

Public Document Pack

Date of meeting Thursday, 11th April, 2019
Time 7.00 pm
Venue Astley Room - Castle House
Contact Jayne Briscoe 2250



**NEWCASTLE
UNDER LYME**
BOROUGH COUNCIL

Castle House
Barracks Road
Newcastle-under-Lyme
Staffordshire
ST5 1BL

Finance, Assets & Performance Scrutiny Committee

AGENDA

PART 1 – OPEN AGENDA

- 1 APOLOGIES**
- 2 DECLARATIONS OF INTEREST**
- 3 MINUTES OF THE LAST MEETING - 24 JANUARY 2019** (Pages 3 - 8)
- 4 QUARTERLY PERFORMANCE REPORT** (Pages 9 - 18)
- 5 ETHICAL DEBT COLLECTION** (Pages 19 - 80)
- 6 WORK PROGRAMME**
- 7 PUBLIC QUESTION TIME**

Any member of the public wishing to submit a question must serve two clear days' notice, in writing, of any such question to the Borough Council

8 URGENT BUSINESS

To consider any business which is urgent within the meaning of Section 100B (4) of the Local Government Act 1972

9 DATE OF NEXT MEETING - 27 JUNE 2019

Members: Councillors G. Burnett, J. Cooper, A. Fear, A. Fox-Hewitt, B. Johnson, T. Kearon, S. Pickup (Vice-Chair), B. Proctor, M. Stubbs (Chair) and P Waring

Members of the Council: If you identify any personal training/development requirements from any of the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Democratic Services Officer at the close of the meeting.

Meeting Quorums :- 16+= 5 Members; 10-15=4 Members; 5-9=3 Members; 5 or less = 2 Members.

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

NOTE: THERE ARE NO FIRE DRILLS PLANNED FOR THIS EVENING SO IF THE FIRE ALARM DOES SOUND, PLEASE LEAVE THE BUILDING IMMEDIATELY THROUGH THE FIRE EXIT DOORS.

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FINANCE, ASSETS & PERFORMANCE SCRUTINY COMMITTEE

Thursday, 24th January, 2019
Time of Commencement: 7.00 pm

Present:- Councillor Mike Stubbs – in the Chair

Councillors:

G. Burnett

J. Cooper

A. Fear

D. Harrison

T. Kearon

S. Pickup

P Waring

Officers

Jayne Briscoe - Democratic Services
Officer and Interim Executive Director -
Resources and Support Services - Jan
Willis

Also in attendance the Deputy Leader,
Councillor S Sweeney – Portfolio Holder
for Finance and Efficiency

1. **APOLOGIES**

There were no apologies

2. **DECLARATIONS OF INTEREST**

There were no declarations of interest

3. **MINUTES OF PREVIOUS MEETING - 17 DECEMBER 2018**

Resolved: That, with the inclusion in the attendance of Councillor G Burnett the minutes of the meeting held on 17 December 2019 be agreed as a correct record.

4. **REVENUE AND CAPITAL BUDGETS 2019-20**

The Interim Executive Director (Resources & Support Services) submitted a report which provided the Committee with the opportunity to scrutinise the draft Budget and Council Tax proposals before the final proposals were considered at Cabinet on 6 February 2019.

A verbal update was given on the Revenue and Capital budget report which was presented to Cabinet on 16 January 2019.

Members were asked to comment on the proposals. The points made by members of the Committee are set out together with the response:-

Sickness levels within the waste recycling/disposal area of the council was a significant cost. *Sickness absence which requires the use of agency staff is reflected.*

“Income” recouped from court costs in relation to non-payment of council tax was decreasing and this change should be reflected. *Recovery costs in relation to Court summons had decreased and this will be reflected in future budgets.*

There was a question as to how robust the savings identified by the Efficiency Board were. *It was acknowledged that there was little fat to trim, a risk rating had been applied and closely monitored.*

Members were concerned at the impact of the vacant posts and flexible retirement on the remaining staff. *In each case an impact assessment would be carried out by the Head of the Section and opportunity taken to redirect capacity.* The Chair would confirm if the Trade Union was engaged within the processes.

Does the Authority lose income due to vacant commercial space? *Net income from commercial property has decreased.*

In relation to capital receipts land should be examined and if suitable marketed.

In terms of the 10 year Strategy the population of Kidsgrove deserved to have an increased level of funding at an earlier opportunity including a swimming pool. *There was investment in the Kidsgrove area including £150,000 for a 4G network, additional investment would come in years 4/5 of the strategy. Funding for dryside activities at the Leisure was first of the works to be scheduled.*

Members of the Committee discussed whether constitutionally a scrutiny committee could support decisions taken by the Cabinet which would result in an additional increase in the Council tax level in addition to those of the County Council and Staffordshire Commissioner for Police, Fire and Rescue and Crime.

Agreed (a) That the progress on the completion of the Revenue and Capital Budgets for 2019/20.

(b) That the strategy for addressing the provisional forecast outturn for the 2018/19 revenue budget be noted.

(c) That the strategy for addressing the provisional forecast outturn for the 2018/19 revenue budget be noted.

(d) That the level of reserves provisionally required to be maintained in 2019/20 be noted.

(e) That the Flexible Use of Capital Receipts Strategy be recommended for approval by Council on 20 February 2019.

5. CAPITAL STRATEGY 2019/2029

The Interim Executive Director (Resources & Support Services) submitted a report which provided the Committee with an opportunity to scrutinise the Capital Strategy for 2019-2029 prior to it being considered by Council on 20 February.

A verbal update was given on the decisions made by the Cabinet on 16 January in respect to the report. It was noted that there may be a need to borrow to finance the purchase of new vehicles to be used on the introduction of the new recycling scheme.

Members were asked to comment on the proposals. The points made by members of the Committee are set out together with the response:-

The Chair noted that the Local Authority was in uncertain times in relation to funding from Central Government and that there were revenue implications to funding debt. There was a need to ensure that all members were given the opportunity to understand the process and reasons for borrowing.

It was acknowledged that there would be a need to borrow to invest in a sustainable future which could include building industrial units or housing.

Agreed That the report be noted.

6. **INVESTMENT STRATEGY 2019-20**

A report was submitted by the Interim Executive Director (Resources & Support Services) which provided the Committee with the opportunity to scrutinise the Capital Strategy for 2019-2029 prior to consideration by the Council at their meeting on 20 February 2019.

A verbal update was given on the decisions of Cabinet at their meeting on 16 January 2019.

The Interim Director (Resources and Support Services) explained the managed approach to risk. The authority would be appointing expert advisors to undertake a review of our commercial property portfolio.

Members expressed their concern on examination of the expenditure on commercial properties in relation to income. Property advisors should be carefully chosen to reflect values of the authority. *The Interim Director (Resources and Support Services) agreed to obtain the gross income % of property portfolio and pointed out that there was a wider set of circumstances than purely income for a local authority to hold property included helping to maintain a vibrant town centre.*

The market should be marketed to help ensure footfall. The attractiveness of other niche markets was highlighted.

Agreed: That the report be noted.

7. **PUBLIC QUESTION TIME**

A member of the public, Mr N Jones submitted the following questions for consideration by the Committee and was present at the meeting to present his questions and to engage in further discussion with the Committee:-

1. What are the total costs involved for the next two years in recycling and waste management,(both the large capital expenditure for the new scheme and operational costs) AND correspondingly if the new scheme were postponed, what would be the costs involved if the current system were maintained (operational costs and any likely capital expenditure) ?

2. Given the risk assessment shows a very large number of high risks with no actions that can be taken and given the statements on page 48 that the capital programme "will require a significant amount of borrowing" together with "an annual contribution of £50K from revenue account to the ICT Development Fund" with scarce reserves, how can the council justify the capital budget as proposed?

3. What income is estimated to be received in the next two years from sale of land to support the proposed budget?

In response the Executive Director of Operational Services submitted the following response to Question !

1a. What are the total costs involved for the next two years in recycling and waste (both the Capital Expenditure for the new scheme and Operational Costs)?

Revenue		Capital	
19/20 £m	20/21 £m	19/20 £m	20/21 £m
*1.288	*1.244	-	*3.7

1b. What would the costs be if the current system were maintained (Operational Costs and likely Capital Expenditure)?

Revenue		Capital	
19/20 £m	20/21 £m	19/20 £m	20/21 £m
*1.288	*1.388	-	*0.130

*Excluding recharges and subject to detailed service modelling and costing to confirm number of rounds and staffing resources required.

Mr Jones considered that the answer was more troubling in terms of the cost of the proposed new system. Mr Jones added that the increase in costs had been confirmed by a recent Cabinet report. *The Deputy Leader pointed out that a decision had not been taken to purchase of new vehicles. He added that the proposed new system was not designed to save money but to deliver an improved method of collecting recycling at no extra cost.*

Q2. Given the risk assessment shows a very large number of high risks with no actions that can be taken and given the statements on page 48 that the capital programme "will require a significant amount of borrowing" together with "an annual contribution of £50k from revenue account to the ICT Development Fund" with scarce reserves, how can the council justify the capital budget as proposed?

The overall risk profile of the council in relation to the objective of setting a balanced, affordable and achievable budget has reduced compared to 2018-19. The highest risk score is now 9, at the bottom end of the high risk category, and a number of risks that were previously rated as high or moderate have reduced to moderate or low. This is due in part to actions taken to mitigate risks in year – for example, undertaking a detailed stock condition survey and completing the pay spine review, both of which have provided greater certainty about future funding requirements. The draft revenue and capital budgets also include a number of measures designed to reduce those risks further or to provide greater financial resilience – for example:

- adjusting the base budget for significant shortfalls in income in waste and revenues
- building in a £1m contingency into the capital programme
- establishing a £300k growing borough fund which will provide pump priming for initiatives that generate additional revenue streams or enable efficiency savings
- increasing the General Fund reserve from £1.2m to £1.448m

One of the key prudential ratios we are required to calculate under the CIPFA Prudential Code is the actual and estimated ratio of financing costs to net revenue stream which is a broad measure of the affordability of capital investment. On the basis of the draft 3 year capital programme this ratio is expected to rise from 1.11% in the current financial year to 1.17% in 2021/22. Comparative statistics for other local authorities are not readily available. However, on the basis that the council is currently debt-free and does not have plans for large scale borrowing over the next 3 years our ratio will compare very favourably with most other councils. In the longer term, the affordability of the council's capital programme will hinge on our ability to grow our net revenue stream – for example, by growing our tax base (both council tax and business rates) and generating additional income from investments, fee and charges and other revenue streams. The more successful we are in doing this, the greater the level of capital investment we will be able to afford.

Mr Jones felt that the answer to Q2 showed the risk of using Reserves with the uncertainty of the level of interest rates. Mr Jones questioned that as the population grew the authority may be required to spend more. *The Deputy Leader confirmed that this risk was recorded at the bottom of the risk register.*

Q3

What income is estimated to be received in the next two years from sales of land to support the proposed budget?

Estimates of capital receipts from asset disposals are shown in Appendix 3 to the revenue and capital budget report (p19 of the Cabinet agenda). These total £7.4m in the next 2 years.

Mr Jones concluded by stating that members of the public would need to see good justification for the increase in Council Tax.

Mr Jones was thanked for his attendance and the interest he had demonstrated.

8. URGENT BUSINESS

There were no items of urgent business.

9. DATE OF NEXT MEETING - 21 MARCH 2019

The next meeting will be held on Thursday 21 March 2019

COUNCILLOR MIKE STUBBS
Chair

Meeting concluded at 8.40 pm

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO THE FINANCE, ASSETS AND PERFORMANCE SCRUTINY COMMITTEE

Date - 11 April 2019

1. **REPORT TITLE** FINANCE, ASSETS AND PERFORMANCE SCRUTINY COMMITTEE

Submitted by: Chief Executive- Martin Hamilton

Portfolio: Corporate & Service Improvement, People & Partnerships, Finance & Efficiency

Ward(s) affected: All Wards

Purpose of the Report

Members of this Committee at their meeting in December 2018 asked to scrutinise the performance of the Council against the key performance indicators. In line with this request the Quarterly Performance Report is attached. The attached report has been considered by Cabinet and members of this Committee may scrutinize the performance targets and forward any comments to Cabinet for future action/discussion.

Recommendations

That members consider the contents of the report and highlight any areas of concern for consideration by Cabinet.

1. **Background**

Members of the Finance, Assets and Performance Scrutiny at their meeting in December asked to scrutinize areas of performance within the Council in accordance with their remit.

2. **Issues**

The Leader of the Council is considering the current performance indicators to ensure that they are aligned with the new priorities contained within the Council Plan.

4. **Proposal**

That the Scrutiny Committee receive a quarterly report setting out the key performance indicators of the Council in line with the Council plan and strategic projects being delivered.

5. **Reasons for Preferred Solution**

Once agreed the key performance indicators will measure outcomes linked to the corporate priorities and key strategic council projects.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

The key performance indicators will give scrutiny an overview of the quarterly achievements against corporate priorities.

9. **Financial and Resource Implications**

One of the three reports contained in the attachment is a finance report which sets out the achievements over the quarterly period.

13. **Earlier Committee Resolutions**

Arising from discussions at 17 December Finance, Assets and Resources Scrutiny Committee meeting.

14. **List of Appendices**

Attached report details

15. **Background Papers**

None

FINANCIAL AND PERFORMANCE MANAGEMENT REPORT TO END OF QUARTER THREE (October-December) 2018-19

Submitted by: Executive Management Team

Portfolio: Corporate & Service Improvement, People & Partnerships, Finance & Efficiency

Wards Affected: All

Purpose

To provide Cabinet with the Financial and Performance Review report with the Financial and Performance Review report – third quarter 2018/19.

Recommendations

- (a) That Members note the contents of the attached report and agrees to the recommendation that the Council continues to monitor performance alongside the latest financial information for the same period.
- (b) That Members support the future development of the Financial & Performance report to reflect the vision and priorities of the Council Plan 2018-2022.

Reasons

The Financial and Performance Management monitoring reports provide information on a quarterly basis regarding the performance of individual council services, alongside related financial information on the organisation.

1. Background

- 1.1 This quarterly report provides Members with a detailed update on how the Council has performed during the third quarter of 2018/19 by presenting performance data set within a financial context.
- 1.2 This report provides broad financial information (Appendix A) and also details performance (Appendix B) for the third quarter of 2018/19.
- 1.3 A summary of the overall performance picture is presented in section 3 of this report and members will note that performance is generally progressing well.

2. 2018/19 Revenue and Capital Budget Position

- 2.1 The Council approved a general fund revenue budget of £13,335,420 on 21 February 2018. Further financial information is provided in Appendix A.

3 Performance

- 3.1 The latest performance information for quarter three has been analysed.
- 3.2 All indicators monitored for this period are listed in the table found in Appendix B.
- 3.3 Any indicators failing to meet the set targets include a comment explaining why the indicator has not performed well, and what steps are being taken to ensure improvement in the future.

- 3.4 The layout for Appendix B changed in early 2018.
- 3.5 For this report a total of 21 indicators were monitored, and the proportion of indicators which have met their target or are within tolerance levels during this period stands at 71%.
- 3.6 There are 6 indicators off target this quarter, with 1 within tolerance and officers consider that the performance against these indicators does not give rise to serious cause for concern at present (see commentary provided at Appendix B). The management of each of the service areas concerned continue to monitor and take steps to deal with under achievement of targets where possible and/or appropriate.

Further quarterly updates will be provided for Members in future reports.

- 3.7 Positive performance can be seen in a range of services and members will note that some services are affected by both seasonal and external factors. It should also be noted for consideration that some indicators have stretched targets set and local targets that are higher than the national ones.

4. Development of the Financial and Performance Report

- 4.1 The performance section –Appendix B was updated in quarter two and the indicators align to the new vision and priorities of the new Council Plan 2018-2022.
- 4.2 The performance measures are currently being reviewed to reflect the priorities in the new Council Plan.
- 4.3 During the next months, the format and content of the report will be reviewed and developed in order to reflect the progress of the planned aims of the Council Plan 2018-2022.
- 4.4 Additional performance information will be provided, not only to ensure the monitoring of the corporate activities of the council, but also to inform Members, businesses and residents of performance in their local economy.

5. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities

- 5.1 All indicators link to corporate priorities set out in the Council Plan and/or Service Plans.

6. Legal and Statutory Implications

- 6.1 The Council has a duty to set targets for performance of a range of functions and needs to monitor these closely.

7. Equality Impact Implications

- 7.1 There are no differential equality issues arising directly from this monitoring report.

8. Financial and Resource Implications

- 8.1 Any positive variance for the full year on the General Fund Revenue Account will enable that amount to be transferred to the Budget Support Fund and will be available in future years for use as the Council considers appropriate. Conversely, if there is an adverse variance, the amount required to cover this will have to be met from the Budget Support Fund.

9. Major Risks

- 9.1 The ongoing changing market conditions represents the greatest risk to the revenue budget, particularly with regard to the impact it may have upon income receivable in relation to services where customers may choose whether or not to use Council facilities or in the case of the waste/recycling service where the volume of recycled materials is liable to fluctuate. The situation will be monitored through the normal budget monitoring procedures.
- 9.2 The capital programme will require regular monitoring to identify any projects which are falling behind their planned completion dates. This will be carried out by the Capital Programme Review Group, which meets on a monthly basis together with quarterly reports to Cabinet.
- 9.3 The above represents a high level view of risk. There are detailed risk registers available if members wish to see them.

10. List of Appendices

Financial information (Appendix A), and performance information (Appendix B).

11. Background Papers

Working papers held by officers responsible for calculating indicators.

12. Management sign off

Each of the designated boxes need to be signed off and dated before going to Executive Director/Corporate Service Manager for sign off.

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Corporate Performance Scorecard Quarter 3 October-December 2018-19

Priority 1:Local Services that Work for Local People

Ref	Service Area	Portfolio Holder	Indicator	Good is	Result Q3 2017-18	Result Q3 2018-19	Target 2018-19	Status	Notes
1.1	Environmental Health	Cllr. Trevor Johnson	Percentage of food premises that have a zero or one national food hygiene rating	Low	1.64% (18 out of 1,100 published premises)	1.25% (13out of 1,107 published premises)	5%		The figure remains well within target this quarter.
1.2	Recycling & Fleet	Cllr. Trevor Johnson	Household collections from the kerbside (%):-						
1.2a			· Dry Recycling	High	19.03%	19.3%*	18%		The annual figures for waste were as follows; Dry -18.68%, Food 5.57% and Garden waste recovered slightly and up on the same period last year. however collections stopped at the end of November, so unlikely year end target will be met with the effect of the very hot summer as well.
1.2b		· Food	High	6.66%	5.26%*	5%			
1.2c		· Green	High	15.92%	16.64%*	20%			
1.3	Operations	Cllr. Trevor Johnson	Levels of street and environment cleanliness (LEQ survey) free / predominantly free of litter, detritus, graffiti and fly-posting)	High	93.5.5% 95.86% 100% 100%	94.5% 96.67% 100% 100%	91% 91% 97% 99%		The second survey for 2018-19 was undertaken in Qtr 3 and the results were above target, having improved on the position in tranche 1.
1.4	Customer & ICT		Percentage of requests resolved at first point of contact	High	99%	98%	97%		The result exceeds the target set for Qtr 3.
1.5	Customer & ICT	Cllr. Simon Tagg	% Unmet demand (number of calls not answered as a % of total call handling volume)	Low	7.48%	6.90%	8%		The result has improved this quarter and is within the target set.
1.6	Revenues & Benefits	Cllr. Stephen Sweeney	Time taken to process Housing/Council Tax Benefit new claims and change events	Low	5.82 days	5.86 days	10 days		The results are above the targets set for Qtr 3.
1.7			Percentage of Council Tax collected	High	78.10%	77.70%	76.08%		
1.8			Percentage of National non-domestic rates collected	High	83.00%	82.90%	78.66%		
1.9	Human Resources	Cllr.Simon Tagg	Average number of days per employee lost to sickness	Low	6.22 days	7.34 days	6 days Qtr 3 (8 days annual)		Attendance Management is currently a high priority for HR to support managers in managing sickness absence cases particularly within Operational Services. A dedicated HR Adviser has been employed to tackle attendance issues at NULBC and will be working with all line managers to coach them through the process, which has also led to improved sickness absence recording. A new Attendance Management policy is currently being developoed with the intention to train managers on the policy so that they have the skills and knowledge to ensure that all cases are dealt with consistently.

*Results are provisional at this time.

Priority 2: Growing our People and Places

Ref	Service Area	Portfolio Holder	Indicator	Good is	Result Q3 2017-18	Result Q3 2018-19	Target 2018-19	Status	Notes
2.1	Operations	Cllr. Trevor Johnson	Number of community volunteer groups/hours spent caring for their local green spaces and neighbourhoods	High	1,361.5 hrs Qtr 3 (4,520 hrs cumulative)	278hrs	250 hrs Qtr 3 1,000 hrs (annual)		The figure continues to exceed the target.
2.2	Culture & Arts	Cllr. Mark Holland	Number of hours worked by volunteers in council co-ordinated activities (museum)	High	508.8hrs Qtr 3 (1,778 hrs cumulative)	513hrs Qtr 3 (1,339.87 hrs cumulative)	300hrs Qtr 3 (1,200hrs cumulative)		The result continues to be above target for this indicator.
2.3	Planning & Development	Cllr. Paul Northcott	Percentage of Major Planning Applications decisions issued within an agreed extension of time	High	75.00%	57.10%	72.50%		The target has been increased for 2018-19 to reflect changing national targets. The result is well below target and is due primarily to case management issues where agreements to extend the statutory period were either not sought or were not sought/provided by agents in time. Whilst the performance achieved is not symptomatic of applicants' concerns, given that this is a national designation measure, it is a priority for improvement. Annual performance for 2017/18 was 78.4% and with more pro-active case management it is anticipated that the performance target could be achieved by the end of the year. It is also worth noting that significant fluctuations in performance will arise because of the relatively small number of applications involved.
2.4	Planning & Development	Cllr. Paul Northcott	Percentage of Non Major Planning decisions issued within an agreed extension of time	High	81.90%	80.70%	85%		This target has not quite been met again this quarter, although performance has improved. More pro-active case management is being used to drive improvement. The Council's performance remains above the Government target.

Priority 3: A Healthy, Active and Safe Borough

Ref	Service Area	Portfolio Holder	Indicator	Good is	Result Q3 2017-18	Result Q3 2018-19	Target 2018-19	Status	Notes
3.1	Operations	Cllr. Trevor Johnson	Number of parks which have Green Flag status	High	7	7	7		
3.2	Operations	Cllr. Trevor Johnson	Level of satisfaction with Council run parks and open spaces	High	N/A	N/A	66%	N/A	This will be reported in March 2019.
3.3	Community Safety	Cllr. Jill Waring	Number of Anti-Social Behaviour (ASB):-						
3.3a			-New ASB cases received during the quarter	Low	93	72	-	-	The number of cases reported this quarter are down on the same period for last year and the current caseload is lower too.
3.3b			-Current open ASB cases as at the end of the quarter	Low	14 (31/12/17)	15 (31/12/18)	-	-	
3.3c			-ASB cases closed in the quarter	Low	101	73	-	-	
3.4	Culture & Arts	Cllr. Mark Holland	Number of people visiting the museum	High	10,340 Qtr 3 (52,644 cumulative)	9,634 (54,862 cumulative)	10,000 Qtr 3 (46,000 cumulative)		The museum has reached its annual target in Qtr 3.
3.5	Leisure	Cllr. Mark Holland	Number of people accessing leisure and recreational facilities	High	150,080 Qtr 3 (473,800 cumulative)	144,597** Qtr 3 (463,120 cumulative)	150,000 Qtr 3 (600,000 annual)		Slightly under target this quarter but within tolerance, and on target annually.

** Result is within tolerance

Priority 4 : A Town Centre for All

Ref	Service Area	Portfolio Holder	Indicator	Good is	Result Qtr 3 2017-18	Result Qtr 3 2018-19	Target 2018-19	Status	Notes
4.1	Regeneration & Economic Development	Cllr. Simon Tagg	Town Centre Vacancy Rate	Low	13.80%	16.77%	15%		The vacancy rate has fallen slightly this quarter. Five new independents have opened (two eating places, two hair/beauty and a travel agent) plus one Christmas pop-up, all in the secondary retail areas to the north of the town centre. Cabinet has prioritised bring about improvements to the high street, including preparation of a Future High Streets Fund bid.
4.2	Property	Cllr. Paul Northcott	Percentage of investment portfolio vacant (NBC owned)	Low	8.80%	8.90%	12%		This indicator remains within target.
4.3	Regeneration & Economic Development	Cllr. Stephen Sweeney	Average stall occupancy rate for markets	High	55%	48%	65%		Members should be aware that the long-term (estimated 30 weeks) highway maintenance works immediately next to market stalls has had an adverse impact on stall occupancy rates. Cabinet has prioritised action to improve the market, as part of its wider work on the town centre. The national Association of British Market Authorities has been commissioned to undertake a Health Check of the Market, and Cabinet will consider proposals for improvement to the Market in the Spring.

N/A Performance information not available at this time or due to be provided at a later date.

Performance is not on target but direction of travel is positive

Performance is not on target where targets have been set

Performance is on or above target.

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NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

EXECUTIVE MANAGEMENT TEAM'S REPORT TO THE FINANCE ASSETS AND PERFORMANCE SCRUTINY COMMITTEE

Date April 2019

1. **REPORT TITLE** Ethical Debt Collection
- Submitted by:** Revenues Manager – Karen Hollinshead
- Portfolio:** Finance and Resources
- Ward(s) affected:** All

Purpose of the Report

To Review the Councils debt collection policies and procedures.

Recommendations

That the Use of Enforcement Agents (Bailiffs) only be used as a last resort in the Collection Council Tax

Reasons

The report follows a Council Resolution on 20th January 2019 referring this issue for Scrutiny

1. **Background**

On 20th January 2019 Council resolved :

To review its debt collection policies and implement an ethical debt collection approach by asking the Finance, Assets and Performance Scrutiny Committee to review the Councils debt collection policies and procedures and to make any recommendations

To endorse the Councils policy of not using bailiffs for the collection of Council Tax arrears

To ask the Leader to write to the Secretary of State for Justice supporting the Citizens Advice call for an independent regulator for the debt collection sector.

This report provides an overview of the Council's debt collection policies and procedures as well as information about alternative approaches adopted by some other Council's in order to assist the Committee in formulating its recommendations.

2. **Issues**

Legislative Background

The Local Government Finance Act 1992 (as amended) introduced the concept of Council Tax and imposed on Billing Authorities the duties to collect the tax on behalf of precepting and parish authorities as well as itself.

This legislation states that *'As regards the financial year beginning in 1993 and subsequent financial years, each billing authority shall, in accordance with this Part, levy and collect a tax, to be called council tax, which shall be payable in respect of dwellings situated in its area'* and Councils also have a fiduciary duty in this matter. These regulations specify the remedies available for non-payment of the tax and include the power of distress (seizing personal goods to enforce payment of the debt).

The Taking Control of Goods Regulations 2013 updated the position with regards to the use of bailiffs (now called Enforcement Agents but different from High Court Enforcement agents) and specifies the process to be carried out and fees to be charged at each stage. Under these regulations both the individual enforcement agent and the firm for which they work have to be certified by the Courts. Under the Certification of Agents Regulations 2014 the court must be satisfied that the applicant is a fit and proper person to hold a certificate and has sufficient knowledge of the law to be competent to exercise these powers. Applicants must also undergo an enhanced DBS check. Certificates are granted for a two year period and can be challenged and suspended or cancelled by the courts where necessary.

The Council's Debt Collection Policies and Procedures

The Council currently uses Enforcement Agents as a last resort collection method. Our recovery procedures are attached at Annex A.

The Enforcement agents used comply with the National Standards and the CIVEA code of conduct and good practice guide (also attached at Annexes B and C).

At every stage of the process charge payers are encouraged to contact the Council to discuss payment arrangements and entitlements to discounts or benefits which may reduce their bill.

If a charge payer does not pay their Council Tax demand as required a Reminder Notice is issued which, if not paid or responded to, is followed by an application to the Magistrates Court for a Liability order. This order grants the authority various powers of collection.

Following the obtaining of the liability order officers attempt to engage with the charge payer to encourage them to make payment arrangements or discover if there are any reasons why payments cannot be made.

Customers can communicate with the Council via telephone, personal visit or email and can access their account details directly via the website (this facility is currently being upgraded). Letters and emails are sent out and telephone calls made where possible. Charge payers expressing difficulties or believed to require assistance are signposted to debt advice agencies such as the Citizens Advice Bureau with whom we have regular meetings.

All of our staff have been trained in how to identify vulnerable debtors and further attempts are made to engage with them, using home visits where appropriate.

If a charge payer will not engage, enquiries are made to establish whether the charge payer is working or receiving benefits and attachment of earnings orders are obtained if possible.

However there is still a significant minority of charge payers who cannot be contacted or will not engage and in these instances the cases are issued to Enforcement Agents. Often the first time we are aware of a customer's circumstances is after a visit from the Enforcement Agent. Enforcement

Agents also receive training in vulnerability and will not charge the enforcement fee of £235.00 and will return the case to us if a customer is found to be vulnerable. Whilst it is accepted that some of these charge payers will be struggling, a significant number of these cases are 'won't pays' who for various reasons choose not to pay the tax rather than being unable to do so.

In 2017-18 4118 cases (7.35%) were issued to Enforcement agents with a total value of £2,312,830.54. Of this £858,515.54 has been collected to date.

We have an arrangement with the Enforcement Agents whereby they issue a further letter to all Council Tax debtors prior to the Compliance letter required under the Taking Control of Goods regulations. This letter has no cost to the charge payer and allows them another opportunity to get in touch and make arrangements before the compliance notice is served. Of the cases mentioned above 23.6% were cleared at this stage.

Following the introduction of the Taking control of goods regulations in 2014 a review of enforcement arrangements was undertaken. This considered the possibility of bringing the Enforcement service in-house, however the costs of doing so were found to be prohibitive.

Currently the Enforcement Agents operate at no costs to the Council covering their costs from the fees which are specified in legislation.

Other debts

In addition to Council Tax the Borough Council also collects National Non Domestic Rates, Housing Benefit Overpayments and other Sundry Debts.

Enforcement Agents are used as a last resort to collect all of the above. However for business debts no pre compliance letter is issued.

Businesses in financial difficulty are also signposted to the CAB, or to our Business Development Officer to assist. We are also aware of a free business clinic provided by a local insolvency practitioner who can assist in some cases.

Regulations with regard to the overpayment of Housing Benefit are prescribed by the DWP. The guidance allows the recovery from ongoing benefit (where applicable) or deductions from DWP benefits or earnings at rates at prescribed rates (although these can be amended if agreed with the debtor). Initially all attempts are made to contact the debtor to make individual payment arrangements. If however none of these prove affective powers to engage enforcement agents or take proceedings in the county court may be used.

3. **Options Considered** (if any)

Other Authorities

London Borough of Hammersmith and Fulham (LBHF) announced in November 2017 that they were to cease their use of Enforcement Agents altogether for the collection of council tax debt. Since mid-July 2018 they have worked with a company who commit to making arrangements with customers based on their ability to pay. The collection costs of this company are met by the Council with the Council committing at least £80,000 towards the funding of the pilot. The underlying aim is to help residents to avoid getting into debt and reducing the number of cases which end up in Court.

However, it is inevitable that some customers will be unwilling or unable to pay and the approach that LBHF have taken means those debts will not be recovered. It is too early for them to predict the impact on their council tax collection rate.

Bristol CC has announced a pilot scheme for ethical debt recovery to start in the coming months but have not resolved to entirely cease the use of Enforcement Agents.

4. **Proposal**

Possible Further Actions

It is accepted that in the present day modern forms of contact should be used and we are currently considering the use of text messages as a way of communicating with customers. Timely reminders can be an effective way of ensuring that people do not fall behind with payments and building up large debts.

Other avenues that are being explored to improve collection rates include increased use of more specialised sophisticated data matching and tracing systems to enable more attachment of earnings to be created and digital analysis of all phone calls for signs of vulnerability and customer sentiment – this is being trialled by LBHF but analysis of the impacts, including costs is not yet available.

The Committee may also wish to consider introducing a local enforcement code of practice. An example of Sefton MBC's local code is attached at Annex D.

5. **Reasons for Preferred Solution**

Whilst it is desirable to consider the financial position of individual tax and not to add to their difficulties this must be balanced with the Councils duty to collect the debt and its duties to all residents.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

None

7. **Legal and Statutory Implications**

The Local Government Finance Act 1992 (as amended) imposed on Billing Authorities the duties to collect Council Tax on behalf of precepting and parish authorities as well as itself.

8. **Equality Impact Assessment**

Not Applicable

9. **Financial and Resource Implications**

Currently there are no costs to the Council for using Enforcement Agents. The Model implemented by London Borough of Hammersmith and Fulham (LBHF) currently has a budget of £80,000 although ongoing costs are unknown

10. **Major Risks**

There is a major risk that if taxpayers become aware that the Council has a policy of never using Enforcement Agents that the collection rates of Council Tax will fall.

11. **Sustainability and Climate Change Implications**

None

12. **Key Decision Information**

This is not a key decision and is not included in the forward plan

13. **Earlier Cabinet/Committee Resolutions**

The report follows a Council Resolution on 20th January 2019 referring this issue for Scrutiny

14. **List of Appendices**

Appendix A – Council Tax and NNDR Collection Policy
Appendix B – Taking Control of Goods National Standards
Appendix C – CIVIA Code of Conduct and Good Practice Guide
Appendix D – Sefton MBC Code of Practice for Enforcement Agents

15. **Background Papers**

None.

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NEWCASTLE·UNDER·LYME
BOROUGH COUNCIL

COUNCIL TAX AND BUSINESS RATES RECOVERY PROCEDURE

Revised March 2017

SECTIONS

- 1. The Council's Aims**
- 2. The Revenues Service**
- 3. The Legal Framework**
- 4. Demand Notice**
- 5. Joint & Several Liability**
- 6. Instalments**
- 7. Methods of Payment**
- 8. Reminder / Final Notices**
- 9. Summons and Application for a Liability Order**
- 10. Liability Order**
- 11. Payment Arrangements**
- 12. Attachment of Earnings**
- 13. Attachment of Members Allowances**
- 14. Attachment of DWP Benefits**
- 15. Enforcement Agents**
- 16. Further recovery options available to the Council**
- 17. Committal Proceedings**
- 18. Charging Orders**
- 19. Bankruptcy**
- 20. Winding Up Procedures**

Appendix - Vulnerability Criteria

1.0 The Council's Aims

- 1.1** The Council's aims are to
- Help minimise debts to the Authority and improve the Council's income levels through the efficient and effective collection of Council Tax and Business Rates.
 - Effectively pursue all amounts due to the Council so that all taxpayers and ratepayers who have the ability to pay do so.
 - Ensure that the debtor's circumstances (where known) are taken into account when deciding the most appropriate form of recovery action to take.
 - Treat individuals consistently and fairly, regardless of age, sex, gender, disability, race and sexual orientation.
 - Protect individual rights under Data Protection and Human Rights legislation.
- 1.2** A prime intention of the Council is to operate sensitive debt recovery procedures which do not place the individual in hardship and where possible do not affect a business's financial viability. This will be achieved by having realistic, flexible methods of payment that can be adapted to the circumstances of the taxpayer or ratepayer.
- 1.3** Prevention is the first essential step in the effective recovery of debt. There are a number of measures that can be taken to minimise indebtedness at an early stage which reduces the necessity for costly enforcement action. This not only reduces cost but also works towards avoiding potential hardship for taxpayers and ratepayers.
- 1.4** To achieve this we believe it is essential that we promote early contact with taxpayers and ratepayers, establish the correct amount that is payable and make mutually acceptable arrangements to pay.
- 1.5** At all stages of billing, collection and recovery of Council Tax and Business Rates, the Council will give customers the opportunity to make individual arrangements to pay. Where a customer defaults on the arrangement this facility will be withdrawn and the most appropriate recovery action then be taken (e.g. attachment of earnings).
- 1.6** The Council will promote the take-up of all available reductions for Council Tax and Business Rates to reduce our customers' liability where circumstances allow.
- 1.7** The Council when discharging the functions to which this policy relates will comply with the relevant legislation and have regard to relevant Government guidance and policy.

2.0 The Revenues Service

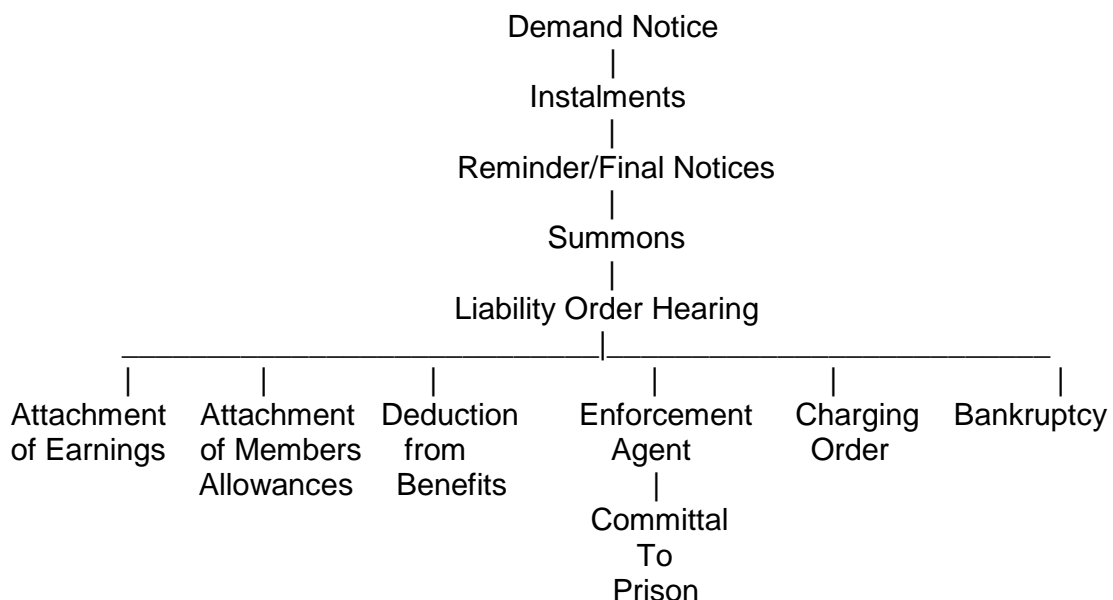
- 2.1** The Revenues Service will;
- Provide help and advice to taxpayers and ratepayers in a clear, accurate and understandable way.
 - Maintain contact details to ensure quick and easy contact can be made where the need arises.
 - Ensure bills, reminders and other notices are issued in a timely manner, meeting all legal requirements.
 - Encourage taxpayers and ratepayers or their representatives to make

contact as soon as possible where they will have difficulty in making or maintaining their payments

- Treat taxpayers and ratepayers as individuals taking account, wherever possible, of known personal circumstances to determine the most appropriate action to be taken.
- Keep the taxpayer and ratepayer informed of the action being taken and other types of action that may be taken.
- Provide support for vulnerable taxpayers and ratepayers through home visits as required.
- Promote and work in partnership with local debt advice agencies to ensure those in financial difficulty get good quality debt advice.
- Liaise with the Council's Benefits Service to identify accounts where outstanding benefit issues need resolving.
- Support businesses who are suffering financial difficulty by giving advice regarding relief, including mandatory and discretionary relief and small business rate relief.
- Deal with complaints in line with the Council's Corporate Complaints Policy.
- Work with others to check the information given to the Council by taxpayers and ratepayers and to improve the Council's services. The Council may give information to other organisations as the law allows, for example to safeguard against crime.

3. Legal Framework

The legal framework for the enforcement of Council Tax is provided by Schedule 2 and Schedule 4 of the Local Government Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992 (SI.1992/613)



4 Demand Notice

- 4.1 Annual bills are issued mid-March prior to the financial period 1 April to 31 March
- 4.2 When a customer tells us that he/she has occupied a property we will send a bill and give the statutory number of instalments.
- 4.3 When a customer tells us that he/she has vacated we will issue a closing account and process any refund as appropriate.
- 4.4 Where there is a change in circumstance or an amendment to the amount due or the instalment amounts we will issue an adjustment notice.
- 4.5 When a bill is sent out later than 30 April, for example when someone moves in part way through the financial year, the payment period will be shorter and there will be fewer instalments

5. Joint & Several Liability

- 5.1 Joint and several liability in law means that all, or both, the jointly liable parties are each responsible for the whole liability. As a result the billing authority can recover the whole amount due from any one of them and they are then left to sort out their respective contributions between themselves
- 5.2 When Council Tax is not being paid, the Council will take action for recovery of the debt against any or all of the liable parties

6. Instalments

- 6.1 Council Tax is usually paid by 10 monthly instalments from April to January but you can also choose to pay 12 instalments in a full year. If your request is received by March, you will receive a revised bill outlining the 12 instalments from April to March of the following year. If your request is received in any month after March, you will only be given instalments for the remaining months until March of the following year. For example if your request is received in June you will be given nine instalments from July to March. When new bills are issued in April, your payments will automatically be divided into 12 instalments.

7. Methods of Payment

- 7.1 Direct Debit. This is our preferred method of payment. We offer payment dates of the 3rd, 15th or 25th of the month.
- 7.2 Standing Order. The taxpayer sets this up at their bank by quoting the agreed instalments and Newcastle under Lyme Borough Council's bank details
- 7.3 Debit card by telephoning our automated telephone service on 08452340069
- 7.4 Credit card by telephoning our automated telephone service on 08452340069. This carries a 2% fee for all transactions.
- 7.5 Online at www.newcastle-staffs.gov.uk

:

- 7.6** By Post: Addressed to The Executive Director Resources and Support, Civic Offices, Merrial Street, Newcastle, Staffs ST5 2AQ. Cheques and Postal Orders should be crossed and made payable to: - Newcastle-under-Lyme Borough Council and the Council Tax account number written on the reverse.
- 7.7** By Pay Point Payment Card:
Payment may be made at Post Offices and other shops offering the Pay Point service. To obtain a Pay Point payment card, the customer should contact the Council. There may be an initial delay in issuing a new or replacement card and any instalments due during this time should be made using an alternative payment method

8. Reminders / Final Notices

- 8.1** We follow a strict recovery programme, and reminders are timetabled monthly. We can amend this timetable, adding to or removing dates as required. This enables us to manage workloads, resources and collection requirements more effectively.
- 8.2** If a customer does not pay an instalment by the due date we will issue a reminder. The reminder will request payment of the overdue instalment within 7 days
- 8.3** If the missed instalment is received within 7 days we will not take any further action; but if it remains unpaid we may cancel the instalments and issue a summons for the full year's tax.
- 8.4** If the instalment is received within 7 days, but another instalment is not paid then we will issue a second reminder. If the missed instalment is received within 7 days we will not take any further action; but if it remains unpaid we may cancel the instalments and issue a summons for the full year's tax.
- 8.5** If the account is brought up to date but falls behind a third time, we may send a Final Notice, at this point the full outstanding amount will become payable as the right to pay by instalments has been lost.
- 8.6** Failure to pay the Final Notice will result in a summons, which will incur costs.
- 8.7** The individual circumstances of the customer will be considered to see if there any special or mitigating factors to be taken in account.

9. Summons and Application for a Liability Order

- 9.1** A summons will be sent to each person named on the bill and summons costs will be incurred.
- 9.2** If the customer pays the amount of the summons (i.e. the full amount outstanding for the year) plus costs prior to the Court Hearing, the Hearing will not proceed and we will not obtain a Liability Order.
- 9.3** If the customer does not pay the Summons amount plus costs prior to the Hearing, the Hearing will proceed and we will ask the Magistrates to grant a Liability Order plus additional costs.
- 9.4** At any time after the Summons has been issued we may agree to a repayment arrangement, (see section 11). If the payment arrangement is accepted and payments are received as agreed, no further recovery

action will be taken. If a payment arrangement is not accepted, the Council will write to the customer with the reasons why.

- 9.5** Failure to pay in full or contact the Council to make an arrangement will result in further recovery action being taken.
- 9.6** At the Hearing we must show the Magistrates proof that we have set and attempted to collect the Council Tax in accordance with the law. We must also confirm that the customer named on the Summons is liable and that all or part of the debt remains unpaid. If the Magistrates accept our evidence they will grant the Liability Order.
- 9.7** To defend an application for a Liability Order, the customer must offer a valid defence against it. Valid defences are:
- We have not demanded council tax in accordance with the regulation.
 - The amount has been paid in full with costs.
 - The person named on the Summons is not the liable person.
 - We have already commenced bankruptcy or winding up proceedings.
- 9.8** It is not a valid defence if the customer:
- Is unable to pay.
 - Has recently applied for council tax benefit.
 - Has applied to the Valuation Office Agency against their Banding.
 - Has appealed their liability to the Valuation Tribunal.
- 9.9** Where customers are liable on a joint and several basis, recovery and enforcement procedure may be applied to one or more of the joint taxpayers.
- 9.10** The individual circumstances of the customer will be considered to see if there are any special factors to be considered when determining what enforcement action is taken.

10. Liability Order

- 10.1** A liability order is an order of the Magistrate's Court that gives certain powers to the Council to collect the debt that it is owed. The order is for a fixed amount of money, plus additional costs
- 10.2** The liability order gives the Council the power to recover the debt using any of the following methods set out below. The authority will decide which method is most appropriate to follow depending on the information available on the customer at the time

11. Payment Arrangements

- 11.1** Taxpayers and ratepayers who are experiencing personal and financial difficulties and struggling to pay their Council Tax and Business Rates will be encouraged to undertake an income and expenditure analysis with the Council to ascertain the best method and rate of recovery.
- 11.2** Taxpayers and ratepayers will also be advised of other organisations that can help with debt advice.
- 11.3** An individual's financial and personal circumstances will be assessed before any arrangement is made.
- 11.4** When agreeing an arrangement to pay with a taxpayer or ratepayer, Recovery Officers will refer to the Council's Guidance on Vulnerability

(Attached Appendix - Vulnerability Criteria).

- 11.5 The Council will make arrangements with the taxpayer, ratepayer or bona fide representative, including, but not limited to, husband/wife, partner, debt advisor, executor or solicitor. Arrangements will only be made with representatives, where there is written or express authority for the representative to act on behalf of the taxpayer or ratepayer whose name appears on the bill.
- 11.6 When making arrangements to pay the Council will seek to clear debts within the financial year of the liability. Where this is not possible, the Council will seek to reach an agreement that allows, as a minimum, the payment of the continuing liability plus an affordable amount off any arrears. Arrangements will be assessed based upon the affordability and sustainability for payment and seek to ensure that the debt is paid off within a reasonable period.
- 11.7 At the discretion of the Recovery Section a solicitors undertaking that Council Tax arrears will be paid from the proceeds of a sale will be accepted as an alternative to setting up a payment arrangement
- 11.8 Where a taxpayer or ratepayer makes an arrangement to pay but fails to keep to that arrangement, the Council will assess the circumstances of the taxpayer (if known) before taking further recovery action.
- 11.9 Whether the arrangement is made by telephone or by personal contact, the Council will confirm the arrangement in writing, clearly detailing the arrangement and the consequences of not meeting the payments.

12. Attachment of Earnings

- 12.1 Where the Council is aware of a Council Taxpayer's employment details they will, in most cases, issue an order to the taxpayer's employers to make deductions from their earnings. Employers are legally required to comply with the order and may deduct a nominal charge which is defined in law for each deduction made towards the costs of administering the order.
- 12.2 The amount being received under the order will be reviewed on a regular basis and where it is felt that this is insufficient to clear the debt outstanding within a reasonable time, the Council may either request a further attachment to earnings order to be made (maximum of 2) or cancel the attachment and take alternative action to recover the amount due.
- 12.3 In cases where a taxpayer will suffer hardship because of an attachment order, the circumstances of individual cases will be considered with a view to taking alternative action. This will usually be an arrangement to pay a lower amount than that prescribed under an attachment order which is acceptable to the Council.
- 12.4 An attachment to earnings will only be cancelled in exceptional circumstances where suitable alternative action can be agreed.

13. Attachment of Members Allowances

- 13.1 This process is available in respect of an elected member of any billing authority or any major precepting authority (with the exception of the City of London and the Metropolitan Police) against whom a liability order has been granted.

- 13.2** It is not limited to members of the billing authority or major precepting authorities whose Council Tax is under collection.
- 13.3** An Attachment Order is directed to the Local Authority of which the debtor is a member and operates as an instruction to the authority to make a deduction from attachable allowances payable to the debtor.

14. Attachment of DWP Benefits

- 14.1** Universal Credit, Job Seekers Allowance, Pension Credit, Income Support and Employment Support Allowance can all be attached to pay Council Tax arrears.
- 14.2** If the customer is receiving one of these Benefits, the Council will ask The Department of Works and Pensions to make regular deductions from the benefit and make payments to the Council.
- 14.3** When deciding this option, the council will take into consideration the level of arrears and the length of time it will take to recover the debt.

15. Enforcement Agent

- 15.1** Following the granting of a Liability Order, where a taxpayer or ratepayer fails to make contact with the Council or fails to make or maintain a payment arrangement (including orders under attachments to earnings or deductions from benefit) the Council may issue instructions for a Enforcement Agent to collect the debt.
- 15.2** For Council Tax debts there will be an initial 14 day period - called pre-compliance, where the Enforcement Agent will attempt to engage with the customer via written communication. No fees are incurred at this stage and providing an acceptable arrangement is made with the enforcement agent then no fees are added. If no contact is made with the Enforcement Agent then the debt will move to the compliance stage of the process and fees are incurred. Business Rates debts move straight to the compliance stage of the process and fees are incurred immediately.
- 15.3** At the compliance stage the Enforcement Agent will again attempt to engage with the tax or rate payer via written communication before visiting the customer's home with the aim of taking control of goods and gaining full payment. With the exception of the pre-compliance stage noted above, there are associated fees with each stage of action that the Enforcement Agent takes.
- 15.3** Fees associated are charged in accordance with levels set out in the legislation.
- 15.4** The Enforcement Agent may make an acceptable arrangement with the debtor to repay the sums due or take control of goods owned by the debtor to satisfy the amount outstanding.
- 15.5** Actual removal and sale of goods will only take place in exceptional circumstances following approval from a Senior Recovery Officer. All efforts will be taken in order to make an arrangement to pay.

16. Further recovery options available to the Council

Where the forms of action detailed in Sections 10 to 15 have either been unsuccessful, are not considered to be appropriate, or the taxpayer or ratepayer has failed to make contact with the Council, the Council may pursue other recovery options that may have more serious implications for the taxpayer and ratepayer.

These actions are:

- Committal Proceedings
- Charging Orders
- Bankruptcy
- Winding Up Procedures

17. Committal Proceedings

The Council can apply to the Magistrates Court to have the customer committed to prison for a maximum of 90 days. The council is likely to take committal action against the customer when;

- An Enforcement Agent has returned a debt back to the Council endorsed "Nulla Bona"
- Has no property or assets
- Has previously broken agreed payment arrangements / have failed to enter into a payment arrangement
- Has failed to provide employment details

17.1 Committal proceedings can only be taken against a taxpayer or ratepayer where the Enforcement Agent has certified there is insufficient goods and may only be taken against individuals and not Limited Companies.

17.2 Where committal action is considered to be appropriate, the Council will write to the tax or ratepayer(s) inviting them to attend an informal interview with Council Officers to discuss their financial and personal circumstances to resolve the matter to the satisfaction of the Council without the need to commence proceedings. This will be at a pre-arranged date and time.

17.3 Only when the taxpayer or ratepayer fails to respond or the Council is unable to agree arrangements to discharge the debt, will the Council commence committal proceedings.

18 Charging Orders

18.1 The council can apply to the County Court for a charge to be put on a property on which a Council Tax debt is owed if it has liability orders for a debt more than £1,000.00, providing the property is owned by the debtor.

18.2 The council can apply to the Court to force an order for sale of the property to pay the Council Tax arrears including all costs incurred.

18.3 The Council is likely to apply for a Charging Order against a property that is fully or jointly owned by the customer if;

- The customer has a vulnerable person in their household e.g. disability or the customer/partner is over 70 years of age

- A third party has power of attorney
- No contact can be made with the debtor
- They do not appear to have sufficient income or assets to pay the arrears
- The property is currently for sale and no payment arrangement has been agreed

19 Bankruptcy

- 19.1** This option is only available where the taxpayer or ratepayer is an individual. This course of action is not only administratively costly for all parties but can also have considerable impact both on the taxpayer and members of the taxpayers' household. Consequently, this will only be considered where:
- They have sufficient realisable assets e.g. equity in a property to pay the debt and all costs incurred
 - Have previously broken agreed payment arrangements / have failed to enter into a payment arrangement
 - Are not considered to be vulnerable
 - All other enforcement remedies have been exhausted
- 19.2** No bankruptcy proceedings will take place without attempting to contact the taxpayer or representative.
- 19.3** A statutory demand will be served on the taxpayer setting out the debt outstanding, and the options available to them to prevent further action, the time scales in which they need to respond (21 days). A guide to the potential bankruptcy costs is included with the statutory demand. No additional costs are incurred at this stage, and the Council may agree a payment arrangement with the taxpayer.
- 19.4** Where, after 21 days, the tax/ratepayer has not responded to the statutory demand or the Council is unable to agree arrangements that will discharge the debt; the Council will consider whether a petition for the taxpayer to be made bankrupt should be issued.
- 19.5** Before a petition is issued, the Council will make all reasonable attempts to find out what the tax/ratepayer's personal and financial circumstances are and to determine whether they or other members of the household may fall within the Council's Vulnerability Criteria as described in Appendix 1. A petition for Bankruptcy will only be authorised by the Head of Revenues.
- 19.6** Where, from information provided by the tax/ratepayer or their representative, or other sources there is evidence to suggest that the taxpayer or other members of the household fall within the Council's Vulnerability Criteria the case will be reviewed by a Senior Recovery Officer to confirm that bankruptcy is appropriate.
- 19.7** Where the Council considers that bankruptcy action should continue, a petition will be served on the tax/ratepayer, advising them of the date and time of the bankruptcy hearing. The serving of a bankruptcy petition will result in significant costs being incurred.
- 19.8** It is essential that the taxpayer or ratepayer attends this or any adjourned hearing to make representation to the judge as to why the order should not be made. Where the taxpayer or ratepayer fails to attend, the Court will determine whether the issue of a bankruptcy petition should be

made. Once the order has been made the matter will be referred to the Official Receiver for Trustees to be appointed

20. Winding Up Procedures

- 20.1** Where the ratepayer is a limited company the same criteria as for determining whether bankruptcy action is appropriate will be undertaken.
- 20.2** In appropriate cases, a formal request for payment will be sent to the ratepayer advising them of the impending action and the consequences of this action being successful.
- 20.3** No additional costs are incurred at this stage, and the Council may agree a payment arrangement with the ratepayer.
- 20.4** Where, after 14 days, the ratepayer has not responded to the formal request or the Council is unable to agree arrangements that will discharge the debt; the Council will consider whether a petition for the winding up of the company should be issued.
- 20.5** Where a petition is served on the ratepayer this will notify them of a date and time of the hearing in the High Court. The serving of a petition will result in significant costs being incurred.
- 20.6** It is essential that the ratepayer attends this hearing or any adjourned hearing to make representation to the judge as to why the winding up order should not be made.
- 20.7** Where the ratepayer fails to attend this will generally result in the company being wound up.
- 20.8** Once the company has been wound up the matter will be referred to the Official Receiver for a Liquidator to be appointed

Appendix

Vulnerability Criteria

A failure to maximise collection of Council Tax and Business Rates will potentially put Council services at risk and increase the likelihood that Council Taxpayers and Ratepayers who do pay on time will have to subsidise non payers through future increases in the level of Council Tax.

The Council recognises that some taxpayers and ratepayers will, due to their individual personal and financial circumstances have extreme difficulty in paying their Council Tax and Business Rates, and recovery action, particularly where an option under Sections 17, 18 19 & 20 of these procedures is being considered, may not be appropriate where these suggest the taxpayer, ratepayer or other household members may be vulnerable in some way.

The Council will ensure processes are in place to ensure that due regard is given to this group of taxpayers' and ratepayers.

A person may be considered vulnerable in the following circumstances. The list is not exhaustive and each case will be decided on its own merits:

- The person is elderly
- The person is seriously ill or mentally or physically disabled
- The person has communication or learning difficulties
- The person has young children and where there is severe deprivation
- The person has recently experienced a recent marital break up
- The person has recently been bereaved or made unemployed

Falling into one of these categories does not automatically mean that recovery action is not appropriate. The Council will make individual decisions based upon the individual circumstances of the taxpayer or ratepayer to identify if recovery action is appropriate and, if so, what action to take.

Different recovery proceedings cannot be applied simultaneously to one customer, but can be applied subsequently if a debt remains outstanding. The choice of recovery action is made at the discretion of the Council's Recovery Officers and will take into account the taxpayers and ratepayers circumstances on a case by case basis and the guidance within this Policy.

The Revenues Service may become aware of vulnerable ratepayers and taxpayers following contact from the taxpayer, ratepayer or their representative or once recovery action is instigated. Alternatively, this information may become available from other internal systems used by the Council, from other service lines or from other support agencies.

Where the Enforcement Agent on visiting the taxpayer or ratepayer identifies vulnerability they have procedures in place to take the appropriate action.

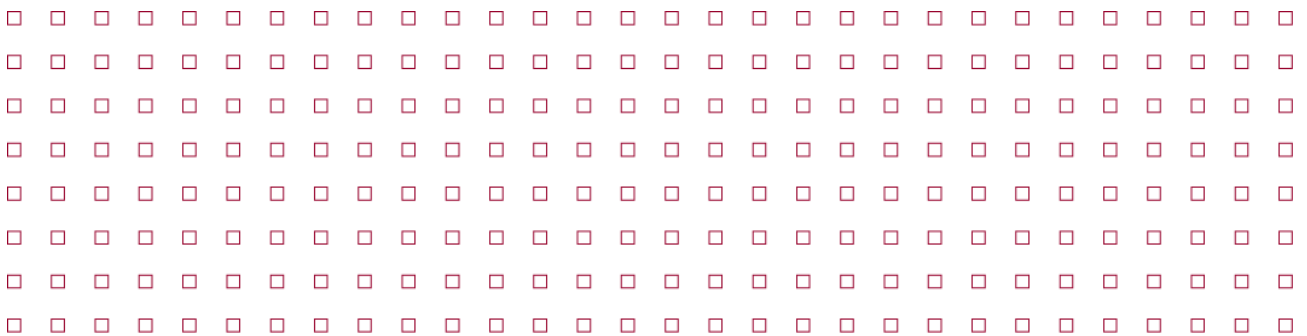
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Taking Control of Goods: National Standards

April 2014

6 April 2014



Introduction

1. These standards are intended for use by all enforcement agents, public and private, the enforcement agencies that employ them and the major creditors who use their services. Private sector enforcement agents who are recovering debts owed to the public sector perform the vast majority of enforcement work, and this document has established a set of common standards to cover this activity supporting the underpinning legislation. In order to improve the public's perception of the profession, enforcement agents and those who employ them or use their services, must maintain high standards of business ethics and practice.
2. This national guidance does not replace local agreements, existing agency codes of practice or legislation; rather it sets out what the Ministry of Justice, those in the industry and some major users regard as minimum standards.
3. We recognise this document is not legally binding, but offer it as a helpful tool for the industry and for creditors which, it is hoped, will inform their own arrangements and against which they may benchmark their professional standards.

Terms used

4. In this document we have used the following terms:

Creditor: this includes - a local authority, major or frequent judgment creditors in the civil courts, Government Departments and HM Courts and Tribunals Service to whom financial penalties are paid, and landlords undertaking the commercial rent arrears recovery (CRAR) process. .

Debtor: a person who owes a sum of money - this may be a judgment debt or a criminal financial penalty fine which is in default or a liability order. The debtor should behave lawfully and is encouraged to co-operate with the enforcement agent. The term "debtor" where appropriate and applicable, also covers individuals who are being wrongly pursued for a debt in respect of which they are not the actual debtor.

Enforcement: we mean the lawful process of warrant or writ execution, and taking control of goods.

Enforcement Agency: the business that employs enforcement agents, unless specifically indicated (where different arrangements exist); we also include those public sector organisations that have in-house enforcement agents.

Enforcement Agent: someone who is responsible for the enforcement of court orders against goods (warrants of control) or the person (arrest warrants); we include those employed in the public and private sector, bailiffs and High Court Enforcement Officers.

Creditors' Responsibilities

5. In order for the enforcement process to work effectively, creditors must be fully aware of their own responsibilities. The primary purpose of this guidance for creditors is to draw their attention to their responsibilities when instructing and dealing with enforcement agents/agencies to recover debts on their behalf.
6. The creditors responsibilities should be observed and set out in terms of agreement with their enforcement agent/agency. They should consider carefully any specific requirements for financial guarantees so that these are adequate, fair and appropriate for the work involved.

7. Creditors should remember that enforcement agents are acting on their behalf and that ultimately they are responsible, and accountable, for the enforcement agents acting on their behalf.
8. Creditors should act proportionately when seeking to recover debt, taking into account debtors' circumstances.
9. Creditors must notify the enforcement agency of all payments received and other contacts with the debtor, including repayment agreements made with the debtor.
10. Creditors have a responsibility to tell the debtor that if payment is not made within a specified period of time, action may be taken to enforce payment.
11. Creditors agreeing the suspension of a warrant or making direct payment arrangements with debtors must give appropriate notification to and should pay appropriate fees due to the enforcement agent for the work they have undertaken.
12. Creditors must not issue a warrant knowing that the debtor is not at the address, as a means of tracing the debtor at no cost.
13. Creditors must provide a contact point at appropriate times to enable the enforcement agent or agency to make essential queries, particularly where they have cause for concern.
14. Creditors must consider the appropriateness of referring debtors in potentially vulnerable situations to enforcement agents and, if they choose to proceed, must alert the enforcement agent to this situation.
15. Creditors should ensure that there are clear protocols agreed with their enforcement agents governing the approach that should be taken when a debtor has been identified as vulnerable.
16. Should a debtor be identified as vulnerable, creditors should be prepared to take control of the case, at any time, if necessary.
17. Creditors should inform the enforcement agency if they have any cause to believe that the debtor may present a risk to the safety of the enforcement agent.
18. Creditors should have a clear complaints procedure in place to address complaints regarding their own enforcement agents or external enforcement agents acting on their behalf.

Professionalism and conduct of the enforcement agent

19. Enforcement agents must act within the law at all times, including all legislation and observe all health and safety requirements in carrying out enforcement. They must maintain strict client confidentiality and comply with Data Protection legislation and, where appropriate, the Freedom of Information Act.
20. Enforcement agents must not be deceitful by misrepresenting their powers, qualifications, capacities, experience or abilities, including, but not restricted to;
 - Falsely implying or stating that action can or will be taken when legally it cannot be taken by that agent
 - Falsely implying or stating that a particular course of action will ensue before it is possible to know whether such action would be permissible
 - Falsely implying or stating that action has been taken when it has not

- Falsely implying or stating that a debtor refusing entry to a property is classed as an offence.
21. Enforcement agents must not act in a threatening manner when visiting the debtor by making gestures or taking actions which could reasonably be construed as suggesting harm or risk of harm to debtors, their families, appointed third parties or property.
 22. Enforcement agents should always produce relevant identification to the debtor, such as a badge or ID card, together with any written authorisation to act on behalf of the creditor (in appropriate debt types).
 23. Enforcement agents, for the purpose of taking control of goods shall, without the use of unlawful force, gain access to the goods. The enforcement agent must produce all relevant notices and documents, such as controlled goods agreements, that are required by regulations or statute.
 24. Debtors must not be pressed to make unrealistic offers and should be asked to consider carefully any offer they voluntarily make and where possible refer to free debt advice.
 25. Where a creditor has indicated they will accept a reasonable repayment offer, enforcement agents must refer such offers onto the creditor.
 26. Enforcement agents must carry out their duties in a professional, calm and dignified manner. They must dress and speak appropriately and act with discretion and fairness.
 27. Enforcement agents must not act in a way likely to be publicly embarrassing to the debtor, either deliberately or negligently (that is to say through lack of care)
 28. Enforcement agents must act in accordance with the Human Rights Act 1998 and the Equality Act 2010. They must not discriminate unfairly on any grounds including those of age, disability, ethnicity, gender, race, religion or sexual orientation.
 29. In circumstances where the enforcement agency requires it, and always where there have been previous acts of, or threats of violence by a debtor, a risk assessment should be undertaken prior to the enforcement agent attending a debtor's premises.
 30. Where enforcement agents have identified vulnerable debtors or situations, they should alert the creditor and ensure they act in accordance with all relevant legislation.
 31. Enforcement agents must not seek to enforce the recovery of fees where an enforcement power has ceased to be exercisable.

Statutory or Financial Requirements for Enforcement Agencies¹

32. Enforcement agencies should ensure that audited accounts are available, where required by law. An annual audit of the agency's accounts by independent accountants should be undertaken at least once a year for businesses where this is appropriate.
33. Enforcement agencies must comply with statutory obligations, for example, the Companies Act, HMRC provisions, Data Protection, Health & Safety etc.
34. A separate account for monies due to the creditor should be maintained and accurate books and accounts should be kept and made available to establish monies owed to the creditor.
35. Enforcement agencies must keep a complete record of all financial transactions in whatever capacity undertaken.
36. Enforcement agencies must maintain suitable and comprehensive insurance cover for both professional indemnity and other risks including employer's liability and public liability.

Training and Certification

37. Enforcement agencies must ensure that all agents, employees and contractors are provided with appropriate training to ensure that they understand and are able to act, at all times, professionally and within the bounds of the relevant legislation. This training should be provided at the commencement of employment and at intervals afterwards to ensure that their knowledge is kept up to date.
38. Professional training/assessment should be to a standard that complies with relevant legislation.
39. Enforcement agencies must ensure that legislation restricting the enforcement activity to enforcement agents is complied with²
40. Enforcement agencies must ensure that all employees, contractors and agents will at all times act within the scope of current legislation, for example The Companies Act, HMRC provisions, Data Protection, Health and Safety, Equality, and Human Rights Act etc, and have an appropriate knowledge and understanding of it and be aware of any statutory obligations and provide relevant training.
41. Enforcement agents should be trained to recognise and avoid potentially hazardous and aggressive situations and to withdraw when in doubt about their own or others' safety.
42. Enforcement agents should be trained to recognise vulnerable debtors, to alert creditors where they have identified such debtors and when to withdraw from such a situation.

¹ Separate provisions regarding financial accounting and insurance may apply to public sector organisations who directly employ their own enforcement agents

² The Tribunals, Courts and Enforcement Act 2007.

Complaints/Discipline

43. Enforcement agencies must operate complaints and disciplinary procedures with which their agents must be fully aware of.
44. The debtor should be able to easily find out how to make a complaint and obstacles should not be placed in their way.
45. The complaints procedure should be set out in plain English, have a main point of contact, set time limits for dealing with complaints and include an independent appeal process where appropriate. A register should be maintained to record all complaints and complainants should be notified of the outcome of disputes.
46. Enforcement agents/agencies are encouraged to make use of the complaints and disciplinary procedures of professional associations such as The Civil Enforcement Association or the High Court Enforcement Officers Association.
47. The enforcement agent must make available details of their own and the creditor's complaints procedure on request or when circumstances indicate it would be appropriate to do so.

Information and confidentiality

48. All notices, correspondence and documentation issued by the enforcement agent/agency must be clear, complete and unambiguous and to the satisfaction of the creditor. They must not use unhelpful legal or technical language and should comply with relevant legislation.
49. On returning any un-executed warrants, the enforcement agent should report the outcome to the creditor and provide further appropriate information, where this is requested and, where appropriate, paid for by the creditor.
50. All information obtained during the administration and enforcement of warrants must be treated as confidential between the enforcement agent, debtor, the creditor and any third parties nominated by the debtor.
51. Enforcement agents should provide clear and prompt information to debtors and where appropriate, creditors.
52. Enforcement agents should, so far as it is practical, avoid disclosing the purpose of their visit to anyone other than the debtor or a third party nominated by the debtor, for example an advice agency representative. Where the debtor is not seen, the relevant documents must be left at the address in a sealed envelope addressed to the debtor.
53. Enforcement agents should make debtors aware of the possible additional costs of enforcement which will be incurred if further action becomes necessary. If a written request is made, an itemised account should be provided.
54. Enforcement agents will clearly explain and give in writing, the consequences of taking control of a debtor's goods.

Times and Hours

55. Enforcement agents should be respectful of the religion and culture of others at all times. They should carefully consider the appropriateness of undertaking enforcement on any day of religious or cultural observance or during any major religious or cultural festival.

56. Enforcement action should only be carried out between the hours of 6.00am and 9.00pm, or at any time during trading hours, unless otherwise authorised by a court. Existing legislation must be observed.

Mode of entry

57. Enforcement agents should not seek to gain peaceable entry to premises under false pretences; for example asking to use the toilet, or to use the telephone. They should be clear as to why they are seeking entry to the premises.
58. Enforcement agents should only enter premises as part of the enforcement process.
59. Enforcement agents must only use a door or usual means of entry to enter premises.
60. A power to enter premises by force exists for the execution of High Court and County Court debts at business premises or at any premises where an enforcement agent is enforcing criminal penalties. This power should only be used to the extent that it is reasonably required and only after the debtor has been warned that the power exists and the consequences of a wilful refusal to co-operate.
61. A power to re-enter premises by force applies to both residential and business premises where a controlled goods agreement is in place and the goods remain on the premises but the debtor has failed to comply with the repayment terms of the controlled goods agreement. This power should only be used to the extent that it is reasonably required and only after the debtor has been given notice of the enforcement agent's intention to re-enter.

Goods

62. Enforcement agents must only take goods in accordance with the appropriate regulations or statute. In addition creditors may agree other restrictions with agents acting on their behalf.
63. Enforcement agents must ensure that goods are handled with proper care so that they do not suffer any damage or cause damage to other goods or property, whilst in their possession. Enforcement agents should have insurance in place for goods in transit so that if damage occurs this is covered by the policy.
64. Enforcement agents should not remove anything clearly identifiable as an item belonging to, or for the exclusive use of a child (person under the age of 16) or items clearly identifiable as required for the care and treatment of the disabled, elderly and seriously ill.
65. A detailed and complete receipt for the goods removed should be given to the debtor or left at the premises in accordance with the appropriate regulations.
66. Enforcement agents should take all reasonable steps to satisfy themselves that the value of the goods taken into control to cover the sum outstanding is proportional to the value of the debt and fees owed.
67. Enforcement agents should not take control or remove goods clearly belonging solely to a third party not responsible for the debt. Where a claim is made, the third party should be given clear instructions on the process required to recover their goods.

68. Enforcement agents should be aware of circumstances where a “no goods” valuation may be appropriate – for example where no goods of sufficient value have been identified; or where the removal of goods would lead to severe hardship for the debtor. In such instances the enforcement agent should make the creditor aware of this situation.

Multiple warrants

69. Where enforcement agents have multiple warrants for a single debtor, an enforcement agent must take control of goods, and sell or dispose of these goods, on the same occasion except where it is not practical to do so.

Vulnerable situations

70. Enforcement agents/agencies and creditors must recognise that they each have a role in ensuring that the vulnerable and socially excluded are protected and that the recovery process includes procedures agreed between the agent/agency and creditor about how such situations should be dealt with. The appropriate use of discretion is essential in every case and no amount of guidance could cover every situation. Therefore the agent has a duty to contact the creditor and report the circumstances in situations where there is evidence of a potential cause for concern.
71. If necessary, the enforcement agent will advise the creditor if further action is appropriate. The exercise of appropriate discretion is needed, not only to protect the debtor, but also the enforcement agent who should avoid taking action which could lead to accusations of inappropriate behaviour.
72. Enforcement agents must withdraw from domestic premises if the only person present is, or appears to be, under the age of 16 or is deemed to be vulnerable by the enforcement agent; they can ask when the debtor will be home - if appropriate.
73. Enforcement agents must withdraw without making enquiries if the only persons present are children who appear to be under the age of 12.
74. A debtor may be considered vulnerable if, for reasons of age, health or disability they are unable to safeguard their personal welfare or the personal welfare of other members of the household.
75. The enforcement agent must be sure that the debtor or the person to whom they are entering into a controlled goods agreement understands the agreement and the consequences if the agreement is not complied with.
76. Enforcement agents should be aware that vulnerability may not be immediately obvious.
77. Some groups who might be vulnerable are listed below. However, this list is not exhaustive. Care should be taken to assess each situation on a case by case basis.
- the elderly;
 - people with a disability;
 - the seriously ill;
 - the recently bereaved;
 - single parent families;

- pregnant women;
 - unemployed people; and,
 - those who have obvious difficulty in understanding, speaking or reading English.
78. Wherever possible, enforcement agents should have arrangements in place for rapidly accessing interpretation services (including British Sign Language), when these are needed, and provide on request information in large print or in Braille for debtors with impaired sight.

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CIVEA Code of Conduct and Good Practice Guide

CIVEA

Civil Enforcement Association

**CIVEA
513 Bradford Road
BATLEY
WF17 8LL**

CIVEA Code of Conduct and Good P r a c t i c e Guide

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Confidentiality

This document contains confidential and proprietary information belonging to CIVEA. The contents are protected by copyright, trademark and other intellectual property rights, as applicable and are provided solely for guidance purposes.

Introduction

This document is intended to provide enforcement agents with guidance as to good practice and procedure in carrying out their duties. It is not an exhaustive guide but provides a template on which all enforcement agents should base their actions.

Terms used:

In this document we have used the following terms:

Creditor: Includes local authorities, major or frequent judgment creditors in the civil courts, government departments and HM Courts and Tribunals Service to whom financial penalties are paid, and landlords undertaking the commercial rent arrears recovery (CRAR) process.

Debtor: we mean a person who owes a sum of money - this may be a judgment debt or a criminal financial penalty fine which is in default or a liability order. The debtor should behave lawfully and is encouraged to co-operate with the enforcement agent.

Third Party Advisor: by this we mean anyone seeking to advise a debtor in relation to their debt.

Enforcement: in this document we mean the Schedule 12 power for taking control of goods.

Enforcement Agency: here we mean the business that employs enforcement agents, unless specifically indicated (where different arrangements exist); we also include those public sector organisations that have in-house enforcement agents.

Enforcement Agent: we mean someone who is responsible for the enforcement of court orders against goods (warrants of control) or the person (arrest warrants); we include those employed in the public and private sector.

Enforcement Agencies – Obligations

Enforcement agencies must ensure that enforcement is conducted in accordance with prevailing legislation and in a professional, ethical and proportionate manner. The objective should be the recovery of the sum outstanding as quickly as possible, without causing unnecessary hardship.

Agencies have a responsibility to ensure that all personnel engaged to enforce warrants and orders are properly vetted and possess an appropriate knowledge and understanding of all relevant legislation, case law and powers, and at all times act in accordance with them.

The training that is provided to individual Enforcement Agents must be adequate, covering as a minimum: the law relating to taking control of goods; conduct and relevant codes of practice; Health and Safety and conflict reduction. Such courses should be provided at the commencement of employment and should include regular refresher

training as the basis for the continuous professional development of enforcement agents.

Procedures must be in place to ensure that all agents are subject to regular appraisal and performance reviews, at a minimum of yearly intervals. Such appraisal should include identification of training needs as well as a review of incidents and complaints.

Enforcement agencies must work in a way that, so far as possible, allows them to distinguish between debtors who can't pay and those who could pay or who won't pay.

An audit of the agency's accounts by independent accountants should be undertaken at least once a year. This requirement should be mandatory and accordingly applies in the case of large and small companies and sole traders.

An audit of individual enforcement agents must be conducted at least annually. Ideally this audit should be independent of the officer's line management.

Enforcement agencies must keep a complete record of all financial transactions in whatever capacity undertaken. A separate account for monies due to the creditor should be maintained and accurate books and accounts should be kept and made available to establish monies owed to the creditor.

Comprehensive insurance must be in place, to include:

- professional indemnity
- public and employers liability
- cover for goods taken into control including goods in transit.

All enforcement agencies must maintain sufficient telephone lines, with sufficient trained and competent staff available to answer debtor calls. Telephone calls must be answered within a reasonable time limit.

Enforcement agencies must maintain strict confidentiality and compliance with the relevant data protection regulations.

Enforcement agencies must ensure that legislation restricting the enforcement activity to enforcement agents is complied with.

Initial Contact

Advance written notice in the form of a Notice of Enforcement must be given to the debtor at least 7 clear days before a visit. A period of less than 7 days may be permitted if a court has ordered a shorter period.

The CIVEA guidance recommends that, unless the creditor wishes otherwise or where delay might jeopardise the case good practice would be to allow 14 actual days' notice to ensure that 7 clear days' notice is given to allow for postal delays and Sundays and Bank Holidays.

All documents, whether posted or hand delivered must be in accordance with the relevant legislation and should not be ambiguous or misleading.

Recruitment:

Only staff who have been subject to appropriate pre - employment vetting and who are able to provide verifiable and satisfactory references must be engaged as an

Enforcement Agent.

All staff that will be engaged in a direct customer facing position must be subject to a check with the Disclosure and Barring Service. As a result of legislation introduced in 2006, Enforcement Agents are exempt from the provisions of the Rehabilitation of Offenders Act.

Staff directly engaged in enforcement by taking control of goods must not have previously been convicted of any (unspent) criminal offence or any offence involving fraud, dishonesty or violence or have any current County or High Court judgments made against them.

Training:

Enforcement agencies must ensure that all agents, employees and contractors are provided with appropriate training to ensure that they understand and are able to act, at all times, professionally and within the bounds of the relevant legislation. This training should be provided at the commencement of employment and at intervals afterwards to ensure that their knowledge is kept up to date.

Professional training/assessment should be to a standard that complies with relevant legislation

Enforcement agents should be trained to recognise and avoid potentially hazardous and aggressive situations and to withdraw when in doubt about their own or others' safety.

Enforcement agents should be trained to recognise vulnerable debtors and to act in accordance with the relevant legislation and any specific client instructions.

Attendance at the Debtor's Address:

Enforcement agents must carry out their duties in a professional, calm and dignified manner. They must dress appropriately and act with discretion and fairness. Officers must conduct themselves in a humane, firm but fair manner and will act responsibly and shall do nothing to prejudice the reputation and integrity of their client or employing organisation.

Enforcement agents must not misrepresent their powers, qualifications, capacities, experience or abilities and must not discriminate unfairly on any grounds including those of age, disability, ethnicity, gender, race, religion or sexual orientation.

Enforcement agents must act within the law at all times, including all defined legislation and observe all health and safety requirements in carrying out enforcement. They must maintain strict client confidentiality and comply with Data Protection legislation and, where appropriate the Freedom of Information Act.

When attending a domestic property to meet with an individual debtor, the enforcement agent shall take reasonable steps to ensure he/she is speaking directly to the debtor, before identifying himself or herself as an enforcement agent. If the debtor is unavailable the enforcement agent must ascertain when they will be available. Every effort should be made not to discuss the nature/purpose of their visit with anyone other than the debtor and the enforcement agent shall take care to ensure that the debtor's circumstances are not given to or discussed with a third party. This might be relaxed when speaking with a spouse/partner or close relative of the debtor. When attending a business and the debtor is not available, the

enforcement agent may deal with a person in apparent authority who is on the premises where those premises are used, either wholly or in part, to carry on a trade or business.

The enforcement agent shall clearly state to the debtor the purpose of the visit, informing the debtor which enforcement agency they are employed / engaged by and that they are acting on behalf of a particular (named) client.

It is a fundamental principle of this code that all agents must properly identify themselves when asked to do so and must not attempt to misrepresent their status or powers.

Agents must not imply that they are anything to do with the police or any other government agency.

Enforcement agents should always produce relevant identification to the debtor, such as a badge or ID card, when asked to do so.

When required by legislation, the written authorisation of the relevant local authority must also be shown to the debtor if it is requested.

The relevant documentation, including details of costs incurred to date must be handed to the debtor, or left at the premises.

Enforcement agents shall at all times attempt to act in a way to minimise embarrassment, inconvenience and distress to the debtor and/or his/her family. In particular, they must avoid responding unreasonably to provocation.

The name of the actual agent attending the premises must be made clear on any documents left with the debtor or left at the premises. All relevant contacts and telephone numbers should be clearly displayed, as should the relevant reference number(s).

The purpose of the enforcement agent's visit must be explained to the debtor. The warrant or order instructs the enforcement agent to take control of goods, to secure payment of the debt under threat of the removal and sale of those goods. If on attendance, contact is made with the debtor, the enforcement agent should attempt to recover the full amount owed, as quickly as possible, taking into account the circumstances of the individual debtor.

The consequences of a failure to pay, together with the details of the fees that have already been incurred and any additional fees / costs that may be incurred, must be fully explained. If settlement is not immediately forthcoming the enforcement agent should consider the appropriateness of a controlled goods agreement, with a suitable payment arrangement.

Debtors must not be pressed to make unrealistic offers and should be asked to consider carefully any offer they voluntarily make.

When dealing with individual debtors, enforcement agents should, so far as it is practical, avoid disclosing the purpose of their visit to anyone other than the debtor. Where the debtor is not seen, the relevant documents must be left at the address in a sealed envelope addressed to the debtor. When attending a business and the debtor is not available, the enforcement agent may deal with a person in apparent authority who is on the premises where those premises are used, either wholly or in part, to carry on a trade or business.

A family member or other 3rd party should not be pressured into paying the sum due on behalf of an individual debtor, though the enforcement agent may accept a voluntary payment, if tendered, and which might avoid goods being seized or removed.

Taking control of goods must be conducted in a humane and fair manner and in accordance with the relevant regulations and codes of practice. Goods should not normally be removed where the sale price achieved at auction is unlikely to exceed the costs of removal.

All reasonable attempts should be made to ensure that the debtor is present when goods are taken into control.

Enforcement agents shall, at all times, act in such a way as to minimise any embarrassment to debtors. Wherever possible the debtor should be interviewed in private unless the debtor wishes otherwise or declines the invitation.

When goods are taken into control, a complete inventory of the goods covered must be made. The inventory must detail individual items and not include "catch all" items purporting to cover goods not specifically listed. There must be no doubt as to which goods are in the enforcement agent's legal possession.

Attendance / Time:

The enforcement agent may take control of goods on any day of the week. Enforcement action should only be carried out between the hours of 6.00 am and 9.00 pm, or at any time during trading hours, unless otherwise authorised by a court.

Enforcement agents should be respectful of the religion and culture of others at all times. They should attempt to be aware of the dates for religious festivals and carefully consider the appropriateness of undertaking enforcement on any day of religious or cultural observance or during any major religious or cultural festival.

Entry to Premises

Before seeking access to premises an enforcement agent should ensure, where possible, that the debtor is still resident at the property or carries on a business or trade from the premises.

Force should not normally be used to gain entry to premises in the first instance and deception should never be employed to gain physical access to premises. Force may only be used to gain entry in limited circumstances and an enforcement officer must not misrepresent his power to force entry.

A power to enter premises by force exists for the execution of warrants of control to enforce criminal penalties. This power should only be used to the extent that it is reasonably required and only after the debtor has been warned that the power exists and the consequences of a wilful refusal to co-operate.

Removal of Goods

Enforcement agents must only take goods in accordance with the appropriate

regulations or statute. When goods have to be removed the agent must ensure that sufficient and appropriately skilled personnel are available.

Only goods that belong to the debtor or in which he/she has an actual interest may be taken.

Enforcement agents must ensure that goods are handled with reasonable care so that they do not suffer any damage whilst in their possession and should have insurance in place for goods in transit so that if damage occurs this is covered by the policy.

Removed goods must be transported in vehicles suitable for the purpose and packed and secured in such a way as to minimise the risk of damage to them. Goods must be stored in such a place and manner as to minimise the risk of theft, damage or deterioration.

Any sub-contractors engaged to assist in a removal must be directly supervised by the enforcement agent.

Enforcement agents should take all reasonable steps to satisfy themselves that the value of the goods taken into control is proportional to the value of the debt and the charges owed. Goods belonging to, or for the exclusive use of a child should not be removed.

When goods are removed the enforcement agent must comply with the legal requirements relating to notices and inventories. Reasonable care must be taken of the debtor's goods pending sale, including suitable and secure storage facilities and adequate insurance cover. Any sale which takes place must be properly publicised and as many potential buyers as possible encouraged to attend, to secure the best price available.

Certain goods are protected from being taken into control. Enforcement agents should be familiar with the circumstances when goods are exempt.

Fees

The Enforcement Agent must provide details of any direct charges to the debtor. There are three stages of enforcement, the compliance stage, the enforcement stage and the sale stage. Specific fees are payable by the debtor should each stage become necessary. If full payment is made at the compliance stage only the compliance fee is incurred. Details of the fees and disbursements which are payable are set out on the CIVEA website.

Enforcement agents will clearly explain to the debtor the consequences of taking control of goods and ensure that debtors are aware of any additional charges that will be incurred.

Enforcement Agencies must make payments to clients on account of monies collected at agreed intervals. Each payment must be supported by a schedule giving sufficient information to enable the client to credit each debtor's account correctly.

There must be adequate facilities available to allow the debtor to make payment both to an office location and directly to the enforcement agent.

Costs charged to the debtor should be strictly in accordance with the relevant regulations.

Complaints

Enforcement agencies must aim to provide a high level of customer care and must operate comprehensive complaints and disciplinary procedures with which enforcement agents must be fully conversant. How to make a complaint should be easily ascertainable by the debtor and obstacles must not be placed in the way of complainants.

It is recommended that within 10 working days of receiving a complaint, the enforcement agency write to the debtor, acknowledging receipt of the complaint and enclosing a copy of their complaints procedure, and informing the debtor that the complaint has been registered and will be investigated in accordance with that procedure. The complaints procedure must detail any escalation procedure, set out timeframes and provide details of the CIVEA complaints process.

Enforcement agencies must make available details of the complaints procedure on request or when circumstances indicate it would be appropriate to do so.

Information & Confidentiality

All information obtained during the administration and enforcement of warrants or orders must be treated as confidential.

The enforcement agents themselves must comply with Data Protection and Human Rights legislation.

Vulnerable Persons

Enforcement agencies/agents and creditors must recognise that they each have a role in ensuring that the vulnerable and socially excluded are protected and that the recovery process includes procedures agreed between the agent/agency and creditor about how such situations should be dealt with.

The appropriate use of discretion is essential in every case and no amount of guidance could cover every situation, therefore the agent has a duty to contact the creditor and report the circumstances in situations where there is potential cause for concern. If necessary, the enforcement agent will advise the creditor if further action is appropriate. The exercise of appropriate discretion is needed, not only to protect the debtor, but also the enforcement agent who should avoid taking action which could lead to accusations of inappropriate behaviour.

Where the debtor is a vulnerable person the enforcement agent should give the debtor an adequate opportunity to get assistance and advice in relation to the exercise of the enforcement power.

A debtor may be considered vulnerable if, for reasons of age, health, disability or severe financial insecurity, they are unable to safeguard their personal welfare or the personal welfare of other members of the household.

Enforcement agents must withdraw from domestic premises if the only person present is, or appears to be, under the age of 16; they can ask when the debtor will be home - if appropriate.

Enforcement agents must withdraw without making enquiries if the only persons present are children who appear to be under the age of 12.

Enforcement agents should not enter premises if a child under 16 or a vulnerable person is the only person present.

Wherever possible, enforcement agents or their client should have arrangements in place for rapidly accessing translation services when these are needed, and provide on request information in large print or in Braille for debtors with impaired sight.

Those who might potentially be vulnerable include:

- the elderly;
- people with a disability; the seriously ill;
- the recently bereaved single parent families; pregnant women; unemployed people; and,
- those who have obvious difficulty in understanding, speaking or reading English.

Where a debtor is discovered to have:

- serious illness
- mental impairment
- learning difficulties
- physical disabilities

Then enforcement should cease and the matter should be referred back to the client for guidance.

Creditors' Responsibilities

In order for the enforcement process to work effectively, creditors must be fully aware of their own responsibilities. These should be observed and set out in terms of the service level agreement (SLA) with their enforcement agent/agency.

Creditors must not seek payment from an enforcement agency or enforcement agent in order to secure a contract.

Creditors must notify the enforcement agency of all payments received and other contacts with the debtor.

Creditors have a responsibility to advise all debtors that if payment is not made within a specified period of time, action may be taken to enforce payment.

Creditors must not issue an instruction knowing that the debtor is not at the address, as a means of tracing the debtor at no cost. All background information relating to the debtors circumstance or health / welfare, together with any relevant case history, should be given to the enforcement agency when they are instructed to collect the debt.

Creditors must provide a contact point at appropriate times to enable the enforcement agent or agency to make essential queries particularly where they have cause for concern.

Creditors will avoid using enforcement agencies when they have evidence that a debtor falls within the category considered 'vulnerable'. Vulnerable persons may

include:-

- Disabled persons
- The long term sick or seriously ill
- The recently bereaved
- Those experiencing communication difficulties

Debtors Obligations

A debtor is equally responsible for ensuring that an enforcement encounter is concluded in a civil, polite, honest and non-threatening manner. An enforcement agent is entitled to be treated with respect and courtesy and should not be subjected to violence, threats or intimidation.

Attendance by an enforcement agent is never the first course of action by a creditor and consequently the enforcement agent is entitled to assume that the debtor is fully aware of the liability. The agent is equally entitled to assume that the debtor has received and understood any postal documentation sent by the enforcement agency or the creditor.

Debtors should ensure that they respond immediately to correspondence and should not attempt to delay matters by making false claims or attempt to conceal their true identity. A failure to respond to correspondence and/or contact from the enforcement agency will inevitably result in the matter being escalated, with the potential for goods to be seized and removed, thus incurring additional costs, charges and fees.

Debtors should understand that any documents posted or delivered to the debtor's address by the enforcement agents will be deemed to have been delivered.

If a debtor believes that they have a legitimate challenge to the debt, this must be raised immediately and progressed without delay. The grounds of any challenge must be communicated to both the creditor and the enforcement agency, supported by evidence.

Debtors who may feel that they fall into a vulnerable or hardship category must inform the enforcement agency immediately of their circumstances. They should be aware that such claims must be corroborated, which may involve a personal visit to observe their circumstances.

If a debtor does not understand what is happening or needs help in dealing with their debt then they should seek the assistance of a free advisory service immediately. If doing so they should provide that agency with ALL documentation they have received.

Debtors should realise that delay may increase costs, fees and charges. Ignoring a debt does not make it go away, it merely delays the inevitable and may increase costs, charges and fees.

The warrant or order that is being enforced empowers the immediate taking of goods and there is no automatic right to have an extended payment arrangement or instalment plan. When an enforcement agent first demands payment they are seeking full payment. Any agreement for extended terms is solely at the enforcement agent's discretion.

If a payment is promised or an agreement or arrangement is reached for settlement of a debt, the debtor must keep to the strict terms of that contract. Should the terms of an agreement be breached or broken the debtor should understand that the enforcement agent will proceed to recover the full remaining debt, with additional costs.

If paying by debit/credit card or by cheque, a debtor should ensure that there are sufficient funds by which to pay the amount and realise that if the payment by card is declined or the bank return a cheque unpaid then the enforcement agent will return and further costs, charges and fees will be applied.

It is common practice for advisory agencies to recommend that a debtor should deny access to the enforcement agent and refuse to sign any documentation. The debtor should realise that by accepting this advice they could be prejudicing the potential for an instalment plan to be agreed and any accessible goods could be removed immediately.

If a debtor disputes the level or appropriateness of any cost, charge, or fee they can apply to the court for those items to be assessed, once payment has been made.

A debtor should be aware that if the enforcement agent is not successful in recovering the debt due, then the creditor, subject to the relevant legislation, has several other options open to them to achieve recovery of their money, which can include; attachment of earnings or benefit, administration or sequestration orders, bankruptcy or liquidation, or committal to prison.

Third Party Advisors

An enforcement agency is not legally obliged to deal with a third party advisor. Agencies will normally deal with bona fide organisations, but only if they are in possession of evidence that they are empowered to act and if their involvement is beneficial to clearing the debt.

Advisors should restrict themselves to relevant issues, namely settlement or discussion of the actual debt. Making uncorroborated and possibly unfounded claims or allegations against the actual agent or their company is not constructive to bringing the matter to an amicable conclusion.

If an advisor believes that the debtor has a genuine grievance in respect of their treatment, this should be addressed as a separate issue, firstly to the agent or the relevant enforcement agency. If the grievance is not resolved at this first stage, it can then be escalated to the CIVEA Complaints system.

The recovery agents are not bound to accept any offer made by an advisor and may refuse such offers if they are felt to be unreasonable.

Code of Practice for Enforcement Agent Services



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1. Introduction

Sefton Council uses the services of external firms of Enforcement Agents in the recovery of outstanding arrears of Sundry Debt/Other income, Housing Benefit Overpayments, Council Tax, Business Rates, Business Improvement District Levy (BID levies) and Parking Fines.

From 6 April 2014 bailiffs were replaced by Enforcement Agents. This Code of Practice for Enforcement Agents replaces the Sefton Code of Practice for Bailiffs dated August 2013 and reflects the changes required under the Tribunals Courts and Enforcement Act 2007 and subsequent regulations.

The main objective for an Enforcement Agent, together with the Council, is to provide an effective and efficient Enforcement service in the collection of debt.

This Code of Practice has been drawn up in an endeavour to achieve the very best practice in the conduct that is expected of our Enforcement Agents.

Failure to comply with the requirements of this Code of Practice and the relevant legislation may result in the Council terminating with the services of the firm of Enforcement Agents.

This document will be subject to periodic review.

2. Core Requirements

The Enforcement Agency company (referred to as the company) will ensure that all employees, contractors and Agents will act strictly within the scope of current legislation at all time and will not commit any illegal act whilst working on behalf of the Council.

The company will ensure that their employees receive adequate training to keep their knowledge up to date and are informed of this Code of Practice.

The company must ensure that its employees use the title Enforcement Agent only in appropriate work (for instance not when acting as debt-collectors or tracing Agents).

The company must at all times be Corporate Members of the Civil Enforcement Association.

All Enforcement Agents carrying out the lawful act of taking control of goods shall hold a current certificate issued by the county court in accordance with legal requirements.

3. Communication with the debtor

All documents proposed to be left or posted to debtors must be agreed by the Council before use.

The company will ensure that all notices and other documentation left with or sent to the debtor are in Plain English, unambiguous and not misleading.

All documents must be correctly completed in a legible manner, be signed and carry the appropriate reference numbers (including the Council's account/reference number).

Pre-printed stationery must not be altered, or added to, in any way except to advise of proposed subsequent visits, balances outstanding etc.

The company shall ensure that debtors are able to contact the company during reasonable office hours by telephone and should publicise the appropriate telephone number on all documentation.

Except where handed to a debtor any notices or documents must be sent or left at the premises in a sealed envelope addressed to the debtor by name.

The company must make available to the Council, upon request, all correspondence relating to debtors and any supporting documents and working papers.

4. Enforcement Agency Procedures

Compliance Stage

When an account is referred to the Enforcement Agency the company shall maximise efforts to make contact with debtors and negotiate payment by use of letters, email and telephone calls.

The company should issue a statutory Notice of Enforcement to the debtor by post within one working day of being instructed by the Council. The statutory compliance fee of £75 is to be added to each case by the company upon receipt of the instruction. The company will seek to recover their fee and the outstanding debt through a combination of different contact methods.

Where, during the Compliance Stage, the debtor makes contact with the company the company should in the first instance seek payment in full.

In cases where the debtor is unable to pay in full the company should at this stage request details of the debtor's financial circumstances and their employer, then negotiate a suitable payment plan. Where the debtor is in receipt of welfare benefits a National Insurance number and their date of birth should be obtained, and the company should request evidence that the debtor is in receipt of welfare benefits. In these cases an agreement should be made for payments at least equal to the deductions that would be made by the Department of Work and Pensions.

In the event that the debtor is unwilling to provide information about their income and expenditure the company may negotiate a short term payment plan if a reasonable offer of payment is made, but is under no obligation to do so.

The company should provide clear indication in all communications that the earlier a debtor makes contact the less fees will be incurred. Furthermore, documentation must detail the appropriate legal timescales for taking control of goods together with a warning of potential future costs: an Enforcement fee £235 when the first visit is made and the additional 7.5% costs on any amount over £1500.

There may be exceptional occasions that on the basis of information known about the debtor the company may request that the Enforcement stage is advanced. The company must seek approval from the Council to do so.

Where the debtor fails to agree a payment arrangement and not before seven clear days after the issue of the Notice of Enforcement the company shall;

a) In the case of Business Rates Rate and Business Improvement District Levy debts, progress to Enforcement Stage.

b) In the case of other debts, send a second (non-statutory) notice warning of the intention to take Enforcement action and make further attempts to contact the debtor before issuing a Final (non-statutory) notice warning of the escalation to Enforcement Stage if payment is not made. Timescales for the issue of second, further and final notices to be agreed with the Council.

If it is ascertained that the debtor is no longer resident, the company shall make the appropriate local discreet enquiries to ascertain the date of leaving and the new address and then refer back to the Council with either the relevant information or to the effect that no further information is available. If the debtor has moved a very short distance within the Borough, the company may proceed to take control of goods at the new address and then refer back to the Council with the relevant information.

On certain occasions the Council will require the Enforcement Agency to prioritise certain cases, and the company will be expected to respond promptly.

Details of all attempted contacts must be formally recorded on the debtors record held by the company. Details of these must be made available to the Council on request.

Before the Enforcement Agency adds the Enforcement fee, they must, using their professional judgement, explicitly consider whether the debtor falls into the following vulnerability categories and should report this back to the Council. Where the debtor:

1. Appears to be severely mentally impaired or suffering severe mental confusion.
2. Has young children and severe social deprivation is evident.
3. Is disputing liability or claims to have paid, applied for a rebate, Council Tax Support, discount or any other relief not yet granted.

4. Is heavily pregnant, or the spouse of the debtor is heavily pregnant, and there are no other adults available in the household.
5. Is in mourning due to recent bereavement (within one month).
6. Is having difficulty communicating due to profound deafness, blindness or language difficulties. In these cases the Council would make arrangements for the appropriate support in terms of a signer or translation services etc.
7. Is currently unemployed and provides proof that they are in receipt of Income Support or Job Seekers Allowance (Income Based) payments from the Department for Work and Pensions (DWP) and details are obtained of the debtor's National Insurance Number.
8. Has severe long term sickness or illness including the terminally ill.
9. Appears to be over 70 years of age.
10. Is consulting his or her Councillor or Member of Parliament.

This judgement must be based on telephone conversations, written responses, visits by company employees not acting as Enforcement Agents and visits by Enforcement Agents. A clear statement that the debtor's vulnerability has been considered must be recorded on the debtor's record before the Enforcement fee is added. When an Enforcement Agent makes the first visit to the property and decides that the debtor is vulnerable, no Enforcement fee should be added and the account should be returned to the Council

Enforcement Stage

When an Enforcement Agent visits a debtor

Where more than one liability order is held for a debtor, the Enforcement Agent where practicable will attend the property for all liability orders at the same time charging one Enforcement fee.

When an Enforcement Agent visits a debtor he/she must hand to the debtor or leave on the premises the relevant documentation required to be left by regulations relating to taking control of goods and any other additional guidance notes that may be agreed with the Council.

An Enforcement Agent must not misrepresent their powers, qualifications, capacities, experience or abilities.

The company will ensure that the removal of goods is always directly supervised by a certificated Enforcement Agent.

The nature of the work demands that the Enforcement Agent should adopt a firm but correct attitude with debtors and other people they contact in the course of their duties. Should the debtor dispute liability the Enforcement Agent will contact the Council before proceeding further.

The Enforcement Agent must inform their company of any visit they receive where a conflict of interest may exist. A conflict of interest could be where a debtor is known to them personally, for example a friend relative or associate.

The Enforcement Agent must not use their position or powers for personal gain. Gifts or bribes must always be reported to the company.

The Enforcement Agent must always try to contact the debtor personally. If this is not possible, the Enforcement Agent will speak to the debtor's partner or other responsible adult to establish when the debtor is likely to be at home.

The Enforcement Agent will not enter the debtor's premises if it appears that the only people present are young people under the age of 18, but in such circumstances the Enforcement Agent may enquire as to when the debtor is likely to be at home.

The Enforcement Agent should take reasonable steps to ensure that he/she is speaking directly with the debtor, before identifying himself or herself as an Enforcement Agent.

The Enforcement Agent should seek to establish the identity of all persons present, and inform the debtor (when present) of the purpose of the visit, and explain the powers of the Enforcement Agent.

The absence of the debtor should not automatically prevent the Enforcement Agent from taking control of goods (particularly where the debtor is a business), but the Enforcement Agent will be expected to take all relevant circumstances into account before deciding whether to take control of goods.

The Enforcement Agent's initial visit will be with the intention of taking control of goods. If the debtor tenders payment in full including all costs incurred, the Enforcement Agent must not take control of goods.

When the Enforcement Agent has taken control of goods, the debtor should normally be invited to sign a Controlled Goods Agreement. If the debtor refuses to sign, or refuses to make payment, or defaults on payment, the goods should (subject to contrary instructions from the Council) be removed at the earliest opportunity.

The Enforcement Agent must not remove goods without first consulting the Council.

The Enforcement Agent must at all times:-

- carry the written authorisation of Sefton Council, to be shown to the debtor on request.
- carry on their person an identity card containing a photograph and contact telephone number which should be produced to the debtor.
- make clear to the debtor the purpose of their visit and the fact that he/she is acting as an Agent of the Council but is not directly employed by the Council.
- carry out their duties in a calm, dignified and polite manner and do nothing to prejudice the reputation of the Council.
- act in a way to minimise embarrassment, inconvenience and distress to the debtor and his/her family.
- respect confidentiality when third parties are present.
- not conduct enquiries by involving children and young people under the age of 18 or the elderly/infirm.
- be presentable in their manner and dress.
- act with discretion and fairness.
- not consume or be under the influence of alcohol or drugs (other than prescription or routine medication) whilst working.
- not smoke in front of or whilst on the premises of the debtor.
- not respond to verbal abuse under any circumstances and remain calm and objective at all times.
- avoid physical confrontation and call the police if a breach of peace is suspected.

Before attending with a van in order to remove goods, the Enforcement Agency must send to the debtor a letter warning of the intention to send a van and to remove goods. The debtor must also be warned of the potential costs of the sale process.

Unless circumstances are exceptional, the Enforcement Agent must not remove goods from domestic premises during the period from 18th December to 1st January inclusive. The Enforcement Agent should also be sensitive to other circumstances where there is information that indicates that the debtor is observing a religious holiday.

Arrangements to pay the debt

The debtor must immediately be given an acknowledgement of payment or an official receipt for all payments made in person. All payments must be handed in for banking no later than the following working day. Where payment is made by post or left at an office which is closed, an official receipt must be sent within 3 working days where a prepaid self-addressed envelope accompanies the payment. The company shall offer a convenient method of payment for example, via the Post Office, or other payment network, by telephone or by Internet.

Where the Enforcement Agent takes control of goods with a view to securing payment in the future or over an agreed period of time, the debtor should be invited to sign a controlled goods agreement which details the arrangement made regarding payment.

The Enforcement Agent should attempt to collect the amount due to the Council including costs as quickly as possible, taking into account the circumstances of the debtor. If payment is not made in full immediately the debtor should be given the opportunity to enter into an agreement or an instalment arrangement of up to 6 months.

Only in exceptional circumstances, and only with the agreement of the Council, should an arrangement to pay be accepted which exceeds a period 6 months

Where no payment arrangement can be made

Where no arrangement can be made, the Enforcement Agent will attempt to take control of the debtor's goods.

This means entering a debtor's property and listing goods belonging to the debtor that may be removed and sold at auction with the proceeds being distributed between the fees and the Council debt in accordance with legislation.

Removing goods from the debtor's home

Before attending to remove goods, the Enforcement Agent must send a letter to the debtor warning of the intention to remove goods and also warning of the additional sale fee that will be added to the account if goods removed are sold. The Enforcement Agent should also indicate the additional costs that will be incurred in respect of the removal.

If there are circumstances that indicate that by telling the debtor it may compromise the ability to remove goods (for example where a company is about to go into liquidation or the debtor about to abscond) then attendance can be made without a letter being issued.

Enforcement Agents should not attend at a company director's personal address where the liability order is not in his/her specific name unless they have reason to believe that company assets are being held at the director's home.

Under no circumstances must an Enforcement Agent force entry into a debtor's premises without prior agreement by the Council.

Before goods are removed approval must be sought from the Council.

For Council Tax debts, no goods should be removed for sale which falls within the categories listed in The Council Tax (Administration and Enforcement) Regulations 1992 (as amended) and the Tribunals, Courts and Enforcement Act 2007 being:

1. Basic clothing, beds, bedding and household linen.
2. a Cooker or a microwave
3. a Refrigerator, freezers and essential room heaters.
4. Dining table and chairs.
5. A Washing machine, a vacuum cleaner and an iron.
6. Toys primarily for the use of any child who is a member of the debtor's household.
7. Articles reasonably required for the care or upbringing of a child who is a member of the debtor's household.
8. Medical aids or medical equipment reasonably required for the use of the debtor or any members of the debtor's household.
9. Articles which are required for safety reasons in the home.
10. Any goods bought with a DWP budgeting loan or under the Council's Welfare Provision Scheme.
11. Any items of a personal nature with a nominal or no cash value, for example, videos of family occasions, family photographs or pictures, etc.
12. Any other items protected by law.

Only goods belonging to the debtor may be listed on the control of goods order. Goods subject to higher purchase or credit sale agreements will not be removed (in accordance with the Consumer Credits Act 1974).

Sale Stage

When the debtor's goods are removed and sold at public auction, the Council must be provided with a full statement itemising the goods sold, the amount realised, a breakdown of the costs incurred and a statement of the amount subsequently outstanding or overpaid, as appropriate. The Enforcement Agent should not remove goods for sale unless it is anticipated that the sum realised will be sufficient to settle a substantial proportion of the amount outstanding, including costs. "Substantial proportion" may be defined by the Council. No goods should be removed for sale if they fall into the categories protected by legislation.

When the debtor's goods are removed, at least seven days must pass before they can be sold at public auction. After the sale, the Council and the debtor must be provided with a full statement which:

- lists the goods sold;
- lists the amount realised;
- lists the costs incurred; and
- details the amount subsequently outstanding, or overpaid, as appropriate.

The debtor should be notified of the date, time and place of sale, to give them the opportunity to make payment of the full amount owed to the Council including all costs and arrange the collection and return of their goods. Any goods taken must be transported and stored with due care and attention whilst in their care including relevant security and insurance provisions. Any disbursements incurred during this process can be recovered by the Enforcement Agent in the form of additional costs (e.g. storage, cost of locksmith, auctioneers fees). The Enforcement Agent should not remove goods for sale unless it is anticipated that the sum realised will be sufficient to settle a reasonable proportion of the account outstanding to the Council (30% to 50%), including costs. As a general rule, the value of the goods can be divided by five to give an approximate value if auctioned.

Information and Confidentiality

The Enforcement Agent and the company shall ensure that all information coming into their possession during the performance of the contract is treated with strict confidence and is not to be used for any purpose other than performance of the contract.

All data must be processed in accordance with data protection legislation, Freedom of Information legislation and with any guidance issued by the Information Commissioner.

The company is responsible for putting in place suitable arrangements to ensure the security of data in its possession at all times and shall only exchange data with the Council in a secure manner agreed by the Council.

5. Complaints

The Enforcement Agency Company will provide the Council with a full response to complaints made by debtors direct to the Council concerning the activities of Enforcement Agents within seven days of the complaint being received and will provide copies of any documents which are considered relevant to the complaint. The Council will then respond directly to the complainant in accordance with the Council's complaints procedures.

The Enforcement Agency Company will also inform the Council of any complaints with which they have dealt directly and provide copies of all correspondence to and from the complainants. Complaints made directly to the Enforcement Agency Company should receive a response within 5 working days from the receipt of the complaint.

The Council should be notified of any complaints made against the Enforcement Agency to the Civil Enforcement Association. Also, any complaint made to the county court if representation is made that an Enforcement Agents not fit to hold a certificate, the Enforcement Agency Company must notify Sefton Council.

A register should be maintained to record all complaints.

The Enforcement Agency must make available details of their comments and complaints procedure upon demand.

6. Management Information/Access to Records/Instructions

The Enforcement Agency Company will provide Management Information, reports, the content and frequency of which will be agreed with the Council.

7. Data Protection Act

The Company shall ensure that all information coming into their possession is treated as strictly confidential and is not used for any other purpose.

All Enforcement Agency companies must comply with the provisions of the Data Protection Acts 1984 and 1998. All data passed to the Enforcement Agency Company by the Council, or obtained by the Enforcement Agents in the performance of their duties and services, remains confidential and the property of the Council at all times.

8. Data Security

The Enforcement Agency Company will provide the Council with their data protection & security policies for the Council to approve.

9. Variations

The Council reserves the right to amend, suspend or discontinue any of the procedures and requirements in this Code of Practice or introduce new procedures and requirements resulting from changed circumstances. The Enforcement Agency Company will be notified in writing of any proposed amendments to the Code and will be invited to comment on their effect on working practices.

10. Contact Details

Council Client Officers

Christine Finnigan, Partnership and Local Taxation Manager

0151 934 4161

Christine.finnigan@sefton.gov.uk

Angela Ellis, Customer and Transactional Services Support Manager

0151 934 2154

Angela.ellis@sefton.gov.uk

Andy Jennings, Committal & Insolvency Manager

0151 934 4651

Andy.Jennings@sefton.gov.uk

arvato Public Sector Services Ltd:

Mark Barry, Head of Revenues

0151 934 4361

Mark.barry@sefton.gov.uk

Gary Davies, Principal Revenues Manager (Collection)

0151 934 4501

Gary.davies@sefton.gov.uk

Lezley Kynaston, Business Rates Team Manager

0151 934 4366

Lezley.Kynaston@sefton.gov.uk

Sally Neophytou, Business Rates Team Manager

0151 934 4387

Sally.Neophytou@sefton.gov.uk

Parking Services:

Dave Marrin, Service Manager – Traffic and Transportation

0151 934 4295

Dave.marrin@sefton.gov.uk

Linda Beatty, Parking Admin Officer

0151 934 2307

linda.beatty@sefton.gov.uk

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