

Bank Arrestments

What is a bank arrestment?

A bank arrestment is a particularly harsh form of diligence, or formal debt recovery. Citizens Advice Scotland (CAS) has been campaigning for change in this area for a number of years.

Under a bank arrestment:

- All the money in the debtor's bank account is frozen and becomes inaccessible. Despite legislation designed to protect benefits and tax credits¹, client evidence shows that they do get arrested.
- The money remains inaccessible until the debtor signs a mandate releasing funds to the creditor, or the creditor raises a court action to force the release of funds.

Case evidence shows that this can cause already vulnerable people severe financial hardship, as they are left without access to any funds for periods of days or even weeks.

The current situation

- Bank arrestments are the most frequently used form of diligence. In 2002 – the most recent year for which figures are available - nearly 80,000 bank arrestments were executed in the Scottish courts.
- The English equivalent of bank arrestments – third party debt orders – are not an equivalent at all. They are far more complicated to apply for, and in 2002 only 5,449 were carried out. This means that fifteen times as many bank arrestments were carried out in Scotland, from a significantly smaller population.
- The Bankruptcy and Diligence etc (Scotland) Bill proposes that a minimum sum in a bank account is protected from arrestment. Whilst we fully support this proposal, it does not address the fundamental issue of benefits and tax credits being arrested.

¹ Section 187 of the Social Security Administration Act 1992 and Section 45 of the Tax Credits Act 2002

Bank arrestments are a harsh form of debt recovery that can cause severe financial hardship for already vulnerable people

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Current concerns

Case evidence highlights a number of specific issues relating to bank arrestments:

- Benefit and tax credit payments are theoretically exempt from bank arrestments, as long as they are identifiable as such. However, some banks argue that once benefits are paid into an account they lose their identity, becoming part of the generic pool of money in the account, and are therefore arrestable.
- The arrestment of benefits in bank accounts is an area of increasing concern since the advent of direct payment of benefits into bank accounts. This means that many more vulnerable people are now susceptible to this form of diligence.
- Bank arrestments are most frequently used by local authorities in respect of council tax arrears. This is a particular concern for two reasons. Firstly, in 2004/05 client enquiries relating to tax debt represented the third biggest category of debt enquiry. Secondly, bureaux are reporting an increasingly hard-line approach in debt recovery by local authorities.
- Client evidence shows that some banks charge administration costs for implementing a bank arrestment, causing clients further financial hardship.
- People with severe disabilities can receive a relatively high level of income, comprising benefits, premiums, independent living funds and direct payment awards for paying a carer's wages. These funds are essential for meeting the extra costs associated with a severe disability, and arresting this income can therefore compromise the ability to pay for medical needs or fulfil obligations as an employer of a carer.
- Double diligence occurs when people simultaneously face more than one form of formal debt recovery. This is a particular problem for bureau clients on very low incomes who can be faced with both a bank arrestment and an arrestment of wages at the same time.

CAS calls for change

In order to address the issues raised by bureau client evidence, CAS calls for:

- Benefit and tax credit income to be exempt from arrestment.
- A provision that would prevent a creditor carrying out a bank arrestment if they have already arrested someone's wages.
- Any sum protected from bank arrestment to be safeguarded from erosion by the application of bank charges.
- Payments related to disability to be exempt from arrestment.

|| A West of Scotland CAB reports of a client whose account was arrested for council tax arrears. The account contained £92, made up entirely of the client's incapacity benefit payment. The bank charged £35 for administering the arrestment and the debt collection company charged a fee of £42. Consequently, the arrestment only reduced his debt by £15 but meant he had no money to live on for a fortnight.

Case evidence

|| A North of Scotland CAB reports of a lone parent with two young children whose bank account was arrested the week before Christmas. She had received no paperwork from her bank, the creditor or the sheriff officers. Her only income was income support and child tax credit, both of which were clearly identifiable in her account. Furthermore, the arrestment had been carried out in respect of a two-year old parking ticket which the client was adamant she had never received.

|| A West of Scotland CAB reports of a female client with a young baby who had recently split from her partner and moved out of the family home. She tried to access her account and discovered it had been arrested by a debt collection company for council tax arrears. Her ex-partner had not forwarded her mail and she was therefore unaware that an arrestment order had been issued. The arrested account comprised wages, child benefit and child tax credit. The client was very distressed about how she would take care of her small baby without access to any money, but the debt collection company was unsympathetic.