

# Ashford Borough Council

## Corporate Debt Recovery Policy

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## **Introduction**

This document details the Council's policies on the billing, collection and recovery of monies due to the Council.

Sums due to the Council can be a mixture of statutory and non-statutory charges. The method for billing and recovery of the statutory debts is tightly prescribed by statute. Our enforcement practices must take account of this diversity.

This Policy sets out the general principles to be applied in relation to debt management across all services provided by this Council.

### **Policies Common to all Types of Debt**

- 2.1 Every demand for money will be correctly addressed to the person who is liable to pay it. The name on the demand will be that of a person or body possessing "legal personality"
- 2.2 Demands will, wherever possible, be issued on the day of production.
- 2.3 All relevant information relating to a demand will be kept either in paper or scanned image format until at least six years after the demand is raised. If at the end of that six-year period the demand still remains unpaid, the supporting documentation will be retained until either the bill is paid or the debt is written off.
- 2.4 The Council will attempt at all times to use the most appropriate and effective method of debt recovery in order to maximise income.
- 2.5 The Council will encourage the most cost effective payment methods with the emphasis being on unmediated electronic means where possible. "Unmediated" in the context of electronic payment methods means a method of payment that requires no human intervention by officers of the Council to achieve its crediting to the account in question.
- 2.6 In the interest of economy and where appropriate all demands, reminders and final notices shall be issued by 2<sup>nd</sup> class post unless contrary to regulations or other statutory or legal requirements.
- 2.7 Authorised officers and others referred to in 5.1, will be able to intervene in the recovery cycle in appropriate circumstances to deal with hardship or dispute situations. This includes the ability to make deferred payment arrangements where immediate payment is impossible due to lack of means. Officers making arrangements will take into account paragraph 2.4.

- 2.8 Equality and diversity considerations will be taken into account in accordance with the Council's Equal Opportunities Policy. Specifically staff seeking to recover debts will have regard to:
- Ensuring information is accessible through translations, larger print versions or sign language, as appropriate to the needs of the debtor
  - The need for home visits where the debtors are unable to access advice services
- 2.9 Where the potential for a statutory benefit or discount exists in relation to the debt, efforts will be made to make the debtor aware of such opportunities and they will be assisted and encouraged to apply for these.
- 2.10 All notices issued by the Council will comply with the corporate style guidance and be readily identifiable as being from the Council.
- 2.11 Where either national or local performance indicators exist the Council will strive for top quartile performance and will publish our actual performance against these targets annually. Progress reports will be made available at regular intervals during the year to the Council's Management Team and the appropriate Committee.
- 2.12 The Council welcome the involvement of welfare agencies where authorised by the debtor in connection with debts due to the Council and recognise the benefits that these organisations can offer both the debtor and the Council in prioritising repayments to creditors and in maximising income available to the debtor.

The Council supports the provision of advice from the following agencies and will work in conjunction with them for the benefit of the debtor.

- [Age Concern](#)
  - [Citizens Advice Bureau \(CAB\)](#)
  - [Shelter](#)
- 2.13 In cases of multiple debts there must be close liaison between services. Multiple debts are where a debtor has significant debts in more than one service area, e.g. housing rent, council tax and housing benefit overpayment. Such cases can present problems in determining the relative priority of the individual debts for both the individual concerned and the staff preparing settlement.

In such cases staff are expected to liaise and agree an appropriate means of coordinated recovery, which reflects these policy aspirations together with the need to balance repayment profiles across all debts due to the Council.

Cross service communication may arise on an ad-hoc basis where appropriate cases present themselves.

- 2.14 The Council recognises that prompt recovery action is key in managing its debt and maximising income. The Council therefore aims to:
- Regularly monitor the level and age of debt.
  - Set clear targets for the recovery of debt.
  - Have clear written recovery procedures.
  - Set priorities for specific areas of debt and assess recovery methods to ensure maximum recovery.
  - Regularly review irrecoverable debts for write-off.
- 2.15 All accounts that are written off will be written off against the income code against which they are raised. The VAT on written-off sundry debt accounts will only be recovered by the Authority in accordance with the rules and procedures laid down by HM Customs and Excise. In practice this means that VAT on a written-off debt can only be reclaimed 6 months after the debt became due to the date of supply.
- 2.16 Where an external agency is procured to assist with the delivery of a service the flow of information between the Council and the agency should, wherever possible, be in a secure electronic format.
- 2.17 Where legislation permits, the Council will seek to levy and recover from the debtor any and all costs/fees that are legitimately due from the debtor to the Authority or its agents. Only in exceptional cases, where it would not be in the public interest to pursue costs/fees will they be waived.

### **Principles of Enforcement (all debts)**

- 3.1 The Council will follow the principles outlined below. These principles are derived from the Government's [Enforcement Concordat \(Appendix 1\)](#), to which the Council is fully committed:
- Our action will be **proportional**
  - Our approach will be **consistent**
  - Our actions will be **transparent**

Additionally our intention will be to be firm and fair and our manner will be courteous.

- 3.2 **Proportionality** – Proportionality allows for a balance to be struck between the potential loss of income to the Council and the costs of compliance.

3.3 **Consistency** – Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council aim to achieve consistency in:

- The advice the Council gives.
- The use of our powers.
- The recovery procedures used.

The Council recognise that consistency does not mean simple uniformity. Officers need to take account of many variables such as:

- The social circumstances of the debtor.
- The debtor's payment history.
- The debtor's ability to pay.

3.4 **Transparency** – Transparency is important in maintaining public confidence. It means helping people to understand what is expected of them and what they should expect from the Council. It also means explaining clearly the reasons for taking any recovery/enforcement action.

Transparency is a key part of the Council Officer's role. If action is required, the reasons why must be clearly explained, in writing, where required. If action is required time scales must be clearly stated. A distinction must be made between advice and legal requirements.

Communications should be in plain English and large print with Braille or in translation version being made available to customers upon request.

An opportunity must be given to discuss what is required to comply with the law before formal enforcement action is taken. A written explanation must be give of any rights of appeal against formal enforcement action either before or at the time the action is taken.

### **Write Offs (all debts)**

4.1 The Council recognise that where a debt is irrecoverable, prompt and regular write off of such debts is good practice.

The Council will seek to minimise the cost of write-offs to the local Council Tax and Housing Rent payers by taking all necessary action to recover what is due. All debts will be subject to the full recovery, collection and legal procedures as outlined in this policy.

Irrecoverable debts will be referred to the Council's Section 151 Officer (Deputy Chief Executive) at a pre-agreed frequency and in a pre-agreed format.

The limitations for writing off irrecoverable debts are those contained within the Council's Financial Regulations.

Debts may be referred to the Section 151 Officer for write-off in the following circumstances:

- Debt remitted by a Magistrate.
- The Council has evidence to confirm the claimant is suffering a severe physical or mental illness, which renders enforcement action inappropriate.
- The Council is unable to trace the debtor.
- The debt is not cost-effective to pursue due to small balance.
- The debt is not cost-effective to pursue due to the likelihood of payment balanced against the cost of proceedings.
- The claimant has died and there are no or insufficient funds in the estate to settle the debt.
- The claimant is subject to formal insolvency proceedings and there is little likelihood of a dividend.

### **Policies Specific to Sundry Debtors**

- 5.1 The responsibility for the billing, collection and recovery of sundry debtor demands is held by the Head of Service.
- 5.2 Service providers MUST endeavour to obtain payment in advance or at the time of service delivery wherever permissible. Sundry debt accounts should ONLY be raised where payment in advance for a service is inappropriate.
- 5.3 The minimum value of any demand is for £1.00 (excluding wayleaves).
- 5.4 Except in the case of a demand payable by instalments or as otherwise contractually agreed, the settlement terms for all demands will be 14 days.
- 5.5 Recovery action will commence no later than 14 days after the demand has fallen due. Recovery action 'profiles' are to be agreed between the Exchequer services and the account raising section. These profiles will include pre-agreed determinations, as to when to instigate litigation.
- 5.6 The costs of enforcement action/litigation to recover sundry debtor invoices will be charged against the budget of the service raising the invoice. Any costs recovered from the debtor will be credited against these sums.
- 5.7 Sundry debtor invoices will be raised using the Council's sundry debtors system.

5.8 All statutory methods of enforcement of debts shall be available for use. These include:

- Attachments of Earnings
- Warrants of Execution (taking possession of goods/charging order on land/securities)
- Garnishee Orders
- Insolvency
- Possession proceedings

These methods shall only be used with consideration to the principles set out within 3.1 above.

5.9 Prior to statutory methods of enforcement being taken, officers may use, where cost effective to do so, external collection agents, visits to the debtor's home by designated Council Officers and telephone contact with the debtor as an alternative means of recovering sundry debts.

5.10 Where legally permissible, the provision of future services to the debtor will be suspended until outstanding debts are settled.

5.11 Ownership of all sundry debts rests with the originating services and they can issue an instruction to cancel an invoice. It is the responsibility of the originating services to correspond with or discuss with the debtor issues relating to the validity of the debt.

5.12 The Finance Debtors section will provide reports to the originating services on a regular pre-agreed basis as to the value of their outstanding accounts.

### **Policies specific to Local Taxation Accounts**

6.1 Council tax and Non-domestic Rate annual bills will be issued as soon as practical after the Council has set its Council Tax for the forthcoming year.

6.2 Non-annual bills will be issued as soon as practicable after the amount of liability is known with payment(s) being due on the earliest date(s) permitted by legislation.

6.3 All demand notices will be issued using the Councils revenues & benefits system.

6.4 Where a tax or ratepayer can demonstrate an inability to make payment on the set instalment date, staff authorised by the Head of Finance will have the discretion to vary the instalment dates although the final instalment date must be before 31<sup>st</sup> March of the financial year in question. Such arrangements will only be considered where no recovery action has yet commenced for the account in question.

- 6.5 Reminders and final invoices will, as far as is operationally practical, be issued within 14 days of the payment default to which they relate in accordance with a recovery timetable, which is to be sent at the start of each financial year.
- 6.6 Summonses will be issued as soon as reasonably practicable after the default to which they relate.
- 6.7 All appropriate methods of enforcement of Liability Orders will be available for use. These include:
- Insolvency
  - County Court proceedings, as an alternative to the Magistrates Court
  - Distress
  - Committal to prison application (individuals only)

### **Council Tax Only**

- Deductions from Benefits
- Attachments of Earnings
- Charging orders
- Attachment of Members' Allowances
- Prosecution for failing to provide financial information
- Prosecution of employers for failing to implement Attachment of Earnings

These methods shall only be used with consideration to the principles set out within 3.1 above.

- 6.8 The Lord Chancellor's Department has produced [National Standards for Enforcement Agents \(Appendix 2\)](#). Officers of the Council and contractors acting on its behalf in enforcement roles will comply with these standards.
- 6.9 Where recovery action has commenced, payment arrangements will generally only be entered into where the debt is secured by a liability order and/or the debtor agrees to make payment by way of direct debt. Arrangements will only be agreed by authorised staff and will generally only be agreed to where:
- The debt will clear by the end of the financial year.
  - The debtor's proposals are reasonable in comparison with the amounts that could be secured by taking alternative action.
  - The debtor demonstrates a clear intention to honour the arrangement.
- 6.10 In cases where exceptional circumstances exist and it would not be in the interests of Council Tax payers in general to pursue enforcement action arrangements may be made by authorised staff prior to a liability order being obtained and without the debtor agreeing to make payment by way of direct debit.

## **Policies Specific to the Recovery of Benefit Overpayments**

- 7.1 All necessary invoices, reminder and final notices will be raised using the Council's revenues & benefits system.
- 7.2 Invoices will only be issued when a recoverable overpayment of housing benefit exists and cannot be recovered by other prescribed means.
- 7.3 The Council believes that prevention of overpayment debt is better than cure. Therefore strict measures are to be employed to prevent overpayments occurring. These will include:
- Using a well laid out application form to collate accurate information which contains an unambiguous statement that failure to provide correct information could lead to overpayments of benefit and to prosecution.
  - Ensuring all benefit notification letters and relevant correspondence advise the people affected of their responsibility to tell the Council of any change of circumstances that may affect their claim.
  - Making use of the Verification framework techniques and procedures (compliant since June 1999) for example:
    - Using checks for identity, residency and National Insurance numbers.
    - Visiting programmes targeting high-risk categories.
  - Ensuring all staff involved with overpayments receive enough training with comprehensive access to overpayment recovery procedures and an awareness of problems relating to debt.
  - Providing regular fraud awareness training for staff who have contact with claimants.
  - Using and developing information technology to automate the identification and recovery of overpayments and to reduce error.
  - Including publicity material, for example posters, guidance pamphlets sent with application forms and landlord undertakings, information on responsibilities for reporting changes of circumstances.
  - Dealing quickly with reported changes of circumstances.
  - Participating in various data matching exercises with external agencies and cross matching against internal databases whilst adhering to principles laid down by the Data Protection and Human Rights Acts.

- 7.4 The Council aims to calculate overpayments quickly and accurately and to provide quality information to the people affected, ensuring it recovers the correct amount. To achieve this the Council will:
- Invite claimants to apply for underlying entitlement.
  - Calculate the overpayment, on average, within 14 days of receiving all necessary information.
  - Use the proper effective date of change to fix the correct overpayment period.
  - Consider uncashed or returned cheques or underpayment of benefit.
- 7.5 The Council aims to ensure the correct classification of overpayments for subsidy purposes is always used in order to prevent loss of subsidy.
- 7.6 Where the Council decides an overpayment is recoverable, recovery arrangements will advance, obeying the following hierarchy:
- From arrears of Housing Benefit.
  - From continuing Housing Benefit. This includes direct payments to a landlord for that claimant even if that claimant has moved or changed landlord. The Council will base recovery rates on DWP guidelines and will always initially apply the maximum recovery rate permissible. However officers will be empowered to consider applications from debtors to reduce the recovery rate where applying the maximum rate is causing demonstrable hardship.
  - Council Tax Benefit overpayments will, apart from in exceptional circumstances, be debited to the respective Council Tax account.
  - If there is no continuing Housing Benefit and no likelihood of continuing benefit or reduction by underlying entitlement, an invoice will be raised on the Debtor's system and issue with a Schedule 6 compliant letter within 14 days.  
  
At this point the Council will seek to recover the overpayment in full by a single payment. However, where this is not possible, due to the debtor's financial circumstances the Council may agree a payment plan involving instalments.
- By deductions from other Social Security Benefits managed by the Department of Work and Pensions. Section 75(1) of the Social Security Administration Act 1992 allows recovery of overpaid Housing Benefit by deduction from prescribed benefits which are defined in Regulation 105 of the Housing Benefit Regulations 1987.
- 7.7 Where a sundry debtor account has been raised and payment is not received after the issue of a final notice, the Council will pass the debt to its Recovery Agents. If the debt remains outstanding the Council may issue a claim against

the debtor in the County Court with a view to obtaining immediate payment or failing which, to enter judgment against the debtor.

- 7.8 Where a claimant has been overpaid rent rebate and there is a credit balance on their rent account, the Council will recover all or part of the overpayment from the credit provided it is for the same period as the overpayment. The Council will not recover more than the amount of credit shown on the rent account.
- 7.9 The Housing Benefit (Recovery of Overpayments) Regulations 1997 provide for the Council to recover overpayments from landlords from their current tenants' entitlement. The Council will, in appropriate circumstances, reduce payments to landlords for their current tenants to recover overpayments that arose for former tenants. It will take this action when the original tenant has no continuing Housing Benefit and when there was a misrepresentation or failure to disclose a material fact.
- 7.10 For details regarding the use of Prosecution and Administrative Penalties that may be taken against claimants who have committed benefit fraud as well as the action taken on benefits overpaid to claimants and landlords refer to the Council's Prosecution Policy Appendix 4.

#### **Policies Specific to the Recovery of Housing Rents**

- 8 The specific policies relating to Housing Rents are contained with the Recovery of Rent Arrears Code of Conduct and Procedures Appendix 3.

#### **Policies Specific to the Recovery of Standard Charge Notices**

- 9.1 Standard Charge Notices will be administered in the ways laid down by the Council's Off Street Parking Order.
- 9.2 The Council will engage only firms of bailiffs who are experienced in the collection of outstanding parking charges and who are licensed by the Office of Fair Trading and conform to the Code of Practice laid down by the Credit Services Association.

**'The Enforcement Concordat'****The Principles of Good Enforcement: Policy and Procedures**

This document sets out what business and others being regulated can expect from enforcement officers. It commits us to good enforcement policies and procedures. It may be supplemented by additional statements of enforcement policy.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice, and safety.

We have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term "enforcement" are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the concordat we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

**Principles of Good Enforcement: Policy****• Standards**

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them. The standards will be made available to businesses and others who are regulated.

**• Openness**

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

- **Helpfulness**

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice /information from us. Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

- **Complaints about service**

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

- **Proportionality**

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

- **Consistency**

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Coordinating Body on Food and Trading Standards (LACOTS) and the Local Authority National Type Approval Confederation (LANTAC).

### **Principles of Good Enforcement: Procedures**

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

**'National Standards for Enforcement Agents'**

**May 2002**

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- 

**Introduction**

The Lord Chancellor's Department has produced these *National Standards for Enforcement Agents* to share, build on and improve existing good practice and thereby to raise the level of professionalism across the whole sector. 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 for the first time established a set of common standards to cover this activity. 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.

This guidance is the first document of its kind that will be sent on an individual basis to all certificated bailiffs and which has been so widely endorsed by the industry and by Government. The various trade associations, operating across the enforcement sector, make a valuable contribution in terms of raising standards, handling complaints and assisting their members. Membership is not obligatory but we strongly recommend that enforcement agents should join an appropriate organisation relevant to their sphere of activity. Enforcement is a difficult but essential task and those who operate in this field often face situations that require careful and sensitive handling. It is believed that the creditor and those carrying out enforcement share a duty to give particular consideration to vulnerable debtors or those who have special needs. Therefore, this document provides new guidance on some issues which may not be specifically covered in legislation, but which are relevant in a modern society.

Copies will be made widely available, including to the organisations listed below; in due course, it will be evaluated on its usefulness and to see how it may be further improved as we recognise that up-to-date guidance in this area is essential.

This national guidance does not replace local agreements, existing agency codes of practice or legislation; rather it sets out what the Department, those in the industry and some major users regard as minimum standards.

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. We are working on the recommendations from Professor Beatson's *Independent Review of Bailiff Law* informed by responses to the recent Green Paper *Towards Effective Enforcement: A single piece of bailiff law and a regulatory enforcement structure*. As part of that work, in advance of future legislative proposals, and with the support and involvement of experienced people within the profession, these National Standards have been produced. We are grateful for the invaluable assistance and endorsement received from:

The Association of Civil Enforcement Agencies  
The Advisory Group on Enforcement Service Delivery  
The Certificated Bailiffs Association  
The Child Support Agency  
The Civil Court Users Association  
The Court Service  
The Department for Transport, Local Government & the Regions  
Her Majesty's Customs & Excise  
The Inland Revenue  
The Institute of Revenues, Rating & Valuation  
The Local Authorities Civil Enforcement Forum  
The Local Government Association  
The Sheriffs' Officers' Association  
The Under Sheriffs' Association

## Terms used

In this document we have used the following terms:

- **Creditor:** for these standards which identify some responsibilities for creditors we include - a local authority, major or frequent judgment creditors in the civil courts, including Government Departments and magistrates' courts committees to whom financial penalties are paid (to the consolidated fund), and landlords undertaking distress for rent procedures.
- **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.
- **Enforcement:** in this document we mean the lawful process of warrant or writ execution, distraint and levying on 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 distress and execution) or the person (arrest warrants); we include those employed in the public and private sector, bailiffs, sheriffs' officers and distrainers.

### **Professionalism and conduct of the enforcement agent**

- Enforcement agents should always produce relevant identification on request, such as a badge or ID card, together with a written authorisation to act on behalf of the creditor.
- 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.
- Enforcement agents, for the purpose of distress or execution shall, without the use of unlawful force, gain access to the goods. The enforcement agent will produce an inventory of the goods seized and leave it with the debtor, or at the premises, with any other documents that are required by regulations or statute.
- Enforcement agents must carry out their duties in a professional, calm and dignified manner. They must dress appropriately and act with discretion and fairness.
- Enforcement agents must not misrepresent their powers, qualifications, capacities, experience or abilities.
- Enforcement agents must not discriminate unfairly on any grounds including those of age, disability, ethnicity, gender, race, religion or sexual orientation.
- 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.

### **Statutory or Financial Requirements for Enforcement Agencies** [Endnote 1]

- Enforcement agencies should ensure that audited accounts are available on request, where it is appropriate that these are kept. 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. This should apply in the case of small companies and sole traders too - wherever possible.
- Enforcement agencies must comply with statutory obligations, for example, the Companies Act, Value Added Tax, Inland Revenue provisions, Data Protection, Health & Safety etc.
- 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.
- Enforcement agencies must keep a complete record of all financial transactions in whatever capacity undertaken.

- Enforcement agencies must maintain suitable and comprehensive insurance cover for both professional indemnity and other risks including employer's liability and public liability. Insurance requirements must actively be re-visited each year to the satisfaction of the client and to ensure adequate and appropriate arrangements are in place.

### **Training and Certification**

- 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, within the bounds of the relevant legislation. This training should be provided at the commencement of employment and at intervals afterwards to ensure that the agent's knowledge is kept up to date.
- Enforcement agencies must ensure that all employees, contractors and agents will at all times act within the scope of current legislation, i.e. The Companies Act, VAT, Inland Revenue provisions, Data Protection, Health and Safety etc, and have an appropriate knowledge and understanding of it and be aware of any statutory obligations and provide relevant training.
- 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.
- Professional training/assessment should be to an appropriate standard, for example to that of the *NVQ for Civil Enforcement Officers*, or membership of the *Sheriffs' Officers Association*.
- Enforcement agencies must ensure that legislation restricting the enforcement activity to certificated bailiffs is complied with [Endnote 2].

### **Complaints/Discipline**

- Enforcement agencies must operate complaints and disciplinary procedures with which agents must be fully conversant.
- The complaints procedure should be set out in plain English, have a main point of contact, set time limits for dealing with complaints and an independent appeal process where appropriate. A register should be maintained to record all complaints.
- Enforcement agents/agencies are encouraged to make use of the complaints and disciplinary procedures of professional associations such as the *Association of Civil Enforcement Agencies* or the *Certificated Bailiffs Association*.
- The enforcement agent must make available details of the comments and complaints procedure on request or when circumstances indicate it would be appropriate to do so.

### **Information and confidentiality**

- All notices, correspondence and documentation issued by the agent/agency must be clear and unambiguous and to the satisfaction of the creditor.
- 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 paid for by the creditor.

- All information obtained during the administration and enforcement of warrants must be treated as confidential.
- Copies of the *National Standards for Enforcement Agents* must be freely available from the offices of enforcement agencies, or agents on request and wherever possible from creditors.
- Enforcement agents should provide clear and prompt information to debtors and where appropriate, creditors.
- 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.
- Enforcement agents will on each and every occasion when a visit is made to a debtor's property which incurs a fee for the debtor, leave a notice detailing the fees charged to date, including the one for that visit, and the fees which will be incurred if further action becomes necessary. If a written request is made an itemised account of fees will be provided.
- Enforcement agents will clearly explain and give in writing, the consequences of the seizure of a debtor's goods and ensure that debtors are aware of the additional charges that will be incurred.

### **Times and Hours**

- Enforcement should not be undertaken on Sundays, on Bank Holidays, on Good Friday or on Christmas Day, unless the court specifically orders otherwise or in situations where legislation permits it.
- It is recommended that enforcement should only be carried out between the hours of 6.00am and 9.00pm or at any time during trading hours, existing legislation must be observed.
- Enforcement agents should be respectful of the religion and culture of others at all times. They should 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.

### **Goods**

- 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.
- 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.
- Enforcement agents should not remove anything clearly identifiable as an item belonging to, or for the exclusive use of a child.
- A receipt for the goods removed should be given to the debtor or left at the premises.
- Enforcement agents should take all reasonable steps to satisfy themselves that the value of the goods impounded in satisfaction of the judgement is proportional to the value of the debt and charges owed.

## **Vulnerable situations**

- 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 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.
- Enforcement agents must withdraw from domestic premises if the only person present is, or appears to be, under the age of 18; 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.
- Wherever possible, enforcement agents 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 be potentially 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.

## **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 agreement with their enforcement agent/agency. They should consider carefully any specific requirements for financial guarantees etc so that these are adequate, fair and appropriate for the work involved.
- Creditors must not seek payment from an enforcement agent or enforcement agency 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 tell the debtor that if payment is not made within a specified period of time, action may be taken to enforce payment.

- Creditors must not request the suspension of a warrant or make direct payment arrangements with debtors without appropriate notification and payment of fees due to the enforcement agent.
- 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.
- 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.

## Professional Organisations

Organisation	Contact
Association of Civil Enforcement Agencies Chesham House 150 Regent Street London W1R 5FA	Tel: 020-7432 0366 Fax: 020-7432 0516 Email: <a href="mailto:sec@acea.org.uk">sec@acea.org.uk</a> website: <a href="http://www.acea.org.uk">www.acea.org.uk</a>
The Executive Director Certificated Bailiffs Association Ridgefield House 14 John Dalton Street Manchester M2 6JR	Tel: 0161-839 7225 Fax: 0161-834 2433 e-mail: <a href="mailto:enquiries@bailiffs.org.uk">enquiries@bailiffs.org.uk</a> website: <a href="http://www.bailiffs.org.uk">www.bailiffs.org.uk</a>
Institute of Revenues Ratings and Valuation 41 Doughty Street London WC1N 2LF	Tel: 020-7831 3505 Fax: 020-7831 2048 website: <a href="http://www.irrv.org.uk">www.irrv.org.uk</a>
Sheriffs' Officers' Association Ashfield House Illingworth Street Ossett West Yorkshire WF5 8AL	Tel: 01924-279005 Fax: 01924-280114
Under Sheriffs' Association 20-21 Tooks Court London EC4A 1LB	Tel 020-7025 2550 Fax- 020-7025 2551 Email: <a href="mailto:j-hargrove@sheriffs.co.uk">j-hargrove@sheriffs.co.uk</a>
Local Authority Civil Enforcement Forum Brighton & Hove City Council Priory House PO Box 2929 Brighton BN1 1PS	Tel:01273-291876 Fax: 01273-291 881 Email: <a href="mailto:barrie.minney@brighton-hove.gov.uk">barrie.minney@brighton-hove.gov.uk</a> Website: <a href="http://www.lacef.org.uk">www.lacef.org.uk</a>

## **Endnotes**

1. Separate provisions regarding financial accounting and insurance may apply to public sector organisations who directly employ their own enforcement agents
2. Distress for Rent Rules 1988

Recovery of Rent Arrears

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# Prosecution Policy

## 1. Introduction.

1.1 Ashford Borough Council has an approved Anti-Fraud and Corruption Strategy. The purpose of the Strategy is to clearly state its commitment to prevent, detect and investigate fraud and corruption, and take appropriate recovery action wherever possible. Ashford Borough Council is committed to protecting public funds through its actions on fraud. No discrimination will be made in determining whether to prosecute.

1.2 The Government has introduced a range of measures designed to identify and reduce Benefit fraud. The measures include: the Verification Framework, the National Fraud Initiative and the Housing Benefit Data Matching schemes.

1.3 The Borough Council has officers dedicated to identifying, investigating and preventing cases of Benefit fraud. In addition, all Benefits staff receive regular fraud awareness training enabling them to take a vital role in detecting attempted fraud at source.

1.4 Government Performance Indicators have been set requiring every local authority to adopt a written strategy for combating Housing Benefit and Council Tax Benefit fraud and error. Operating a Prosecution Policy is one of the initiatives a local authority should adopt in order to meet the Government's criteria. An effective prosecution policy enables all of these schemes and initiatives to meet their potential.

1.5 The Borough Council works jointly with the Department of Work & Pensions on all investigations that affect their benefits. The Department of Work & Pensions have their own Prosecution Policy and both policies have to be considered when administering a joint sanction.

## 2. Subsidy

2.1 The Government provides subsidy for local authorities to investigate allegations of benefit fraud. This is included in the Government's benefits administration grant given to Ashford Borough Council and is based on the number and type of benefit claims the council administers.

2.2 An effective system needs to be put in place to ensure that all decisions on matters relating to prosecutions and sanctions are made only after considering fully the facts and circumstances of each case. To achieve this, the following system will apply.

### **3. Sanction Procedures**

Where a claimant of Housing or Council Tax Benefit has been accused of committing a fraud against the Council and the Investigation Officer has enough evidence to sustain a prosecution then the council will first consider whether it is in the public interest to undertake the prosecution. They will then consider which Sanction is most suitable for the offence.

#### **3.1 The test of “Public Interest”**

The Council believes that it is not in the public interest to prosecute in most of the following cases:-

- the claimant has never previously offended, and
- there was no planning involved in the process, and
- the person is seriously or terminally ill
- made a voluntary disclosure of the offence before the Authority had any suspicions
- has social factors that the Authority considers are relevant.

#### **3.2 Local Authority Caution**

The Council will issue an Official Local Authority Caution in most cases where:-

- it was a first offence;
- the person is not in genuine financial hardship or in need of Social Services assistance,
- the offences are over a short period of time
- has caused only small loss to public funds
- admittance to the offence has been made.

#### **3.3 Administration Penalty**

The Council will issue an Administration Penalty in most cases where:-

- it was a first offence, and
- there was no planning involved in the process, and
- there were no other persons involved in the fraud;
- the person is not in genuine financial hardship or in need of Social Services assistance,
- the overpayment is so small as to make any penalty negligible or so large that prosecution should be the first option.

### 3.4 Prosecution

The Council will prosecute in most cases where:-

- it was not a first offence, or
- there was planning involved in the process, or
- there were other persons involved in the fraud,
- there is sufficient evidence to do so
- where it is in the public interest to do so
- the offence has continued for some time
- the offence is deliberate
- the offence involves collusion
- anyone who has been offered, and refused, an Administrative Penalty or Official Caution.
- anyone who has been prosecuted for a similar offence
- anyone who obstructs an inspector appointed under s.110A of the Social Security Administration Act (as amended)

3.5 Having applied the criteria above, if a case is deemed suitable for Sanction (Caution, Administration Penalty or Prosecution) a Sanction Recommendation, together with admissible evidence shall be presented by the Investigation Officer to the Investigation & Visiting Manager for consideration. Following a review the Investigation & Visiting Manager will make a decision on whether Sanction action will be applied. In some cases, where necessary, a recommendation will be made to the Support Services Manager.

3.6 Not all claims deemed to be fraudulent are suitable for prosecution. This is because the test applied for the purpose of whether benefit is cancelled or reduced is different to the test applied in the Court to secure a criminal conviction. Claims and overpayments can be classified as fraudulent not only where there is clear and unequivocal evidence of fraud, but also where it appears to the Authority that on the balance of probabilities a fraud has been committed.

3.7 It is noted that some cases will not fall into any category. Every case will be considered on its own merits and a review presented to the Investigation & Visiting Manager who will decide upon the appropriate course of action.

3.8 The Council will consider any mitigating circumstances, social factors, and the suspect's physical and mental condition.

#### **4. Administrating the Prosecution Policy**

4.1 When deciding whether to prosecute or not, the Council must consider relevant legislation, such as The Social Security Administration Act 1992, The Theft Act, The Fraud Act and the Human Rights Act 1998. Cases considered for prosecution include those where incorrect or incomplete information is provided by claimants or others in an attempt to claim Benefit fraudulently.

4.2 If the prosecution is agreed, proceedings will be initiated in accordance with any statutory limitations, as soon as possible, as unreasonable delays may result in the case failing at Court.

4.3 Prosecutions will be pursued by the Benefits Services Investigation staff along with the Investigation & Visiting Manager, Solicitors Branch of Department of Work & Pensions (DWP) and appropriate Legal Services.

4.4 Consideration will be given to publicising all successful prosecutions as a deterrent.

4.5 The Council will adopt other anti-benefit fraud, error and abuse initiatives that the DWP promote from time to time or that are recommended as good practice by the Audit Commission or Benefit Fraud Inspectorate or other agencies.

#### **Fraudulent Claims by an employee or Member of the Council**

5.1 Where any such cases are identified, the Investigation & Visiting Manager will immediately report the matter to the Head of Audit and Head of Personnel.

5.2 In addition to the above procedures, an employee may also be subject to the Council's Disciplinary Procedures and a Member referred to the Standards Board for England or the Council's Standards Committee as appropriate.

**A copy of the Council's Prosecution Policy will be communicated regularly to staff and all staff will hold an up-to-date copy of the Council's current strategy. A copy of the strategy will be issued to new staff and its use and purpose explained to them as part of their induction.**