB Hackney (20 009 293)

7 Greenwich LBC (22 000 823); Brighton and Hove City Council (22 010 676)

8 LB Southwark (21 017 612)

9 Preston City Council (21 018 348); Lancashire CC (21 009 3620; Cherwell DC (21 012 667)

10 Staffordshire Moorlands Council (21 016 196); Worthing BC (21 017 203)

11 LB Redbridge (21 010 664 and 22 013 178)

Time

An enforcement agent can enter premises to search for and take control of goods on any day of the week. In general, an entry should only take place between the hours of 6am and 9pm.

However, these time limits do not apply in the following situations. ¹

- If the goods to be taken into control are on premises that are used (whether wholly or partly) for business purposes and these are only open for business between 9pm and 6am, the enforcement agent may enter and remain on the premises during the business's opening hours.
- Following a specific application from an enforcement agent, the court can make an order authorising an entry to take place outside the permitted hours – eg, if there is a risk that goods may be removed if the enforcement agent's visit were to be delayed.
- If an enforcement agent entered within the permitted hours or in either of the above situations and needs to conclude the process, they can remain on the premises during the prohibited hours if it is 'reasonably necessary' to continue to search for, take control of, inspect or remove goods, and provided they do not remain on the premises for an unreasonable time to accomplish this.

1 Reg 22 TCG Regs

Place

The premises that enforcement agents are entitled to enter are defined as either 'relevant' or 'specified'. The difference between the two is very important because it determines whether or not a court warrant to enter is required in advance.

An agent can treat premises as 'relevant' and can enter them if they reasonably believe that they are the place (or one of the places) where the client usually lives, or carries out a trade or business. 'Premises' are defined as 'any place' and so include vehicles, vessels, aircraft, hovercraft and tents or other movable structures. See here for taking control of goods on highways. Agents can only enforce the recovery of commercial rent arrears at the premises in respect of which rent arrears are outstanding.

In some circumstances, other premises can be entered to search for an indebted client's goods – eg, a garage rented by the client or a property belonging to someone else. However, to do this, the enforcement agent must first apply to the court for a warrant authorising entry. The application will identify a particular address for which the enforcement agent seeks permission to enter; these are the 'specified premises' to which the warrant will apply. Before issuing a warrant, the court must be satisfied that there is reason to believe that there are goods worth taking into control on the premises and that it is reasonable to issue the warrant, taking all the circumstances into account. ¹ However, if an enforcement agent enters or takes control on third-party premises without having the necessary warrant, the actions will be illegal. ² The

same will be the case if a warrant has been issued in respect of certain specified premises, but the enforcement agent then uses it to enter another location. ³ Damages and compensation may be awarded where the wrong premises have been entered. ⁴ Given the costs and delay of such applications, however, it is unlikely that many will be made.

Note: there is no automatic right to take control of goods found on private land – eg, car parks or at third parties' properties. This can only be done with a prior court order. This means that clamping cars, other than on the highway or on a client's own drive, is unlawful.

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- 1 Sch 12 paras 14-15 TCEA 2007
 - 2 *Rooftops South West v Ash Interiors* [2018] EWHC 2798
 - 3 *Midtown Acquisitions LP v Essar Global Fund Ltd* (2016)
 - 4 Middlesbrough BC (17 012 520); Wrexham BC (201504498, 2016)

Method of entry

Enforcement agents can only enter premises by: ¹

- a door or another usual means of entry – eg, a loading bay at business premises; *or*
- any usual means of entry to premises that are not buildings – ie, the normal access route to an aircraft, ship, hovercraft, tent or other moveable structure.

Enforcement agents are prohibited from entering premises by climbing over gates, fences, hedges or walls. Entering through a window or skylight is also illegal.

Entry should generally be 'peaceable'. Unlawful force includes the use of locksmiths, pushing a person out of the way and preventing a door being closed – eg, by placing a foot across the threshold. It is also unlawful for an enforcement agent to enter against a person's will or to refuse to leave a property once clearly asked to do so by the occupier. If enforcement agents are told not to enter a property or are asked to leave a property, they must comply with that instruction. To fail to do so will render them trespassers. They must not misrepresent their powers of entry and must not suggest that they have general powers to force entry to premises against an occupier's will. ²

Enforcement agents can only 'force' entry in three limited situations.

- To enforce magistrates' court fines. However, in practice, HM Courts and Tribunals Service prefers to supervise closely the use of force by the enforcement agents it uses and generally expects to sanction any use of force (which seldom happens).

- To enter business premises to enforce High Court or county court judgments.
- With a specific warrant permitting forced entry issued by a court. Such a 'break-open' warrant is only issued in a small number of restricted situations – either if the agent is attempting to recover a tax debt enforceable under section 127 of the Finance Act 2008 *or* the premises are those to which the goods have been deliberately removed in order to avoid their being taken into control. **3** In *both* cases:
 - the goods must be (or are likely to be) on the premises, must belong to the debtor and must be ones which can be taken into control; *and*
 - the enforcement agent must have explained to the court the likely means of entry, the type and amount of force required and how they propose to leave the premises in a secure state; *and*
 - the court must take into account all the circumstances, including the sum outstanding and the nature of the debt.

If an enforcement agent is taking control of goods on a highway, a court may issue a warrant allowing the use of forced entry only if: **4**

- they are attempting to collect taxes due under section 127 of the Finance Act 2008, or to recover a debt enforceable by one of the writs or warrants listed below; *and*
- they have explained to the court the type and amount of force required to take control of the goods; *and*
- the court has taken into account all the circumstances, including the sum outstanding and the nature of the debt.

Relevant writs and warrants

The writs and warrants that justify a warrant being granted to allow forced entry on a highway are:

–High Court writs of control enforcing sums of money;

–county court warrants of control enforcing sums of money, but not those issued by the Traffic Enforcement Centre to recover a traffic contravention debt;

–a magistrates' court warrant of control issued for a fine under section 76 of the Magistrates' Courts Act 1980;

–High Court writs and county court warrants of delivery and of possession which also confer a power to take control of goods and sell them to recover a sum of money.

Warrants issued by a court to allow forced entry, whether to premises or on a highway, may require the police to assist the enforcement agent. At the time of writing, it is not yet known how the police will react to these new powers.

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- 1 Ministry of Justice, *Taking Control of Goods: national standards*, April 2014, paras 57-61
 - 2 Bristol City Council (18 005 149); Transport for London (18 013 645)
 - 3 Reg 28 TCG Regs
 - 4 Reg 29 TCG Regs

Identification

An enforcement agent must show the client, and any person who appears to be in charge of the premises, evidence of their identity and authority to enter the premises (ie, the enforcement agent's certificate and the warrant, writ or liability order), if they are requested to do so. The enforcement agent must supply the documents, but they need not be in physical form: electronic copies on a laptop or tablet are sufficient. ¹ A request may be made before the enforcement agent enters the premises or at any later time while they are still there. ²

When an enforcement agent failed to produce the warrant upon request on the day of the enforcement visit (even though it was produced for inspection one week later), the LGSCO felt that there had been a breach of the legislation and ordered the refund of the full £235 enforcement fee charged for that visit.

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- 1 Preston City Council (17 000 407)
 - 2 Sch 12 para 26 TCEA 2007

Taking control of goods

Time and place

Ways of taking control of goods

Which goods can be taken

Inventories

The powers of enforcement agents to take control of goods (ie, to secure sufficient assets to cover the debt and any outstanding costs) are in the Tribunals, Courts and Enforcement Act 2007

and the Taking Control of Goods Regulations 2013. This is a statutory procedure that enforcement agents must follow exactly. In response to the pandemic, regulation 10 of the Taking Control of Goods Regulations 2013 has been amended to prevent an enforcement agent taking control of goods on the highway or at any premises that include a dwellinghouse at any time when a person living at the address stated on the notice of enforcement is prevented, by a lockdown, from leaving their usual residence without a reasonable excuse.

The LGSCO has recognised that bailiff visits are ‘by their nature stressful’ and ‘inherently confrontational’, but bailiffs still have a duty to be professional, polite and to give clear, correct information. ¹ Where a bailiff has been aggressive, violent, rude or even just unfriendly, compensation may be awarded to a complainant debtor. ²

Bailiffs have been criticised for giving inaccurate and misleading information to debtors, adding to their distress and the pressure felt ³ – eg, where a bailiff threatened that a removal team would return to a business within a few hours when, in fact, the debtor was only an employee at the trade premises and therefore owned none of the goods there.

¹ Doncaster MBC (22 013 320); LB Southwark (22 008 141)

² LB Lambeth (21 005 720); LB Croydon (21 015 640)

³ Worthing BC (21 017 203); Doncaster MBC (22 013 320)

Time and place

The rules on the time and place for taking control of goods mirror those for entering premises (see here and here). Goods must be taken into control within 12 months of the date the enforcement notice is served, unless a court allows longer or payments have been agreed with the client. An enforcement agent can take control of goods on any day of the week and, generally, between 6am and 9pm. However, these restrictions do not apply if: ¹

- the goods to be taken into control are located on premises which are used (whether wholly or partly) to carry out a business and the premises are open for business during the ‘prohibited hours’ of 9pm to 6am; *or*
- there is a court order allowing goods to be taken into control outside the permitted hours because there is a risk of assets being taken away; *or*
- the enforcement agent began the process of taking goods into control within the permitted hours (or at a time allowed by either of the above bullet points) and it is necessary to complete that process during prohibited hours, provided the enforcement agent does not

remain on the premises for an unreasonable amount of time to do this.

Goods may usually only be taken into control on the highway, or at the client's home or place of business.

1 Regs 9, 12 and 13 TCG Regs

Ways of taking control of goods

To take control of goods, an enforcement agent must do one of the following: ¹

- secure the goods on the premises where they find them (see here); *or*
- secure the goods on a highway where they are found or within a reasonable distance of that place (see here); *or*
- remove the goods and secure them elsewhere (see here); *or*
- make a controlled goods agreement (see here).

Note: one of the above means of taking control must be used and the detailed rules in the regulations must be followed. In practice, many enforcement agents do not follow the correct procedures. If an enforcement agent does not take control of goods by one of the above ways, the goods will not have been taken into control. Always check what has been done and challenge if it is incorrect. If the agent has not followed the prescribed procedure, the client may be able to claim damages. Also, remember that goods must not be taken into control if there is only a child and/or a vulnerable person on the premises (see here

). ²

If enforcement agents are acting under several warrants, liability orders or writs, they must ensure that they have properly taken control of goods under each of those. Enforcement agents must comply with the necessary rules in respect of each instruction – eg, ensuring that the seven clear days period of grace is allowed after each notice of enforcement. Furthermore, if goods have been removed under an earlier instruction (say, to storage or to an auction house), those goods will then be on third-party premises, so the enforcement agents cannot take those goods into control under a subsequent instruction without a court order. These considerations also affect the fees that an agency can charge. Although grouping of fees together to minimise costs to a debtor is permissible within the fees regime, the Taking Control of Goods (Fees) Regulations 2014 do not provide the enforcement agents with a way of getting round the procedural requirements of the Taking Control of Goods Regulations.

Securing goods on the premises

In general, goods may be secured: **3**

- in a cupboard, room, garage or outbuilding; *or*
- by fitting an immobilisation device. In such cases, a notice in the prescribed form must be fixed in a prominent position to warn the client that clamping has taken place; *or*
- on premises used solely for business purposes by leaving an enforcement agent to guard the goods taken into control; *or*
- by locking up the whole of any business premises, or that part of any premises used for business where there is mixed business and residential use – eg, if the premises comprise a shop and flat above, the shop can be secured. Access to essential facilities should be preserved. Taking control of goods by locking up the entire premises should be the last resort when no other options are feasible.

Securing goods on a highway

It may be possible to take control of livestock, or perhaps business stock and materials, on a highway, but in the vast majority of cases these provisions relate to cars, vans and lorries. The term 'highway' is not defined in the legislation. It will undoubtedly include those roads maintained by local authorities under the Highways Act 1985, but it has a wider meaning than this. It appears to include any route along which members of the public are entitled to pass to gain access to properties and other routes. For example, it has been accepted that a road passing through a Ministry of Defence housing estate would count as a highway, as other residents in the housing there were entitled to use it to come and go from their homes. **4**

A vehicle must be secured by an immobilisation device supplied by the enforcement agent, unless the client voluntarily surrenders the keys to the vehicle to the enforcement agent. This is the only way that enforcement agents can obtain the keys of a car. Keys cannot be taken from debtors against their will so as to immobilise a car – a clamp must be used instead. At the time of immobilising the vehicle, the enforcement agent must provide the client with a written warning that clamping has taken place. The clamped vehicle must remain immobilised where it was found for at least two hours, unless the sum outstanding is paid or an agreement to release the vehicle, on part payment of the liability, is made between the enforcement agent and the client. The enforcement agent must ensure that the full minimum period of two hours is allowed before further enforcement steps are taken. To allow the debtor less time, even if this is only five minutes less, is wrongful and may invalidate the process. **5**

After this minimum period has expired, the enforcement agent may remove the vehicle to

storage, ensuring it is properly cared for. ⁶ After removal, the vehicle is secured as described here.

Removing the goods

Immediately removing goods is lawful and may still be used. However, because of the costs of removal and storage, it is only likely to be used for valuable and mobile assets. Unless there are exceptional circumstances, the goods must be removed to a secure location within a 'reasonable distance' of the place where they were initially taken into control. The premises chosen should be safe and secure. ⁷

Controlled goods agreements

A 'controlled goods agreement' is an agreement whereby a client retains custody of the goods, but acknowledges that the enforcement agent has taken control of them. The client agrees not to remove or dispose of the goods, nor to permit anyone else to do so, before the debt is paid.

A controlled goods agreement can only be made by:

- a debtor aged 16 years or older;
- a person aged 18 or older who has been authorised by a debtor to enter into an agreement on their behalf. There is currently no guidance on the form of authorisation that enforcement agents should accept and so this provision may cause problems for enforcement agents and clients – clear written authority is ideal; express verbal authority may be acceptable;
- a person who is found to be in 'apparent authority' on premises used (wholly or partly) for trade or business purposes. Employees left in charge of running a shop or cafe in an owner's absence are likely to qualify to sign agreements.

In all cases, an agreement must not be made with a person who appears not to understand the effect of the agreement and would not be capable of entering into it. This may be because of language difficulties, mental disability or mental illness, and should be apparent to an enforcement agent after even a relatively brief discussion with someone. As with decisions on whether someone is 'vulnerable' (see here), that will initially be a matter for the enforcement agent to determine.

An agreement must be in writing and signed by both the enforcement agent and the person entitled to sign. It must set out the details of the parties and the amount owed, and *must* include the terms of the repayment arrangement, which must be made with the client at the same time. The controlled goods agreement must also incorporate a list of the goods taken into control. Sufficient details of the goods must be provided to enable the owner to identify them. This list can

be omitted if one is also included in any notice of entry or taking control of goods, or if a stand-alone inventory has been provided (see here).

A copy of the signed agreement must be provided to the signatory and, if that person is not the debtor, to them personally as well. This can be done by leaving the copy in a conspicuous place on the premises where the goods were taken into control. If the debtor is known to share the premises with other occupiers, the copy should be delivered in a sealed and addressed envelope. ⁸

Note: in practice, because of the strict conditions attached to controlled goods agreements, many enforcement agents may do without them and just agree an unsecured repayment plan with a debtor.

A January 2021 judgment in the High Court decided that it is not necessary for there to have been a prior entry before an enforcement agent can make a controlled goods agreement with a debtor. In *Just Digital Marketplace Limited (Claimant) and (1) High Court Enforcement Officers Association, (2) Civil Enforcement Association, (3) Ministry of Justice (Interested Parties)* [2021] EWHC 15 (QB), the court was asked to examine the legislation and caselaw and determine whether a lawful and effective controlled goods agreement could be made virtually, without the necessity of a physical attendance at the debtor's premises. The judge determined that there is nothing in the form of the Tribunals, Courts and Enforcement Act 2007 that prohibits such a 'non-entry' controlled goods agreement being made remotely. However, without amendment to the existing legislation, forced entry to remove goods after a breach of the remote controlled goods agreement does not appear possible.

The idea of virtual enforcement was put forward in response to the pandemic and as a way of avoiding visits upon vulnerable individuals. While virtual enforcement, by means of telephone and Zoom contact, can be implemented immediately under the 2007 Act, it is not yet clear how many enforcement agencies may adopt the procedure unless and until the Ministry of Justice makes changes to the regulations as recommended by the judgment.

¹ Sch 12 para 13 TCEA 2007

² Reg 10 TCG Regs

³ Reg 16 TCG Regs

⁴ North Essex Parking Partnership (18 017 095)

⁵ North Essex Parking Partnership (18 017 095)

⁶ Regs 17-18 TCG Regs

⁷ Reg 19 TCG Regs

⁸ Regs 14-15 TCG Regs

Which goods can be taken

An enforcement agent can only take control of goods if they are the sole or joint property of a debtor. ¹ If goods are jointly owned, the enforcement agent must obtain full details of the co-owner and record them on the inventory, since the co-owner must be included in subsequent proceedings, receive copies of all notices and be paid their share of the proceeds of any sale.

An enforcement agent cannot take control of goods with a total value of more than the outstanding amount plus an amount for future costs. In other words, taking control of goods must be reasonable and not excessive. However, an enforcement agent can take control of goods of higher value if there are insufficient goods of a lower value in the premises. ² *Taking Control of Goods: national standards* reminds enforcement agents that if the value of the goods available is disproportionately low compared with the debt and the costs, proceeding with enforcement is not justifiable. ³ Challenge cases when you think the enforcement agent has taken too much (or the goods were worth too little to justify the costs). So, for example, taking a car worth £52,000 for a parking penalty of £392 is very likely to be excessive. ⁴ Goods that are the sole property of any third party are wholly exempt from being taken. If they are taken, that can be challenged (see here). This includes children's goods, as well as goods that are the sole property of spouses, partners, relatives and hire companies. *Taking Control of Goods: national standards* also protects items exclusively used by children, even if they are the debtor's property. ⁵

Exempt goods

Some items are exempt and cannot be taken into control. ⁶ These are:

- the client's only or principal home. This can include a tent, caravan and mobile home;
- items of equipment (eg, tools, books, vehicles, telephones and computer equipment) that are needed personally by the client for their employment, business, trade, vocation, study or education. The total value of the items or equipment must not be more than £1,350. Even if the goods are assessed at their resale value at auction, this is a very low ceiling and may not provide significant protection to many businesses. **Note:** recent court cases have clarified what is *not* a 'tool of the trade' – eg, a college lecturer could not claim that his motorbike used to get to work was exempt and an artist could not claim a tugboat as a tool. However, a car used as a private hire taxi is exempt if its value is under the specified figure. ⁷ A van used by a business for deliveries may, therefore, be taken by a creditor when it is valued at £11,600, far more than the ceiling for protection of £1,350. If the value exceeds the level of financial protection, the need for the asset will not be relevant. However, in the case in question, the local authority inadvertently misstated the maximum protected value as being £1,500; because this mistake misled the debtor, the LGSCO ordered the authority to apologise and to

pay the debtor £100 in compensation; 8

- clothing, bedding, furniture, household equipment and provisions that are reasonably required to satisfy the basic domestic needs of the client and members of their household. These include, but are not limited to:
 - either a cooker or a microwave, but not both;
 - a refrigerator;
 - a washing machine;
 - a dining table large enough, and sufficient dining chairs, to seat the client and the members of their household;
 - beds and bedding sufficient for the client and the members of their household;
 - one landline telephone or, if there is no landline telephone at the premises, a mobile or internet telephone which may be used by the client or a member of their household;
 - any item or equipment reasonably required for the medical care of the client or any member of their household, or for safety or security - eg, an alarm system;
 - sufficient lamps, stoves or other appliances to satisfy the basic heating and lighting needs of the client's household;
 - any item or equipment reasonably required for the care of a person under the age of 18, a disabled person or an older person;
- assistance dogs (including guide dogs, hearing dogs and dogs for disabled people), sheep dogs, guard dogs and domestic pets (it is not clear whether this means just domestic dogs or other species too);
- a vehicle:
 - on which a valid disabled person's badge is displayed because it is used for (or there are reasonable grounds for believing it is used for) a disabled person;
 - used for (or there are reasonable grounds for believing that it is used for) police, fire or ambulance purposes;
 - displaying a valid British Medical Association badge or other health emergency badge because it is being used for (or there are reasonable grounds for believing that it is used for) health emergency purposes;
- items being used at the time the enforcement agent attempts to take control if it is likely that taking them will give rise to a breach of the peace – eg, a power tool 'in use' means that the item is in a person's hands or is being operated by them. The tool or machine in question must be the client's property, but it does not have to be operated by them personally to be exempt – eg, it could be being used by an employee or subcontractor.

If a client's goods are taken into control and they want to dispute this on the grounds that the items are exempt, they should write to the enforcement agency, stating their reasons. The agency must copy this to the creditor within three days, and the creditor must then decide the matter within seven days. If the creditor accepts that the goods are exempt, they are released from control and can be recovered. If the creditor does not accept that the goods are exempt, the agency is informed and notifies the client of the creditor's response. ⁹

If the client is still not satisfied, they can apply to the relevant court on Form N244 (see here), claiming that the goods taken into control should be exempt. The court gives directions on the conduct of the hearing of the matter and, ultimately, it goes to a trial. ¹⁰ The unsuccessful party should expect to pay the other side's legal expenses, so clients should consider carefully whether it is advisable to initiate litigation. ¹¹

Goods belonging to other people

Other than jointly owned and partnership property, goods of other third parties cannot be taken into control. ¹² As with all goods, enforcement agents should only take them into control when they are satisfied that there is good evidence they are owned by the debtor. If there are indications that assets might be third-party property, the enforcement agent should investigate and should have good reasons for then deciding to take control. ¹³

An enforcement agency or creditor may require a considerable amount of evidence to satisfy itself that a third-party goods claim is valid. That is not unreasonable on its part. ¹⁴

Nevertheless, if it appears likely that items may belong to a third party, enforcement agents should act with great caution before taking them into control. Deliberately taking a third party's goods into control, or even threatening to do so, would constitute a misrepresentation of powers. The ombudsman has stated that enforcement agents must exercise common sense and consider all the circumstances of a case. In one case, the LGSCO found enforcement agents to be at fault when they had clamped a man's car primarily because he refused to tell them where his sister (the debtor) lived and subsequently failed to release the car after evidence of his ownership was provided, despite the fact that the details of his car did not match those of the car known to belong to the sister. ¹⁵ Equally, in a case determined in 2021 in which a vehicle's owner raised a reasonable doubt as to whether or not he was the debtor (the previous owner of the vehicle), it was considered unreasonable of the enforcement agent not to remain by the van to await the return of the individual when he said he was going home to fetch proof of ownership. Removal of the clamped van a few days later was similarly unreasonable, and a payment of £200 was made in recognition of this fault. ¹⁶

If possible, the claim to third-party ownership should be made at the time of the enforcement agent's attendance, and while the goods are being taken into control, either by the debtor or by the

third-party owner. The enforcement agent is under an obligation to consider and investigate any claim, considering any evidence as to ownership that may be available. At the same time, an enforcement agent has to apply their common sense. In a case considered by the LGSCO in 2019, the debtor had moved back into his mother's house after an eviction in which he had lost most of his possessions. His mother had lived in her house for 30 years. Faced with this situation, the LGSCO felt that the agent's strict approach – threatening to take everything into control unless documentary proof was provided – was unreasonable. The LGSCO said: 'In cases such as this, the bailiff should consider all the circumstances and evidence they have regarding ownership, rather than insist on proof.' ¹⁷

Conversely, when a person raises a claim of third-party ownership of an item, it may still be acceptable for an enforcement agent to take control of goods until the matter of ownership is clarified. A LGSCO complaint against one south coast council concerned a car that was subject to hire purchase. Initial checks carried out on the vehicle had not been clear whether it was secured by a finance agreement. The car was initially clamped by an enforcement agent subject to the debtor providing additional information and documents to establish the vehicle's status. That was done within a few days, after which the clamp was removed. The council's approach was felt to have been correct in the circumstances. ¹⁸

Disputes over the correct treatment of hire purchase goods by enforcement agents continue, and it has emerged from recent LGSCO decisions that debtors are still being faced with the proposal that HP agreements should be viewed like mortgages, with an accruing beneficial interest (or 'equity') in the vehicle which the agent might be able to realise by sale. As was seen in case brought by VW Finance a few years ago, the nature of most standard HP agreements is, in fact, that they remain hire agreements until all the instalments have been paid, at which point (and only then) a further sum (albeit nominal) is paid to convert the agreement to hire. On that basis, it would appear that only a taking into control at the very last stage of the agreement might deliver an asset owned by the debtor into an agent's hands. However, this decision was made in the county court only; therefore, it is not binding and might be altered by a higher court.

Given the potential legal uncertainty, the matter rumbles on, on the evidence of recent complaints made to the LGSCO. In a complaint made against one large borough council, ¹⁹ the authority was found to have been at fault for not being proactive enough in determining the ownership of the vehicle in question. The LGSCO laid out what it sees as the options at the point that notification is received that there is a finance agreement outstanding. A council's best courses of action are to:

- release the vehicle from control immediately; *or*
- contact the finance company to see if it will give permission to retain possession and, if necessary, then proceed to sale so that the proceeds can be split (the idea being that the

creditor retains the debtor's notional 'beneficial interest' here); *or*

- if the lender refuses permission to retain possession, release the vehicle as soon as possible.

Any delay by a council in making enquiries or in releasing a vehicle could be treated as fault by the LGSCO. On the matter of the correct interpretation of the law, though, the LGSCO acknowledged that the question of the effect of HP on taking control of goods is a complex legal area which it will be better for the higher courts to determine.

In a slightly later decision, ²⁰ the LGSCO decision maker stated that it was accepted that, if the van in question had been on 'finance' (by which we may presume HP to have been meant) the council 'would need to speak to the finance company to discuss selling the van to pay the debt before seizing it'. No fault was found in the decision to clamp in this case.

The most recent published decision observed that, while the LGSCO still doubted there was any beneficial interest for a bailiff to realise, it was accepted that this was a doubtful area that ought to be resolved by the High Court or Court of Appeal, not by an ombudsman. The decision was therefore limited to considering questions of vulnerability and financial circumstances. ²¹

It appears that the LGSCO's understanding of the law at present is that there is most probably no beneficial interest under an HP agreement that could be realised by sale at auction, but that they are awaiting a definitive higher court decision on this matter.

A special procedure exists for third parties to follow to make a formal claim for the release or return of their goods if they have been taken into control. Enforcement agents and creditors ought to supply details of this procedure when necessary. This procedure is identical to that used to dispute the taking of goods that should have been treated as exempt, but with one major difference: if the third party initiates a court claim, a deposit will be required by the court, a payment not required in exempt goods claims. ²²

If someone believes that their goods have been wrongfully taken into control, they should write to the enforcement agency, stating the grounds for claiming ownership and providing evidence, if possible. It is not unreasonable for a creditor or enforcement agent to ask the third-party claimant to goods for detailed and extensive proof of the claim to ownership be sure that the claim is genuine and accurate. ²³ The enforcement agent must copy this claim to the creditor within three days, and the creditor must then decide on the matter within seven days. Claims by third parties to the ownership of goods must not be dealt with by enforcement agencies. Their sole duty under the Civil Procedure Rules is to pass the details of the claim on to the creditor for determination. ²⁴ If the creditor accepts that the goods were wrongfully taken, they are released from control and can be recovered by the owner. If the creditor does not accept that the goods were wrongfully taken, the enforcement agent is informed and notifies the third party of the creditor's response.

If the third party is not satisfied, they can apply to the relevant court, claiming that the goods taken into control belong to them, not the debtor. This is done on Form N244 (see here). After receiving notice of the application, the enforcement agent must not sell the goods, unless directed to do so by the court – eg, because they are perishable.

If a person wishes to claim goods as third-party property, they are under a clear duty to act promptly. Under the Civil Procedure Rules, a person must certainly raise such an issue within seven days of goods being removed. If a person does not act in good time or fails to make clear upon what basis they are disputing a taking and removal, they may lose any right to a remedy or to compensation. ²⁵

The court may direct the enforcement agent to sell or dispose of the goods if the third party fails to make the required payments to court. These are an amount equal to the value of the goods (or a proportion of it as directed by the court), along with an amount for the enforcement agent's storage costs. The court determines the amount of the enforcement agent's costs and when the sum should be paid. In cases of financial hardship, the court may allow someone to pay less than the full value of the goods.

If the enforcement agent disputes the court's valuation of the goods, any underpayment is determined by a valuation by a qualified independent valuer. The sum underpaid should then be paid by the claimant within 14 days of the copy of the valuation being provided. Even though a third party may make the payment(s) required, the court may still direct the enforcement agent to sell or dispose of the goods before it determines their claim, if the court considers that appropriate. The enforcement agent must pay the proceeds of sale or disposal to the court.

Once all the necessary payments have been made, the court gives directions on the hearing of the matter and, ultimately, it goes to a trial. The unsuccessful party should expect to pay the other side's legal expenses.

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- 1 Sch 12 para 10 TCEA 2007
 - 2 Sch 12 para 12 TCEA 2007
 - 3 Ministry of Justice, *Taking Control of Goods: national standards*, April 2014, para 68
 - 4 Manchester City Council (15 015 253)
 - 5 Ministry of Justice, *Taking Control of Goods: national standards*, April 2014, para 64
 - 6 Reg 4 TCG Regs
 - 7 *Fouda v LB Southwark & Newlyn plc* [2015] EWHC 1128
 - 8 Brighton and Hove City Council (19 019 017)
 - 9 r85.8 CPR

10 r85.9 CPR

11 r85.12 CPR

12 Sch 12 para 10 TCEA 2007; Ministry of Justice, *Taking Control of Goods: national standards*, April 2014, para 67. These also stress the bailiff's duties to avoid securing or removing the goods of third parties and to inform third parties of their rights.

13 *Rooftops South West v Ash Interiors* [2018] EWHC 2798

14 North Essex Parking Partnership (18 017 095)

15 Bury MBC (19 008 621)

16 LB Brent (20 004 923)

17 Harborough DC (18 012 739)

18 Bournemouth, Christchurch and Poole Council (20 010 212)

19 Reading BC (21 011 858)

20 Hertsmere BC (21 016 316)

21 LB Hammersmith and Fulham (21 017 575)

22 LB Ealing (15 016 609)

23 LB Barnet (18 015 978)

24 LB Barnet (18 011 538)

25 LB Southwark (19 011 375)

Inventories

In addition to a notice confirming that goods have been taken into control, an enforcement agent must provide the client with an inventory of the goods involved. ¹ The inventory must include:

- the names and addresses of the parties; *and*
- the name and address of any co-owner of the goods. The rights of co-owners are explicitly protected and they must receive copies of all subsequent notices and must be paid their share of the value of the goods as a first call on the proceeds of any sale; *and*
- confirmation that the goods listed on the inventory have been taken into control; *and*
- a list of the goods taken into control, giving sufficient details to enable the client or co-owner to identify them – eg, the model, make, serial or registration number, colour, usage or other identifying feature.

The inventory may be combined with a controlled goods agreement or with any other notice given, as long as a sufficient list is provided at the same time as the agreement or notice and the

goods taken into control are the same as those listed.

Enforcement agents require a good deal of information to complete inventories in the manner required and detailed enquiries are needed to establish ownership, usage and the need for items to be listed. This should mean an end to sloppy and vague lists of goods, and prevent goods being taken into control of which clients are unaware. However, in practice, many vague and generalised inventories are produced. These should be challenged as being in breach of the law. It is arguable that without a valid inventory, goods have not been taken into control.

1 Sch 12 para 34 TCEA 2007

Selling goods

Removing goods for sale

The sale

Final accounts

The purpose of taking control of goods is to provide valuable security that can be realised if the client fails to pay. However, given the emphasis on 'compliance' and payment arrangements, selling assets has been rare in the past and may be even rarer in the future.

The threat of removal and sale of goods can be an effective way of obliging debtors to make arrangements or to make lump-sum payments, but the threat should not be made before removal can effectively be carried out. In one recent ombudsman decision, the enforcement agents were criticised for delivering a notice threatening to send a removal team to premises before there had been any entry to premises and before any goods had been taken into control. ¹

1 LB Haringey (19 000 635)

Removing goods for sale

If goods have been secured on the premises, they must be removed before they can be sold. Forced entry may be necessary to enable this. **Note:** the general rules on the rights of entry to premises (see here) also apply when enforcement agents need to re-enter premises to remove goods.

Enforcement agents collecting fines and tax debts or enforcing judgments may simply force re-entry without any warning. If a client defaults on the terms of repayment included in a controlled goods agreement (see here), they must be given a notice of an enforcement agent's intention to force re-entry to remove the listed goods (see below). In other cases, a court order is required to permit a forcible re-entry.

The notice of re-entry given after a breach of a controlled goods agreement should give at least two clear days' notice (not counting the day of the notice, the day of removal and any intervening Sundays or bank holidays). If an enforcement agent applies to a court, however, the court can order that a shorter period of notice be given if it is satisfied that, if the order were not made, the goods would be likely to be moved from the premises to prevent them being taken.

The notice must be dated and provide details of the parties, the debt and the means by which payment may be made to prevent the goods being removed and sold. It must be served by fax or other means of electronic communication, hand delivery or in person. Postal service cannot be used. The enforcement agent is responsible for ensuring that the notice is given and must keep a record of when it is served. The notice of re-entry and intended removal can only be served if goods have already been taken into control. It is not acceptable for enforcement companies to issue these notices to debtors merely for the threat value. They can only be sent at the correct point in the process of taking control of goods, after all preliminary stages have been properly completed. ¹

After the goods have been removed for sale, the enforcement agent must provide a written and signed notice of removal to the client. This:

- confirms that a removal has taken place; *and*
- provides a list of items that have been removed if these are different to those items listed after taking control, otherwise the inventory supplied previously is sufficient (this is to allow for the fact that the debt has reduced by payments made since the goods were initially taken into control); *and*
- confirms the procedure for making payment so that the sale of goods can be prevented.

If any of this information is not immediately available to the enforcement agent at the time of removal, it should be provided to the client as soon as reasonably practicable.

Having re-entered the premises, the enforcement agent is required to leave them as effectively secured as they find them.

The enforcement agent must take reasonable care of the goods removed from the premises. Goods should be kept in the same condition as they were found. If the enforcement agent acts negligently, the client can claim damages. Not only are enforcement agencies under a duty to ensure that goods in their care for sale are properly looked after, they must also ensure that items

are not sold in cases in which the debt has been cleared or in which further enforcement action has been placed on hold by the creditor. Substantial compensation may be awarded if the debtor's rights are not protected in such situations. ²

¹ Birmingham City Council (18 017 200)

² LB Barnet (18 011 538)

The sale

Enforcement agents have a general duty to sell or dispose of the goods for the best price that can reasonably be obtained.

At least seven clear days from the day of removal must elapse before a sale can take place. However, perishable goods can be sold on the day after removal. 'Perishable' items are those which would be unsellable or would lose their sale value or have it substantially reduced if they were sold after the seven-day waiting period. They include items of declining value (eg, seasonal goods), as well as food.

An enforcement agent must make or obtain a valuation of the goods that have been removed for sale and must give the client, and any co-owner, an opportunity to obtain an independent valuation. The enforcement agent must do this within seven days of the removal. The valuation must be in writing. Where appropriate, a separate value for each item taken into control should be stated. The client and any co-owner should both be provided with copies. If the enforcement agent does not conduct the valuation, a qualified independent valuer should be used. If the valuation notice is not issued by the enforcement agent, it may invalidate any sale that follows. ¹

The enforcement agent must then give written notice of the sale date, time and place to the client and any co-owner. If the sale notice is not provided, the debtor loses a chance to recover their goods and this can render the sale unlawful. The individual might then be entitled to recover the value of the items sold and other damages. ² The minimum notice period is seven clear days before the date of sale – the date of sale must be within 12 months of the day the enforcement agent took control of the goods. This period may be extended (repeatedly if necessary) by agreement in writing between the creditor and client before the end of the period. This provision gives a client an opportunity to make instalment payment arrangements to discharge the debt and is likely to postpone the deadline for sale. A controlled goods agreement must incorporate terms of repayment (see here). Such an arrangement will presumably have the effect of postponing the sale deadline. If the deadline passes without any notice of sale being issued and without any arrangement being made to extend it, the regulations state that the goods

are 'abandoned' and cannot then be sold. That is the case whether or not liability for the debt is being disputed or if a third-party claim is being resolved. There seems to be no scope in the legislation for flexibility over the 12-month deadline for sale. ³

The goods must be sold by public auction (including online), unless a court permits otherwise following an application by the enforcement agent. A qualified auctioneer (or an independent and reputable provider in the case of an online auction) must be employed.

There are detailed rules on how the sale must be conducted and ownership of the goods transferred. In particular, a sale cannot be fully completed if a third-party claim to ownership is outstanding (see here).

¹ LB Merton (18 019 888)

² LB Merton (18 019 888)

³ *Thomas Banks Hamilton v Secretary of State for Business, Enterprise etc and Christopher Lucas-Jones* [2021] EWHC 2647 (QB)

Final accounts

Immediately after the goods have been sold or disposed of, the enforcement agent must provide the client and any co-owner with a statement detailing:

- the items sold or otherwise disposed of; *and*
- the sum received for each item; *and*
- the proceeds of the sale; *and*
- how the proceeds of the sale were applied to the costs and the debt; *and*
- any recoverable expenses incurred (see here).

The enforcement agent must also provide a copy of all receipts for expenses incurred by the auctioneer, whether at an auction house or at the client's premises. This duty does not apply if the goods were sold by an online auction or by other means of disposal.

If the client pays the outstanding amount at any time after the enforcement agent has incurred expenses, but before the sale or disposal of the goods, the enforcement agent must provide them with: ¹

- a statement of recoverable expenses (see here); *and*
- any receipts for expenses, unless they relate to a sale by an online auction or any other sale

other than a public auction; *and*

- a statement of any fixed and percentage fees that have been charged.

1 Reg 14 TCG(F) Regs

Fees and expenses

Fees

Expenses

Costs of selling the goods

Exceptional costs

Multiple warrants

Vulnerable clients

If a client disputes the fees

Fee review

Enforcement agents can recover money from debtors to cover the cost of their actions. In the past, this was a major source of contention between clients and enforcement agents, but the current rules on fees have substantially reduced the number of disputes. There are special rules on charging fees to vulnerable debtors (see here).

Fees

Enforcement agents can charge fixed fees for three stages of the enforcement process (see below). They can also charge additional fees if the debt is above a certain amount. In addition, they can claim for certain limited expenses (see here), most of which only arise at the very last stage of the enforcement process.

Fixed fees can be charged for the following activities.

- **Compliance.** This covers initial activities, such as receiving instructions from creditors and preparing and setting up accounts, confirming the personal details of the client, sending out the enforcement notice, the initial contact and negotiations with the client, processing payments received, general office administration, handling complaints and managing instalment plans.
- **Enforcement.** This covers initial visits and all aspects of taking control of goods through to the decision to remove the goods. This stage is split in two for High Court enforcement (see here). The enforcement fee can only be added after a physical attendance at premises has

taken place. It is wrong for an enforcement agent to add on this fee before any visit to a debtor's premises. ¹ In a 2021 decision against Birmingham City Council, the LGSCO determined that the enforcement agency's GPS data indicating the proximity of an enforcement agent to a debtor's address does not prove that a visit took place. In the absence of any notice of a visit delivered at the property, it may be possible to challenge the addition of the enforcement fee in certain cases. ²

- **Sale or disposal.** This covers all aspects of the concluding parts of the process, from attending to remove goods to the place at which the sale will take place or starting to prepare for the sale if it is held on the premises, carrying out the sale, dealing with the proceeds, to returning unsold goods and final reports. A sale fee can only be added onto an account where removal action has been started and the proper removal notice has been issued. In a recent ombudsman decision, a local authority's enforcement agent was criticised for adding a sale fee onto an account merely because the debtor was being unco-operative and hadn't made immediate payment in full. The debtor's car had been clamped, but that is part of the enforcement stage and is not part of the removal process. ³ **Note:** removing goods for sale and removing goods to take control of them (see here) are distinct stages of the process. Goods have only been removed for sale if a written valuation has been provided within the seven-day time limit (see here).

As soon as one of the above stages has started, the fee is chargeable, even though all the activities covered by the stage may not have been carried out or completed. The fees and expenses allowed are recovered from the 'proceeds' of the enforcement process – ie, the money received from the sale or disposal of goods and any money received in payment from the client. Once the fees have been added to the account, they form an integral part of the debt and must be paid. Sometimes debtors try to avoid paying enforcement agent's fees by paying the original debt directly to the creditor (or the enforcement agency). This will not work: the money will be allocated to both the debt and the fees and an enforceable amount will remain outstanding, meaning that enforcement action can lawfully continue. ⁴

The Ministry of Justice and HMRC have issued guidance to enforcement agents, which states that a client should not have to pay VAT on enforcement fees. That is because VAT is a tax charged on services provided by businesses to customers. Since the creditor is the enforcement agent's customer, any VAT invoices should be sent to the creditor. However, the situation for High Court enforcement officers is slightly more complicated, as laid out in guidance issued by the Ministry of Justice in October 2021.

- If the judgment creditor is registered for VAT, they will be charged the VAT due on the enforcement fees by the High Court enforcement officer.
- If the judgment creditor is not VAT-registered, the High Court enforcement officer will collect

the VAT due on fees from the judgment debtor.

- If a creditor’s VAT status alters, in some cases a refund of the VAT might be payable to the debtor.

High Court enforcement officers are under a duty to make it clear to judgment debtors whether the sums they pay include a VAT element.

If the enforcement agent’s instruction is withdrawn for some reason, any fees incurred up to that point do not have to be paid by the client. 5

Standard fees

For all debts, except those enforced by the High Court, the following fees may be charged. This is referred to as the ‘standard’ scale.

Standard fee for	Amount
Compliance	£75
Enforcement	£235
Sale or disposal	£110

If the debt is more than £1,500, the enforcement and sale fees may be increased by an additional 7.5 per cent of the amount by which the debt exceeds £1,500 (fees are not included when calculating this total). It is important always to check the percentage fees charged on larger debts, in case they have been calculated on a balance which does not include recent payments made by the debtor. 6

High Court fees

There are higher fees for debts enforced by the High Court.

High Court fee for	Amount
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Compliance	£75
First enforcement	£190
Second enforcement	£495
Sale or disposal	£525

There are two stages of High Court enforcement.

- **First stage.** This applies when the High Court enforcement officer and the client enter into a controlled goods agreement. It covers all activities relating to enforcement from first attending the premises until the agreement is completed or breached.
- **Second stage.** This applies when the High Court enforcement officer and the client do not enter into a controlled goods agreement. It covers all activities relating to enforcement from first attending at the premises until the commencement of the sale or disposal. If the enforcement officer and the client entered into a controlled goods agreement, but the client later breaches it, this second enforcement fee also applies and covers all subsequent activities relating to the enforcement of the writ from the time at which the client breaches the agreement to the commencement of the sale or disposal stage. There is some evidence that High Court enforcement officers are avoiding controlled goods agreements so as to be able to charge this higher fee. The fee is also charged when immediate payment of the debt is made to the High Court enforcement officer or where the High Court enforcement officer was unable to contact the debtor - possibly not what was envisaged by parliament when making these rules.

If a judgment debt is more than £1,000, the first enforcement and sale fees may be increased by an additional 7.5 per cent of the amount by which the debt exceeds £1,000 (fees are not included when calculating this total).

1 Birmingham City Council (18 017 200)
2 Birmingham City Council (20 004 879)
3 LB Merton (19 003 435)
4 LB Hillingdon (19 009 510)

5 Reg 17 TCG(F) Regs; Ministry of Justice, *Taking Control of Goods: national standards*, April 2014, para 3.1

6 Westminster City Council (22 013 781); Stockport MBC (22 012 539)

Expenses

Limited expenses may be recouped from clients by enforcement agents. These must be 'reasonably and actually' incurred and cover:

- the cost of storing goods that have been taken into control and removed from the premises or highway;
- the cost of hiring a locksmith to use reasonable force to enter premises and to secure premises following forcible entry;
- court fees for any successful applications made by the enforcement officer.

Enforcement agents must provide copies of receipts for all expenses they claim. No other costs may be passed on to the client. ¹

¹ Reg 8 TCG(F) Regs

Costs of selling the goods

In addition to charging a prescribed fee, enforcement agents can recover the costs incurred in selling (or otherwise disposing of) the goods. The enforcement agent may recover from the client:

- the auctioneer's commission. If the sale is held on premises provided by the auctioneer, this must not exceed 15 per cent of the amount realised by the sale of the goods. If the sale is held on other premises, the auctioneer's commission is limited to 7.5 per cent of the amount realised by the sale; *and*
- the auctioneer's expenses; *and*
- reasonable expenses incurred in advertising the sale.

If the goods are sold through an online auction site or in some other way, the enforcement agent may recover 7.5 per cent of the sum realised by the sale of the goods. These sale costs may only be recovered from the proceeds of the enforcement process. No other expenses relating to sale can be recovered. ¹

1 Reg 9 TCG(F) Regs

Exceptional costs

In very limited circumstances, in addition to the fees and expenses outlined above, enforcement agents can recover other expenses from the client. Provided the creditor's consent has been obtained, an enforcement agent can apply for a court order allowing them to recover exceptional expenses. The court must be satisfied that the expenses were necessary to enforce effectively the sum to be recovered. It must take all the circumstances into account, including the amount to be recovered, and the nature and value of the goods being taken into control. ¹

1 Reg 10 TCG(F) Regs; r84.14 CPR

Multiple warrants

If an enforcement agent is enforcing more than one warrant or liability order against a client at the same time, there are special rules limiting the fees that can be charged. Although the enforcement agent can charge a compliance stage fee for each instruction received, they must (unless it is impracticable to do so) take control of goods under all the instructions at the same time and sell or dispose of all the goods taken into control on the same occasion. In such cases:

- there is just one fixed fee for each stage, regardless of the number of instructions being enforced; *and*
- the percentage fee due for each stage, if any, is calculated on the basis of the total amount to be recovered under all the warrants.

For example, instructions should be consolidated and enforced together if they are received within a few of weeks of each other. ¹ In one ombudsman decision, a gap of eight months between the issue of one liability order to enforcement agents and the issue of another five for enforcement was not felt to be too long to prevent the council's agent consolidating the accounts and charging only one enforcement fee. Local authorities should take a 'holistic' approach wherever possible and group all debts together for enforcement at the same time. ²

As far as possible, enforcement agents must minimise their expenses that can be recovered from clients by dealing with all the goods to which the instructions relate together and on as few

occasions as possible. ³ At the same time, the LGSCO has found that, in a case where six new warrants were issued against an individual after enforcement action had begun, it was not unreasonable of the enforcement agents involved to make a second enforcement visit to the premises and to add a second enforcement fee, which included an additional 7.5 per cent of the debt added to the fee to reflect the increased level of outstanding debt. ⁴

¹ LB Hounslow (16 012 800); Powys CC (201502998, 2016)

² LB Merton (17 011 640)

³ Reg 11 TCG(F) Regs

⁴ North Tyneside MBC (19 011 521)

Vulnerable clients

If the client is a 'vulnerable person', an enforcement agent cannot charge fees for the enforcement stages or recover any related expenses unless the client has been given adequate opportunity to get assistance and advice on the enforcement process before proceeding to remove goods that have been taken into control. ¹ 'Vulnerability' is not defined in the regulations and no guidance is given to enable enforcement agents to assess what an 'adequate opportunity' might be.

However, in 2022 the High Court was asked in the case of *Progressive Property Ventures v Mrozinski* to consider whether the fees and disbursements incurred by an enforcement agent who had clamped and then removed a debtor's car should be disallowed under regulation 12 of the Taking Control of Goods (Fees) Regulations 2014 ('fees regulation 12'), the provision on vulnerable debtors. ²

The judge accepted that the debtor was a vulnerable person at the time of the enforcement, because he had been had anxiety, depression and significant problems sleeping for which medication had been prescribed and that his ability deal with the issues that enforcement presented would have been affected (even allowing for his relative sophistication).

The judge ruled that the bailiff's duty to give the debtor 'an adequate opportunity to get assistance and advice' arises once goods have been taken into control. In this case, the duty applied from the point that the judgment debtor's car had been clamped (regardless of the fact that the debtor had already had other opportunities to get help and had made several applications to stay enforcement). Although it was not clear what further advice the debtor might have needed, the fact that goods had been taken into control and the debtor faced the potential loss of a valuable asset that could effect his lifestyle and finances was reason alone.

The judge then provided guidelines on the amount of time that should be allowed: given ‘the practical difficulties associated with seeking and obtaining advice and assistance, [that allowing just] one day from the taking of the car into control [before its removal] is not adequate in all the circumstances... [and that] it seemed that more time should have been given’ to ensure that advice and practical assistance could be obtained. The period of a working week, or at least several days, was felt to be more reasonable. As a result, the judge disallowed the agent’s fees and disbursements in line with fees regulation 12.

1 Reg 12 TCG(F) Regs

2 *Progressive Property Ventures LLP v Mrozinski* [2022] EWHC 1256 (QB)

If a client disputes the fees

If a client disagrees with the fees charged, they can apply to the High Court or county court for it to assess the enforcement agent’s bill. ¹ Form N244 should be used (see here). The court can only assess whether the fees should have been applied and whether they were calculated correctly or whether the expenses were permissible. If the client wants to argue that the amounts charged were unlawful, they cannot apply in this way and must use another remedy – eg, paying under protest to release the goods and then issuing a claim to recover the amount paid. In High Court cases, an application for ‘detailed assessment’ of disputed fees should be made against the enforcement agent who enforced the writ of control, not against the High Court enforcement officer. ²

1 Reg 16 TCG(F) Regs

2 *Bone v Williamson* [2022] EWHC 3158 (KB)

Fee review

In early 2023, the Ministry of Justice undertook a review of the fee scales introduced in 2014. This concluded that:

- all fees should be raised by 5 per cent; *and*
- the threshold for the higher percentage fees should be raised to £1,200 for High Court cases and to £1,900 in all other cases; *and*

- that there would be further consultation on various matters, such as the extension of the period of the enforcement notice, amending and clarifying the details of some fees and amending the national standard.

This will require legislation, which has been promised by the end of 2023.

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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.