

## Bailiff s advice - additional information - Case Law

A debtor can remove right of implied access by **displaying a notice at the entrance**. This was endorsed by Lord Justice Donaldson in the case of Lambert v Roberts [1981] 72 Cr App R 223– and placing such a notice is akin to a closed door but it also prevents a bailiff entering the garden or driveway, Knox v Anderton [1983] Crim LR 115 or R. v Leroy Roberts [2003] EWCA Crim 2753

1. **Debtors can also remove implied right of access to property by telling him to leave:** Davis v Lisle [1936] 2 KB 434 similarly, McArdle v Wallace [1964] 108 Sol Jo 483
2. A person having been told to leave is now under a duty to withdraw from the property with all due reasonable speed and failure to do so he is not thereafter acting in the execution of his duty and becomes a trespasser with any subsequent levy made being invalid and attracts a liability under a claim for damages, Morris v Beardmore [1980] 71 Cr App 256.
3. **Bailiffs cannot force their way into a private dwelling**, Grove v Eastern Gas [1952] 1 KB 77
4. Otherwise a door left open is an implied license for a bailiff to enter, Faulkner v Willetts [1982] Crim LR 453 likewise a person standing back to allow the bailiff to walk through but the bailiff must not abuse this license by entering by improper means or by unusual routes, Ancaster v Milling [1823] 2 D&R 714 or Rogers v Spence [1846] M&W 571
5. Ringing a doorbell is not causing a disturbance, Grant v Moser [1843] 5 M&G 123 or R. v Bright 4 C&P 387 nor is refusing to leave a property causes a disturbance, Green v Bartram [1830] 4 C&P 308 or Jordan v Gibbon [1863] 8 LT 391
6. Permission for a bailiff to enter may be refused provided the words used are not capable of being mistaken for swear words, Bailey v Wilson [1968] Crim LR 618.
7. **If the entry is peaceful but without permission then a request to leave should always be made first.** Tullay v Reed [1823] 1 C&P 6 or an employee or other person can also request the bailiff to leave, Hall v Davis [1825] 2 C&P 33
8. Excessive force must be avoided, Gregory v Hall [1799] 8 TR 299 or Oakes v Wood [1837] 2 M&W 791
9. **A debtor can use an equal amount of force to resist a bailiff from gaining entry**, Weaver v Bush [1795] 8TR, Simpson v Morris [1813] 4 Taunt 821, Polkinhorne v Wright [1845] 8QB 197. Another occupier of the premises or an employee may also take these steps: Hall v Davis [1825] 2 C&P 33
10. Also wrongful would be an attempt at forcible entry despite resistance, Ingle v Bell [1836] 1 M&W 516
11. Bailiffs cannot apply force to a door to gain entry, and if he does so he is not in the execution of his duty, Broughton v Wilkerson [1880] 44 JP 781
12. **A Bailiff may not encourage a third party to allow the bailiff access to a property** (ie workmen inside a house), access by this means renders the entry unlawful, Nash v Lucas [1867] 2 QB 590
13. The debtor's home and all buildings within the boundary of the premises are protected against forced entry, Munroe & Munroe v Woodspring District Council [1979] Weston Super-Mare County Court
14. **Contrast: A bailiff may climb over a wall or a fence or walk across a garden or yard provided that no damage occurs**, Long v Clarke & another [1894] 1 QB 119
15. It is not contempt to assault a bailiff trying to climb over a locked gate after being refused entry, Lewis v Owen [1893] The Times November 6 p.36b (QBD)
16. **If a bailiff enters by force he is there unlawfully and you can treat him as a trespasser.** Curlewis v Laurie [1848] or Vaughan v McKenzie [1969] 1 QB 557
17. A debtor cannot be sued if a person enters a property uninvited and injures himself because he had no legal right to enter, Great Central Railway Co v Bates [1921] 3 KB 578

18. If a bailiff jams his boot into a debtors door to stop him closing, any levy that is subsequently made is **not valid** : Rai & Rai v Birmingham City Council [1993] or Vaughan v McKenzie [1969] 1 QB 557 or Broughton v Wilkerson [1880] 44 JP 781
19. If a bailiff refuses to leave the property after being requested to do so or starts trying to force entry then he is causing a disturbance, Howell v Jackson [1834] 6 C&P 723– but it is unreasonable for a police officer to arrest the bailiff unless he makes a threat, Bibby v Constable of Essex [2000] Court of Appeal April 2000.
20. Vaughan v McKenzie [1969] 1 QB 557 if the debtor strikes the bailiff over the head with a full milk bottle after making a forced entry, the debtor is not guilty of assault because the bailiff was there illegally, likewise R. v Tucker at Hove Trial Centre Crown Court, December 2012 if the debtor gives the bailiff a good slap.
21. If a person strikes a trespasser who has refused to leave is not guilty of an offence: Davis v Lisle [1936] 2 KB 434
22. **License to enter must be refused BEFORE the process of levy starts,** Kay v Hibbert [1977] Crim LR 226 or Matthews v Dwan [1949] NZLR 1037
23. A bailiff rendered a trespasser is liable for penalties in tort and the entry may be in breach of Article 8 of the European Convention on Human Rights if entry is not made in accordance with the law, Jokinen v Finland [2009] 37233/0712

## Can the police get involved?

When it comes to bailiff situations, the police cannot get involved as it is a civil matter, not a criminal matter. The police have a duty to serve and deal with all things criminal in nature. Bailiffs and owing money to individuals are what is known as civil matters (matters between the people). For the most part civil occurrences are contractual by nature.

## So why do the police involve themselves?

Well, as we have already established. The police are there to deal with criminal offences, not civil offences. So in order for the police to get involved and become party to the contract, there would need to be a criminal element either occurring or one that has already occurred. This can simply come in the form of a 'breach of peace'. If there is a breach of the peace and the police are present, the police can use this as a means for themselves to get involved, therefore, becoming a party to your dealings with your bailiff.

There have been cases in which there have been no breach of a peace, yet there have been officers who have arrested and detained individuals for a breach of peace. This happens when the police want to get involved in one way or another, and so, in order to do that, the police will need to call out on some criminal offence that has occurred. The police will then approach the debtor with the warning of a breach of peace and you could be arrested. It's a common tactic that is used in order to add extra intimidation towards a debtor in order for them to resolve a debt.

The police (considering there are no breach of the peace occurring) have no jurisdiction or authority to get involved, question, detain or arrest you in any way if you have an issue with a creditor. The debt you owe could be 1 Million pounds! It doesn't matter on the amount. The police have no authority or power to ask of anything from a debtor. All they can do in which they have a right to do so is watch and observe the situation.

## How to avoid police interference?

The most easiest of ways to ensure the police remain as an observer and not become actively involved in your dealings is to always remain calm. Pull out your camera, start recording your interactions. Stay patient, never argue or create any controversy, as the police will use that as a means to justify a breach of peace claim against you.

## How to dispute a claim with your creditor

The key thing when it comes to discussing and disputing a claim against you is not by arguing and raising your voice to ensure you get your point across. The best way to dispute a claim against you is to discuss the terms that were agreed when you entered into your contract.

Things to say:

- Do you have knowledge of the contract I have with \_\_\_\_\_?
- I am currently undergoing a dispute with \_\_\_\_\_ and so my contract is between me and \_\_\_\_\_
- Do you have a copy of the contract?
- I will not be contracting with you today, Thank you

The key thing to remember here is that any debt collector is acting as a third party interlopers. This means that your bailiff have a contract agreement with the company or person you owe alleged money to, and in this agreement they have drafted in bailiffs to collect the outstanding amount. They have sold their debt onto them in most cases. This means that there is a new contract with the bailiff and the person you owe money to, it is between the two parties and has nothing to do with you. Your contract is with the person you owe the money to, and not between the bailiff.

## How the bailiff contracts with you

The bailiffs have a cunning way of getting you to enter into their contracts which will make you liable to their terms. Before this can happen, the bailiff would need to agree some terms with you about your alleged debt. This may come in the form of settled agreement where you both agree to a payment of a small amount each week or month. Once that has been agreed the bailiff and yourself have made a new contract and he has a duty to always collect. Without that contract the bailiff can only collect on the company or persons behalf, if they cannot receive any moneys from you than the contract eventually becomes void and the debt becomes an irrecoverable debt and signed off on the books as such.

The bailiff will try to coerce you into paying your debt through intimidating you and threatening you with claims and letters about taking possession of your property. For this to happen, the bailiff would need a signed warrant and clearance from the high courts that allows them to confiscate your property. If this happens, there is not much you can do but discuss your debt with your creditor and arrange something with him. This way you are acting what the courts like to see, and that's in honour.

## What to do if you genuinely owe money to a creditor

If you genuinely owe money to a company or a creditor, you must always ensure that you communicate with your creditor and any change of circumstances you let them know. If you owe money you must try to avoid paying as this is dishonorable and you will be caught out in one way or another causing a bigger problem for you later on in life. The best you can do if you owe money is to come to some sort of arrangement between yourself and your creditor and agree a plan that is fair to both of you.

## Important Notes

Always ask:

If the document is from the high courts

Are the bailiffs from the high court

Do you have a signed warrant and clearance to be present there today