

TAUNTON DEANE BOROUGH COUNCIL

EXECUTIVE 10 MARCH 2004

REPORT OF THE REVENUES MANAGER

CORPORATE DEBT MANAGEMENT POLICY REPORT

This matter is the responsibility of Executive Councillor T Hall (Portfolio Holder for Resources)

EXECUTIVE SUMMARY

The report introduces the draft Corporate Debt Management Policy, which the Executive are asked to approve.

The Policy originates from recommendations contained within the Revenues Best Value Review and the Audit Commission's 'Local Collection of Taxes and other Revenue Report'. It sets out the Council's general principles for managing debts and incorporates the nationally agreed standards relating to debt collection.

The Policy stresses the need to approach debt management in a corporate way in order to maximise collection rates whilst ensuring that debt collection is carried out in a consistent, fair and transparent manner.

The Policy has been placed before the Resources Review Panel and the Housing Review Panel and has been endorsed by both.

1. PURPOSE OF REPORT

- 1.1. To introduce and request approval for the draft Corporate Debt Management Policy from the Executive.

2. BACKGROUND

- 2.1. Both the Revenues Best Value Review and District Audit's 'Local Collection of Taxes and other Revenue Report' identified the need for comprehensive, Council-wide policies relating to the collection and enforcement of all debts due to the Council.

3. SUMMARY

- 3.1. The Corporate Debt Management Policy covers all debts due to the Council. These include all current and former tenant rent debts (Housing, Garage, Hostel and Commercial), local taxation debts (Council Tax and Business Rate), Housing Benefit overpayments, Penalty Charge Notice debts and other miscellaneous income debts.
- 3.2. These debts vary widely in terms of their nature and the legislation that covers them. This variety impacts greatly upon the way in which we currently administer, collect and enforce payment of these debts.
- 3.3. The purpose of the Policy is to ensure that our general approach to managing the collection and enforcement of these debts is consistent, fair and transparent across the Authority and conducted in accordance with nationally agreed standards.

- 3.4. However, the Policy also reflects the diversity of the debts with which we have to deal and tailors specific policies to fit each individual debt type.
- 3.5. The Policy sets out for the first time common principles for the billing, collection, enforcement and write-off of all types of debt. It is intended to cover the enforcement work undertaken by officers of this Authority and any agents employed on our behalf.
- 3.6. The 'Enforcement Concordat' and the 'National Standards for Enforcement Agents' are incorporated within the policy. These are nationally recognised and accepted standards for the enforcement of debts.

4. IMPLICATIONS

- 4.1. Increasingly local authorities are being judged not just upon whether they have implemented the law correctly, but in the manner in which they have gone about doing so. At the same time local authorities are being measured upon and encouraged to increase collection rates.
- 4.2. Consistency of approach and the adherence to nationally accepted standards are the key to balancing the needs of our debtors against the requirement to maximise collection rates. We must therefore ensure that we have mechanisms in place to provide a consistent approach.
- 4.3. If we fail to properly manage our approach to debt collection we risk leaving ourselves open to claims from our debtors of unfair treatment and/or severe financial consequences.

5. IMPACT ON THE CORPORATE PRIORITIES

- 5.1. The Corporate Debt Management Policy provides a framework for the management of the various debts due to the Authority and as such will play a key role in the way in which we deliver our collection and recovery services.

6. CONCLUSIONS

- 6.1. The Corporate Debt Management Policy will provide core principles for the debt management of all debt types. This will demonstrate our consistent and managed approach to dealing with the collection of debts. The Policy will provide core principles around which can be tailored individual processes and procedures for each of the individual debt types.

7. RECOMMENDATIONS

- 7.1. The Executive are asked to approve the policy.

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TAUNTON DEANE BOROUGH COUNCIL

Corporate Debt Management Policy

“Where the Council seek to collect money, the Council will issue bills promptly and correctly. Where recovery action is required, the Council will act quickly, fairly and impartially, but with due regard to the social welfare and human rights of our customers”

Contents

- (1) Introduction
 - (2) Policies Common to all Types of Debt
 - (3) Principles of Enforcement (all debts)
 - (4) Write Offs (all debts)
 - (5) Policies Specific to Sundry Debtors
 - (6) Policies Specific to Local Taxation Accounts
 - (7) Policies Specific to the Recovery of Benefit Overpayments
 - (8) Use of External Agents
 - (9) Policies Specific to the Recovery of Housing Rents
 - (10) Policies Specific to the Recovery of Penalty Charge Notices
-
- Appendix 1 The Enforcement Concordat
- Appendix 2 National Standards for Enforcement Agents
- Appendix 3 Recovery of Rent Arrears Code of Conduct and Procedure

(1) 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 methods for billing and recovery of the statutory debts is tightly prescribed by statute. Our enforcement practices must take account of this diversity.

The Revenues Best Value review, completed in January 2003, set up a "Vision" for the collection of monies due to the Council, which has been extended to incorporate all debts due to the Council:

"Where the Council seek to collect money, the Council will issue bills promptly and correctly. Where recovery action is required, the Council will act quickly, fairly and impartially, but with due regard to the social welfare and human rights of our customers"

This Policy sets out the general principles to be applied in relation to debt management across all services provided by this Council. *It is to be used together with more detailed procedural guidance for staff.*

(2) 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 documentation 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 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 2nd 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 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.

2.9 All notices issued by the Council will comply with the corporate style guidance and be readily identifiable as being from the Council.

2.10 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 at regular intervals during the year to the Council's Corporate Management Team and Resource Review Panel.

2.11 The Council welcome the involvement of welfare agencies 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.

2.12 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.

2.13 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 or the date of supply.

2.14 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 an electronic format.

2.15 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.

(3) 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 (see TDBC Core Values) 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 a 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 versions being made available to customers upon request.

The Language Line facility is to be used as an aid to improving verbal communications with those customers for whom English is not their first language.

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 given of any rights of appeal against formal enforcement action either before or at the time the action is taken.

All communications with debtors will be conducted in accordance with the principles of the Council's Corporate Communication Strategy.

(4) 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 151 Officer (the Head of Finance) 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.

(5) 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 Finance. Where appropriate, the Head of Finance may agree that staff within other Service units may become involved in the process including, in particular, staff within the Housing Benefit Unit for the recovery of overpaid Housing Benefit accounts and the Housing Estates/Tenancy Relations Unit in respect of rent court cost and former tenant arrears accounts.

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 will be determined annually by the Head of Finance. However such a minimum value shall not apply to accounts relating to legal charges for rights of access or drainage charges where a contractual obligation exists to make such token payments.

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 28 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 revenues section 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 corporate sundry debtors system, '*Taunton Deane Debts*'.

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

- Attachments of Earnings
- Warrants of Execution
- Garnishee Orders (the seizure by the Court of monies owed to the debtor by a third party e.g. a bank)

- 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 units. It is only the originating units that may:

- Issue an instruction to cancel an invoice
- Correspond with or discuss with the debtor issues relating to the validity of the debt

5.12 The revenues recovery section will provide reports to the originating units on a regular pre-agreed basis as to the value of their outstanding accounts.

(6) 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 Council's corporate revenues systems.

6.4 Where a tax or ratepayer can demonstrate an inability to make payment on the set instalment date, staff authorised by the Council's Secretary and Solicitor and/or Head of Finance will have the discretion to vary the instalment dates although the final instalment date must be before 31st 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 notices 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 set 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:

- Deductions from Benefits (Council Tax only)
- Attachments of Earnings (Council Tax only)
- Distress
- Attachment of Members' Allowances (Council Tax only)
- Prosecution for failing to provide financial information (Council Tax only)
- Prosecution of employers for failing to implement Attachment of Earnings (Council Tax only)
- Insolvency
- Committal to prison application (individuals only)
- Charging orders (Council Tax only)
- County Court proceedings, as an alternative to the Magistrates Court

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 debit. 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.

(7) Policies Specific to the Recovery of Benefit Overpayments

7.1 All necessary invoices, reminder and final notices will be raised using the Council's sundry debt 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 July 2001) for example:
 - Using checks for identity, residency and National Insurance numbers.
 - Tailored benefit periods for high-risk claimants.
 - Visiting programmes targeting high-risk claimants.
- 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.
- Ensuring procedures are in place for the prompt ending of benefit claims where a claimant does not return a renewal form before the end of the benefit period.
- 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 Debtors 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 debt account has been raised and payment is not received after the issue of a final notice, the Council will 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 Anti Fraud Policy, Anti-Fraud Strategy and Prosecution Policy.

(8) Use of External Agents

8.1 As Council functions grow more dependent on sourcing external suppliers of services it is vital for those undertaking any procurement activity to work to a clear strategy for how these externally provided resources are selected, acquired and managed. The Council has therefore adopted a Procurement Strategy to which all service units are to adhere.

8.2 Supporting the strategy the Council has a suite of Procurement Policies that have been designed to provide a framework upon which all procurement activities are to be based. These are detailed below;

Detailed Procurement Policies

- Principles Guiding Procurement - CP/PP/01 January 2003
- Procurement Rules - CP/PP/02 January 2003
- Best Practice Guidance - CP/PP/03 January 2003
- Procurement in Best Value Reviews - CP/PP/04 January 2003
- Procurement Design - CP/PP/05 January 2003
- Collaborative Procurement - CP/PP/06 January 2003
- Environmental Sustainability - CP/PP/07 January 2003
- Social and Economic Considerations - CP/PP/08 January 2003
- Negotiation - CP/PP/09 January 2003
- Procurement Ethics and Probity - CP/PP/10 January

8.3 All officers, when undertaking any procurement activity are bound by the Council's code of conduct as set out in the Employee's Handbook which is in accordance with the statutory responsibilities placed on all Council employees.

8.4 The application of the Procurement Strategy together with accompanying policies must not conflict with the Council's Financial Regulations and must be transparent and compliant with relevant law.

8.5 Where it is necessary for the Council to disclose data to a contractor, and the Council has previously established a fair and lawful basis for the exchange of the data, arrangements must be put in place to ensure that data is not processed by the contractor in a manner not in keeping with the Council's instructions.

(9) Policies Specific to the Recovery of Housing Rents

9.1 The specific policies relating to Housing Rents are contained within the 'Recovery of Rent Arrears Code of Conduct and Procedure' a copy of which is attached at appendix 3.

(10) Policies Specific to the Recovery of Penalty Charge Notices

10.1 Penalty Charge Notices will be administered in the ways laid down by the Secretary of State in the LA Circular 1/95 "Guidance on Decriminalised Parking Enforcement Outside London". This prescribes the documentation to be used and the timescales to be followed, including the issuing of warrants to bailiffs.

10.2 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.

10.3 Bailiff firms will be engaged with due regard to the Corporate Procurement Strategy as detailed in section 8 of this document.

APPENDIX 1 to the Corporate Debt Management Policy

‘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 Co-Ordinating 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).

March 1998

APPENDIX 2 to the Corporate Debt Management Policy

'National Standards for Enforcement Agents'

May 2002

- Introduction
 - Terms Used
 - Professionalism and Conduct of the Enforcement Agent
 - Statutory or Financial Requirements for Enforcement Agencies
 - Training and Certification
 - Complaints/Discipline
 - Information and Confidentiality
 - Times and Hours
 - Goods
 - Vulnerable Situations
 - Creditors' Responsibilities
 - Professional Organisations
-

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: sec@acea.org.uk website: www.acea.org.uk
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: enquiries@bailiffs.org.uk website: www.bailiffs.org.uk
Institute of Revenues Ratings and Valuation 41 Doughty Street London WC1N 2LF	Tel: 020-7831 3505 Fax: 020-7831 2048 website: www.irrv.org.uk
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: j-hargrove@sheriffs.co.uk
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: barrie.minney@brighton-hove.gov.uk Website: www.lacef.org.uk

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*

APPENDIX 3 to the Corporate Debt Management Policy

'Recovery of Rent Arrears – TDBC Code of Conduct and Procedure'

Part 1: Preliminary Considerations

The Economic Realities of Rent Arrears Recovery

- The prompt payment of rent and the efficient recovery of outstanding rent debt is crucial to the financial viability of the Housing Revenue Account.
- The Housing Service seeks to recover rent arrears from a customer group which includes some of the most economically disadvantaged members of society.
- The Housing Service is in competition with other agencies and private companies which are seeking to recover debt from Taunton Deane tenants.
- An irresolute approach to rent arrears recovery would have the following effects:
 - i) Payment of rent would be lost to other competitor accounts and the customer, to his or her own disadvantage, may prioritise his or her debts in an inappropriate manner, eg, pay a mail order catalogue at the expense of the rent account.
 - ii) If the Housing Service's approach is not perceived as being robust, the economically disadvantaged customer may build this perception into his or her strategy for coping with the demands of day to day poverty.
 - iii) Those with sufficient means to pay the rent regularly but attracted to the prospect of what they see as an interest-free loan, will be encouraged to fall into arrears.

Comment: The vast majority of the customers of the Housing Service pay their rent regularly as it becomes due and would expect other tenants to do likewise. It is incumbent on the Council to implement effective strategies and procedures to contain rent arrears for the general benefit of all tenants.

Part 2: General Approach To Rent Arrears Recovery – Statement Of Intent

- The Officers of Deane Housing Management will temper the firmness necessary in this area of work with fairness and compassion.
- The Officers will seek to achieve results by persuasion and agreement and only when these options have been exhausted will compulsion be applied via the appropriate legal remedies.

- The Officers will endeavour to assist tenants in arrears to maximise their incomes by the provision of welfare benefits advice and may refer appropriate cases to other agencies which offer debt counselling/advice and support.
- The Officers will carefully record all recovery action throughout the process of rent arrears recovery.

Part 3 – Rent Arrears Recovery – The Procedure

Deane Housing Management will assess each individual arrears case and make an appropriate choice of action from the following options:

1. Arrears Letter

The choice of a range of letter will depend on the size of the debt and what stage in the recovery procedure the case has reached. The letter will be influenced by a tenant's previous history of rent arrears (if any).

2. Personal Contact

Personal contact with the tenant is the best way to get to the root of the problem. The aim is to achieve an agreement to pay in full or by instalments. The telephone is quick and inexpensive, while the individual personal visit is very effective (albeit expensive) in highlighting the seriousness of a rent arrears debt. Personal contact is intended to establish rapport with the tenant. Personal contact is essential in those cases which may require referral for Court action and preferably will also occur before this stage is reached.

3. Service of Notice Seeking Possession (NSP)

The decision to serve NSP will be made by an Estates Officer within Deane Housing Management. The NSP will be served by hand and the tenants address, and will be accompanied by a covering letter inviting the tenant to discuss the matter.

4. Referral for Court Action

Where the successive rent arrears letters, visits and service of NSP have not achieved the desired effect, an application for a possession hearing will be made by the County Court.

5. County Court Hearing

Before each County Court hearing occurs, an Officer of Deane Housing Management will have made at least one further effort to achieve agreement by visiting the tenant at his/her home. If agreement is reached, the District Judge can be asked to ratify it by making a Suspended Possession Order on similar or identical terms. If no agreement is

reached, the Officer bringing the action will seek a Suspended Possession Order appropriate to the individual case which, in his/her judgement, will be acceptable to Court.

6. Warrant to Evict

Where the tenant defaults on the terms of a Suspended Possession Order, an Officer of the Deane Housing Management will, at his/her discretion, refer the case for eviction.

7. Enforcement of the Warrant

At least five working days before a scheduled eviction the Housing Estates and Recover Manager or in his/her absence the appropriate Estates Officer, must pass an Eviction Assessment Report to the Housing Manager – Operations.

8. Action by the Housing Manager – Operations

The Housing Manager – Operations will obtain approval of the Executive Member for Housing, or in his/her absence the Chairperson of the Housing Review Panel, for the eviction to proceed.