



marston
holdings

ENFORCEMENT
TOOLKIT



A GUIDE:

TO CURRENT REGULATIONS AND MARSTON HOLDINGS POLICY IN ENGLAND & WALES

THE BACKGROUND

On 6 April 2014, regulations that made changes to debt enforcement in England and Wales were introduced under the Tribunals Courts and Enforcement (TCE) Act 2007. A clear fee structure was introduced, along with new training and competency requirements and rules on how a debt can be recovered by enforcement agents (described as bailiffs under previous legislation).

As the largest enforcement Group making over 1.4 million visits to households per year, Marston Holdings (Marston) is often asked to provide further clarification of the rules and regulations regarding enforcement.

This document is intended to summarise the new regulations relating to enforcement of debt instructed by order of the court. It also provides further information that may be useful in understanding how Marston may choose, or be required to act, in certain circumstances.

'Debt collection', where there is not a court order relating to recovery of a debt, is subject to different rules set by the Financial Conduct Authority (FCA). Marston has two debt collection subsidiaries that are authorised by the FCA to carry out specific debt collection activities that fall within the FCA's remit. We are applying the same principles across all Group activities as a matter of best practice, but these rules do not relate to enforcement.

The information contained in this booklet refers to Marston's debt enforcement activities in England and Wales. Marston includes subsidiaries that operate in countries other than England and Wales, and are therefore governed by different legislation.

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THE ISSUING OF A COURT ORDER

When a debt is outstanding, a court order may be issued for its enforcement. This is now known as a warrant, except for when issued by the High Court, when it is known as a writ.

Warrants are issued by local authorities and Her Majesty's Courts and Tribunals Service (HMCTS) for non-payment of fines relating to matters such as criminal offences, council tax and traffic offences.

County Court Judgments (CCJs) are made on behalf of individual creditors or businesses. If a CCJ relates to a non-Consumer Credit Act regulated debt of over £600, this may be transferred up into the High Court, and a writ issued. The individual body to whom the debt is owed may pass this to an enforcement company such as Marston to recover on their behalf. The enforcement company is obliged to perform the services instructed by the warrant or writ. Marston does not buy or own any debt.

Some debts are classified as a priority for recovery, because of the sanctions for non-payment.

These sanctions can include, for example, loss of home or energy supply, or imprisonment. Repayment of these debts is therefore considered by the court to take precedence over other forms of debt. Priority debts include arrears of council tax, rent, energy bills or TV licence payments, as well as child support and maintenance payments. Further details of priority debts are available from charities including the National Debtline.

Generally speaking, the court orders Marston enforces are issued against a named individual customer, not a property. A warrant or writ issued in the name of an individual customer can only be executed against that individual.

Magistrates' court fines do not expire. Warrants, on the other hand, are enforceable for only a fixed period (for example, penalties issued under the Traffic Management Act are only enforceable under the TCE Act 2007 for 12 months - though they remain eligible for debt collection for a further five years).

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STAGES OF ENFORCEMENT

Compliance

There must be seven days' clear notice from the Notice of Enforcement being issued, not including Sundays or bank holidays, before any further action is taken. Clients may, and often do, stipulate that a longer period elapses before any further action is taken.

The TCE regulations have introduced a new 'compliance' stage, which relates to the activity that takes place when a warrant or writ is first received by an enforcement company. The company will send by letter a Notice of Enforcement to the customer (the regulations refer to the customer as the 'debtor'), setting out the debt and the potential for further charges if this is not settled. This letter provides asking them to pay as soon as possible to avoid additional charges. This notice also includes details of free debt advice that is available.

No further action may be taken for seven clear days, not including Sundays or bank holidays. The court does, however, have the power to reduce the seven day period

if the enforcement agent or the creditor considers that the customer will avoid enforcement if given seven days' notice.

Often enforcement companies will be by clients asked to wait far longer than seven days before progressing to the next stage of enforcement, and to make more attempts to contact the customer after this time, generally through further letters or by telephone. No further charges will be applicable to customers for additional attempts made to contact them.

The 2014 regulations stipulate that one letter must be sent at compliance stage. In practice, further letters may be sent to encourage the customer to settle the debt without further charges becoming applicable – many of Marston's clients, for instance, stipulate that four letters must be sent during the compliance stage, before any further action is taken.

Enforcement

If the debt is not paid during compliance stage, the case will progress to the enforcement stage, whereby an enforcement agent will attend to enforce the warrant, either to obtain payment or take control of goods.

Where a visit has been made but no contact has been made, an enforcement agent must leave a notice.

Sale or disposal

The sale fee becomes applicable when an enforcement agent attends for the purpose of transporting goods to the place of sale.



TAKING CONTROL OF GOODS

Taking control of goods doesn't necessarily mean removing those goods. In practice, Marston will usually seek to enter into a controlled goods agreement with the customer.

This involves taking a full and detailed inventory to identify what would be removed at a later date, and leaving the goods in possession of the customer for a defined period to allow a final opportunity to settle the debt, or to come to an alternative agreement with the enforcement agent. If it is identified that there are insufficient goods, the process should be abandoned by the enforcement agent, and the client notified.

A customer is generally able to authorise another person to enter into a controlled goods agreement won their behalf. Additionally, where the debt is a business debt, a person in apparent authority at that business is able to enter into a controlled goods agreement. Enforcement agents may not take control of goods if the customer is a child, or if a child and/or vulnerable person is

the only person present. This is also the case if the goods are premises, and a child or vulnerable person is the only person present.

Where there is joint ownership of goods, an enforcement agent must issue an individual notice to each owner.

If a customer chooses not to sign a controlled goods agreement, enforcement agents must remove goods immediately, or leave.

An enforcement agent will have the right to re-enter the customer's premises if there were insufficient goods at the time they were to be removed, or if the enforcement agent believes the customer has sufficient goods at a later time.

Under the TCE Act, it is an offence to intentionally interfere with controlled goods without lawful excuse. If an enforcement agent is concerned that a customer may remove the goods from a trade or business premises in order to avoid enforcement, they are able to secure the entire premises to prevent this.



TAKING CONTROL OF GOODS REGULATIONS 2013

The Taking Control of Goods Regulations 2013 sets out what enforcement agents are, and are not, allowed to remove.

With some exemptions, the list of items that may not be removed includes:

Items or equipment (for example, tools, books, telephones, computer equipment and vehicles) which are necessary for use personally by the customer in their employment, business, trade, profession, study or education, unless the aggregate value of such items exceeds £1,350.

Such clothing, bedding, furniture, household equipment, items and provisions (including white goods) as are reasonably required to satisfy the basic domestic needs of the customer and every member of the household.

One landline telephone, or if there is none, a mobile or internet telephone.

Any item or equipment reasonably required for medical care within the household, safety, security and for any person who is under 18, disabled or elderly.

Assistance aids such as dogs and certain vehicles, including those with a valid disabled person's badge being displayed, mobility scooters, and those being used as an ambulance.

Goods that are also premises are exempt where they are also a principal home of the customer or someone in their care.

Goods that are in use, meaning in the hands of or being operated by the customer, are exempt if taking control of them is likely to result in a breach of the peace.

Where goods may be taken into control

Goods may be taken control of if they are on relevant premises (a place where the customer usually lives, or carries on a trade or business) that an enforcement agent has power to enter, or on a highway.

Additional requirements

If a vehicle is taken control of on the highway, it must remain immobilised for no less than two hours. This is to allow the customer to pay the outstanding sum, or to reach an agreement with the enforcement agent.

Third party ownership

When Marston has been instructed by a court order to enforce a debt, proof of ownership of goods will be required as evidence to satisfy a client that we should not take control of the relevant goods.

Local Government Ombudsman guidance confirms that where an enforcement agent is attending third party premises, they should apply common sense in judging the likelihood of third party ownership.

If a third party claims ownership of goods that have been removed, they must provide details to the enforcement agent. These must be forwarded to the creditor within three days, and a decision must be taken by the creditor within seven days. If the creditor agrees that the third party owns the goods, they will be released; if they dispute this, the enforcement agent must inform the third party within three days of being notified by the creditor. If the creditor fails to respond within the seven day period, an enforcement agent can apply to the court for a decision on rightful ownership. If the third party's claim is disputed, they must make an application to the court, with a supporting witness statement and any evidence. They are also required to make a payment to the court to the value of the goods they claim to own, although they may seek permission to pay only a proportion of the value instead.

ACCESSING PREMISES

Customers may be reluctant to allow enforcement agents to enter their premises, but entry to premises allows enforcement agents to assess the customer's situation.

An enforcement agent is generally only able to enter or re-enter a property peaceably, and without false pretences, by any door or any usual means by which entry is gained to the property.

However, enforcement agents may apply to the court for an order to force entry, which will be granted in limited circumstances. In practice, this is generally only applicable to warrants issued by HMCTS, with only very limited exceptions for use in civil court (including access to third party premises).

HCEOs may also, if necessary, use reasonable force to enter any business premises to enforce a High Court writ. Enforcement agents may also use reasonable force to re-enter any premises where the enforcement agent has already taken control of the goods, if two conditions are met:

- if the customer has failed to comply with any provision of the controlled goods agreement; and
- if the customer has been given notice of the intention to enter the premises to inspect the goods or to remove them for storage or sale.

Notice of intention to re-enter premises after a failed controlled goods agreement must be served by an enforcement agent no less than two clear days before re-entry.

Trespass laws do not prevent an enforcement agent from attempting to enforce a warrant or writ, as the powers granted to an enforcement agent by a warrant or writ take precedence.

REQUIREMENTS OF ATTENDANCE

Enforcement agents are required to carry their Enforcement Agent Certificate. Marston enforcement agents also carry their Marston identification.

The legal requirement for providing a warrant or writ on attendance varies, but the Taking Control of Goods: National Standards guidance states that enforcement agents must carry 'any written authorisation to act on behalf of the creditor (in appropriate debt types).'

In practice, Marston enforcement agents will carry a copy of the warrant or writ for

which they are attending.

Enforcement companies are prohibited by law from sharing original versions of High Court writs. This can arouse suspicion, but under the same rules the court will also only allow customers to view copies.

If enforcement agents discover during an attendance that further warrants or writs are outstanding, they are obliged to enforce these also.

Under the regulations, enforcement companies are not required to inform customers of the precise date and time of attendance; this could be any time from 6am – 9pm on any weekday, including Sundays and religious and public holidays. In exceptional circumstances, attendances may be carried out outside these times. In practice, Marston enforcement agents will not generally attend premises on such holidays.

It is an offence to intentionally obstruct a person lawfully acting as an enforcement agent.

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APPLICABLE FEES

Fees for enforcement are set by statute, and enforcement companies are obliged to charge these fees. The regulations enacted on 6 April 2014 introduced two schedules of fees relating to High Court and non-High Court orders. Court orders predating 6 April 2014 are subject to a separate fee scale.

Once a debt has progressed to compliance and enforcement stages, the relevant fees will still apply in addition to the initial debt. Until the total sum of the initial debt plus all relevant fees is paid, the warrant continues to have effect.

In instances of multiple warrants, enforcement agents will attempt, where possible, to enforce the warrants at the same time. In this case, compliance fees will apply for each, but only one enforcement fee will be applied, and only one sale and disposal stage fee (if applicable).

When other expenses are incurred in recovering a debt, such as the cost of hiring a locksmith, storing goods or the costs incurred in selling goods, actual costs may be applied. Further expenses are limited, and must be approved by the court.

Marston does not pay or reward enforcement agents a fee in relation to the sale or removal of goods.

The fees are set according to the stages of enforcement, rather than the number of activities carried out at each stage.

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NON-HIGH COURT

Compliance fee:	£75
Enforcement fee:	£235 plus 7.5% of the debt value that exceeds £1,500
Sale fee (selling at auction):	£110 plus 7.5% of the debt value that exceeds £1,500

HIGH COURT*

Compliance stage:	£75
1st enforcement stage:	£190 plus 7.5% of the debt value that exceeds £1,000
2nd enforcement stage:	£495
Sale or disposal stage:	£525 plus 7.5% of the debt value that exceeds £1,000

*VAT is applicable to High Court fees.

HELPING CUSTOMERS TO ADDRESS DEBT

WORKING WITH OTHERS

The new regulations require enforcement companies to signpost customers to free advice organisations, and contact details are provided in all notices issued to customers. Marston is pleased to work with organisations, including our partner StepChange, to help customers manage any problems they may have in addressing debt. Working together helps us to respond quickly and appropriately to a customer's needs.

Sometimes customers may be offered advice from other third parties that is erroneous, and discourages engagement with enforcement companies. It is important to be aware that the new regulations repeal and/or supersede previously existing legislation and common law.

Marston always ask that customers contact us as soon as possible to discuss their situation. Calls to our customer contact centre are charged at the local rate, and our team is always happy to call someone back if that's preferred.

Due to data protection rules, enforcement companies must ask customers to give their permission for their case to be discussed with advice organisations. Marston understands that giving written permission can be impractical, so we now accept permission given over the phone when we have a relationship with the customer involved.

MPs' offices are not subject to the same requirement when they are acting on behalf of a constituent, as that relationship is exempt from normal data protection rules.

An MP's office or an advice organisation may ask us to suspend any further enforcement action on a case for 28 days to allow for the customer to make contact, and/or a payment arrangement to be agreed. Some clients authorise a suspension of action without the customer directly requesting it, and others require the customer to confirm this request directly. If no contact is forthcoming during a 28-day suspension, enforcement activity will continue.

The warrant or writ provides limited information to us regarding the reason for its issue. Where there is a query regarding this, we ask that the customer contacts the client on whose behalf we are acting as soon as possible in order to clarify the circumstances and resolve any questions.

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PROOF OF IDENTITY

Enforcement companies are provided with limited information on the customer named in a warrant or writ. At Marston, we also have facilities to search for up-to-date customer address details.

If the person we are seeking to contact is not at the address provided to us, we may require proof of residence from the current occupiers so we can update our records, cease action and satisfy the client on whose behalf we are acting.

Proof of residence includes an up-to-date utility bill, tenancy agreement or council tax bill, which can be posted or emailed to us at the addresses given at the end of this document.

Please note that a Marston enforcement agent will attend the premises to confirm residency where the occupant has the same family name as the customer. This is because it is important to ensure we are providing our clients with correct information, and attendance helps us to do this.



VULNERABLE CUSTOMERS

Under the new regulations, all notices now have the contact details for agencies providing free debt advice. There are also new requirements for the training of enforcement agents, to improve standards in the enforcement sector.

When a warrant or writ is issued, an enforcement company will have no knowledge of whether a customer may be vulnerable, so training is vital in identifying potentially vulnerable people. Vulnerability is not defined under the new regulations, but Marston's enforcement agents are given extensive training on topics including the Mental Capacity Act and emotional intelligence in order to help them recognise potentially vulnerable customers.

Marston's training of enforcement agents to recognise and respond to potential vulnerability was recently highlighted by the Royal College of Psychiatry and the Money Advice Trust in their November 2014 report on treating potentially vulnerable customers fairly.

If a Marston enforcement agent has reason to consider that a customer may be vulnerable, they will refer them to our Samaritan-trained Welfare team for appropriate support, rather than attempt to continue a visit.

Members of the Welfare team take a case-by-case view of individual circumstances to determine whether a customer is deemed vulnerable. This may include requesting confirmation from a medical professional to ensure a customer's account is correctly monitored.

If potential vulnerability is confirmed, the Welfare team will manage the customer's case from beginning to end, and usual enforcement processes will be placed on hold to prevent causing distress to the customer. If information requested by the Welfare team is not provided within the timeframe they set out, action may continue.

If there is evidence during the active enforcement stage that a customer is vulnerable and has previously been unable to engage with the debt recovery process, an enforcement company may be allowed to apply only the compliance stage fee.

In appropriate cases, Marston's Welfare team will pass evidence of vulnerability to clients and request that the warrant or writ be returned (effectively terminated), rather than continue to pursue enforcement. Such a decision will be made on a case-by-case basis, and depending on the individual circumstances of a customer.

The Welfare team are also involved in vulnerability training for all new EAs that join Marston. Our enforcement agents are continually incentivised to follow our set vulnerability procedures.

Marston uses Body Worn Video to record interaction with customers, both for their protection and the protection of our enforcement agents. Under data protection rules, it is generally not permitted to record video footage of minors; people suspected to be vulnerable; people who are not deemed to be sufficiently dressed; or to record footage where payment details are audible. These exceptions will not automatically apply if an enforcement agent feels at risk.



PAYMENT ARRANGEMENTS

Debts enforced by court order are not means tested. Courts may provide opportunities for customers to complete a means test prior to a warrant or writ being issued. If a means test was not available, this should be raised with the court in question.

If a customer cannot afford to pay a debt in full, they may wish to discuss entering into an arrangement to pay in instalments. Warrants or writs do not instruct that payment arrangements must or should be offered, but many, if not all, enforcement companies will accept these where possible. The key factors determining whether Marston may accept a payment arrangement is whether a client permits us to do so, and whether evidence is provided of the customer's circumstances.

Payment arrangements are made on a case-by-case basis and, once established, it is important that they are maintained so that action does not continue and a warrant or writ is not reissued.

Marston reviews payment arrangements on a regular basis to ensure they are set at an appropriate level.

The time limit for taking control of goods is 12 months from the time of the compliance stage, which may be extended for a further 12 months through application to the court. If a payment arrangement is entered into, the 12 months will commence on the date of any breach of the repayment plan. Some clients issue work for a reduced period of six months, requiring payment in full in that period.

If it is not possible to enter into an arrangement, Marston will inform clients of a customer's circumstances so that they may make an informed and appropriate decision regarding their next steps.

If a warrant or writ expires before the debt had been repaid in full, this may be returned to the court and reissued - with new compliance and enforcement fees potentially becoming applicable - for enforcement by another company.

METHODS OF PAYMENT

Methods of payment vary across enforcement companies.

Marston offers a number of ways for payment to be made which are explained in the letters we send and on our website. This may include allpay cards, which are particularly suitable for people in challenging financial circumstances as they cannot be overdrawn.

We arrange payment dates to suit customers, and, if appropriate, we can send text messages to remind customers of payment dates. We encourage customers to establish standing orders rather than direct debits to prevent bank charges being incurred if there are insufficient funds to make the payment.

If a customer believes they have already paid the client the outstanding money, we will require proof of that payment in order to discharge our obligations under the warrant or writ. If a refund is due to a customer, the client is required to provide that to the customer directly.



COMPLAINTS

People may wish to complain to the client who has instructed us to act on their behalf. However, whilst the warrant or writ is with us for enforcement, we will usually be the appropriate route to addressing any questions and concerns a customer may have regarding enforcement.

Individual complaints processes may vary in accordance with specific needs of clients, but all will be addressed through our three-step process.

Complaints regarding members may also be made to the Civil Enforcement Association (CIVEA) and the High Court Enforcement Officers Association (HCEOA), although they will usually ask complainants to follow internal complaints procedures as a first step. Complaints relating to local authority enforcement may be submitted to the Local Government Ombudsman.

MARSTON'S THREE-STAGE COMPLAINTS PROCESS

Stage one

The first step of this is for the complainant to contact us. The first step of this is to contact us by email, fax, post or online. Contact information can be found at the back of this booklet.

Stage two

If the complainant isn't happy with the outcome of stage one, they can ask for their complaint to be reviewed by our Head of Customer Care, who will be independent of the matter in question. The complainant will be asked their reasons for disagreeing with our first-stage finding, and for any additional information that may support their position.

Stage three

The final stage is an appeal process, through which a complaint may be referred to our independent Advisory Group, or the enforcement trade associations CIVEA and HCEOA.

Marston's independent Advisory Group

Our work is monitored by an independent Advisory Group chaired by Elizabeth Filkin CBE, former Parliamentary Commissioner for Standards. The Group reviews how we do business and can recommend changes as appropriate.

Members of the Advisory Group are not employed by Marston Holdings or any of its Group companies.

Further details about the Advisory Group can be found at: www.marstongroup.co.uk

Trade associations

Even if the complainant chooses the Advisory Group to review a stage three complaint, they may still refer this to the CIVEA or HCEOA once internal complaints procedures have been followed.

Contact details

CIVEA

513 Bradford Road
Batley, West Yorkshire
WF17 8LL

T: 0844 893 3922
W: www.civea.co.uk

HCEOA

Drake House,
Gadbrook Park
Northwich, Cheshire
CW9 7RA

T: 0844 824 4575
E: enquiries@hceoa.org.uk
W: www.hceoa.org.uk

The Local Government Ombudsman

Where a complaint relates to enforcement activity carried out on behalf of a local authority, it may be made to the Local Government Ombudsman. They will usually require that internal complaints procedures have been followed first. Other requirements are set out on their website at: www.lgo.org.uk

PO Box 4771
Coventry
CV4 0EH
T: 0300 061 0614

INSOLVENCY

Guidance on the impact of insolvency is available from the government's insolvency service and advice organisations.

COMMERCIAL RENT ARREARS

The new regulations abolished the common law right to levy distress for commercial rent arrears and provide protection to residential tenants. However, landlords of commercial premises are able to use enforcement agents to recover rent payable without needing to take the matter to court, in accordance with the new regulations.

TRADE ASSOCIATIONS

The CIVEA is an independently funded association that represents private certificated enforcement agents in England and Wales. It has published a Code of Conduct and Good Practice Guide to which members must adhere and investigates complaints made about members once internal complaints processes have been completed.

The HCEOA represents authorised High Court Enforcement Officers. HCEOA has also published a Code of Practice, and investigates complaints about members.

NATIONAL STANDARDS FOR ENFORCEMENT AGENTS

The government has published Taking Control of Goods: National Standards, a voluntary code of conduct that sits alongside the new regulations.

AUDITING

Marston conducts regular and thorough audits of our enforcement agents to ensure they are complying with regulations and our own company policy. If it is found that an enforcement agent acting on Marston's behalf has broken the law, we will prosecute and apply to the court for permanent revocation of their certification.

Marston's Learning and Development and Audit functions each set standards for enforcement agent conduct that exceed the National Standards as a matter of best practice.

FURTHER QUERIES

Since the new regulations have been introduced, providing greater transparency and protection for customers, Marston has seen a significant decrease in the number of queries and complaints relating to enforcement.

If you have any other queries this guide does not answer relating to non-High Court enforcement, please contact Mike Marrs, Business Development Director, on 07739 774 487.

If you have any queries relating to High Court enforcement, please contact Mark Eddowes on 0121 200 7441.

Other questions

If you have any suggestions for what further information may be helpful to include in this guide, please let us know by emailing our Public Affairs Director, Pamela Mulcahy, at: pamela.mulcahy@marstonholdings.co.uk.

Further information about Marston

Marston Holdings Limited is the UK's largest judicial services Group. Our enforcement companies are Marston Group Limited, Rossendales Limited, Swift Credit Services Limited, CW Harrison & Co High Court Enforcement Limited, and Collectica Limited.

Other Group companies, operating in different regulatory environments, are Moreton Smith Receivables Ltd, an international debt collection company; and Scott & Co (Scotland) LLP and AA Hutton LLP, both operating in Scotland.

Contact information

Details of how to contact us to discuss enforcement can be found on the following websites. If you have a question about a specific case, please refer to any correspondence to see which Marston company is the right one to contact, so we can help you more quickly:

w: www.marstongroup.co.uk

w: www.marstonhighcourt.com

w: www.rossendales.com

w: www.swiftcredit.co.uk

w: www.collectica.co.uk

w: www.harrisonhce.co.uk

Disclaimer:

This document has been produced in order to provide insight into Marston's approach to enforcement and debt issues further to the Tribunals Courts and Enforcement Act 2007 ("the Act") and the Taking Control of Goods Regulations 2013 ("the Regulations"). It has been provided for guidance purposes only and should not be relied on as legal advice as to your or any third parties' rights and obligations under the Act, the Regulations or generally under the law. The legal information contained within this guidance is not advice and should not be treated as such. Whilst every effort has been made to ensure the accuracy of the information supplied herein, Marston cannot be held responsible for any errors or omissions.



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W: www.marstongroup.co.uk

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