

PENDLE BOROUGH COUNCIL

ENFORCEMENT AGENT CODE OF PRACTICE (*DRAFT*)

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1. INTRODUCTION

These guidelines set out the Council's operating requirements for enforcement agent companies.

The Company will ensure that all enforcement agents and other employees have an appropriate knowledge and understanding of all relevant legislation, case law and powers, and at all times act in accordance with them.

All Company employees must be appropriately trained in and informed of the contents of these guidelines, and must also be capable of acting at all times within the bounds of the relevant legislation.

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

Staff directly engaged in enforcement by taking control of goods must not have previously been convicted of any (unspent) criminal offence or any offence involving fraud, dishonesty or violence or have any current County or High Court judgments made against them. Staff must avoid any conflicts of interest by not dealing with debtors that are known personally to them and should work in areas other than that in which they reside.

2. CORE REQUIREMENTS

2.1 Conduct of Cases and Visits

Initial Contact

At the Compliance Stage the Company shall maximise efforts to make contact with debtors to arrange and negotiate payment by use of letters, email and telephone calls. A minimum of seven clear days must elapse after the commencement of the Compliance Stage before the Enforcement Stage commences.

Telephone / Text (SMS) contact

The company shall ensure compliance with any relevant standards and code(s) of practice relating to recovery activity conducted by phone or SMS text messaging with any targeted activity to be considered with and agreed by the Council's Recovery Team Manager.

Visits

The enforcement agent must at all times carry on his or her person an identity card containing their photograph and contact telephone number which should be produced at each visit. The enforcement agent must at all times make clear to the debtor the purpose of the visit and the fact they are acting as agents for the Council.

The enforcement agent must hand to the debtor or leave on the premises the relevant documentation required to be left by regulations relating to taking control of goods and any other additional guidance notes that might be agreed.

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

Enforcement action should only be carried out between the hours of 6.00am and 9.00pm, or at any time during trading hours, unless otherwise authorised by a court. Existing legislation must be observed. Particular arrangements will apply over the Christmas/New Year period and these will be advised to the Company.

If the debtor is not present at the property the case should not be discussed with any other person other than a person over the age of 18, **authorised by the debtor** to enter into a controlled goods agreement on the debtor's behalf, or a person in **apparent authority** who is on the premises, where those premises are used to carry on a trade or business. Otherwise, cases should only be discussed for the purposes of making discreet enquiries as to the debtor's movements or whereabouts. All documentation should be left in a sealed envelope marked private and confidential.

If a child or other young person (who appears under the age of 18 years) answers the door and the debtor is not present, all documentation must be left in a sealed envelope marked private and confidential.

Where it is felt necessary, or it is apparent, that a person's first language is not English and a translation service is required or owing to impaired sight a Braille translation service is required the Company should contact the Council for further guidance.

Where an enforcement agent is informed that a debtor is in receipt of Income Support, Employment Support Allowance, Job Seekers Allowance they must ask for evidence of current entitlement and make an appropriate payment arrangement. If the debtor fails to keep to the arrangement the Enforcement Agent may attempt to get the debtor back into the arrangement, by a method other than an EA visit, prior to the case being returned to the Council.

If it appears the debtor is no longer resident, the Company should make appropriate discreet local enquiries to ascertain the debtor's date of leaving and new forwarding address and then refer immediately back to the Council with either the relevant information or to the effect that no further information is readily available. The enforcement agent should also ascertain new occupier details if possible. The number of cases returned "Gone Away" will be closely monitored.

The enforcement agent can supply upon request the name of the Council's Recovery Team Manager.

Enforcement agents and other employees of the Company must be aware that they represent the Council in their dealings with debtors. They should at all times act lawfully and in accordance with the provisions of the Taking Control of Goods Regulations 2013, the Taking

Control of Goods (Fees) Regulations 2014, the Taking Control of Goods – Certification of Enforcement Agent Regulations 2014 and the Taking Control of Goods: National Standards April 2014.

Enforcement Agents should act in a responsible, professional and courteous manner and be aware that their behaviour, appearance and attitude have a great influence on the success of the debt recovery process.

If it becomes clear to the enforcement agent that the debtor is unable to pay the full balance immediately then the enforcement agent can use discretion and allow a payment arrangement for the total amount due. In such circumstances the Council will expect the enforcement agent to work towards a payment arrangement and exercise flexibility in debt repayment. If required, guidance can be sought from the Recovery Team Manager.

2.2 Conclusion of Visits

All cases should be concluded by either:

- Full Payment.
- The agreement of an instalment payment arrangement.
- The return of an endorsed Liability Order together with a full case report containing details of visits made and income details obtained.

A minimum of 3 unsuccessful visits to the debtor's address is required before the case is returned to the Council as unpaid. At least one of these visits should be made to the debtor's address outside normal office hours (i.e. Monday to Friday 8.30am to 5.30pm). Documentation issued to debtors must be agreed with the Council and be in plain English. Documentation must be left at the property after each visit is made and give details of the date and time of the visit, the debt and charges incurred; it must give the name of the Enforcement Agent Company and a contact telephone number. It must be left in a sealed envelope addressed to the debtor marked private and confidential.

2.3 Banking and Accounting Arrangements

The Company will make a pay over as agreed, this is usually weekly or fortnightly. Payments received and due to the Council must be sent within 14 days of receipt with the exceptions of cheque payments which can be cleared first.

2.4 Management Information/Access to Records

Monthly reports must be submitted to the Council for those cases that are still outstanding after nine months. Where a case has been outstanding for nine months or more the report must contain full details of all action taken.

The Company will provide website access to the Council to view all cases held. This should include a facility to update payments received direct as well as:

- Putting cases on hold
- Taking cases off of hold (if originally placed on hold by the client)

- Amend balances
- Change addresses
- Cancel and withdraw cases direct
- Add notes
- E-mail instructions

The Company will also provide technology to facilitate the transfer of information and payments by electronic media.

The Enforcement agent Company will allow the Council access to all records as and when required.

2.5 Data Protection

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

All enforcement agents must comply with the provisions of the Data Protection Act 1984 and 1998. All data passed to the enforcement agent by the Council, or obtained by the enforcement agents in the performance of their duties and services, remains confidential and the property of the Council at all times.

In particular, the Company as a “data processor” must comply with obligations equivalent to those imposed on the Council as a “data controller” by the seventh principle (Schedule 1, Part II, Para 12) of the Data Protection Act 1998, i.e. appropriate technical and organisational measures should be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to personal data.

The Council will provide the Company with a copy of the Councils procedures concerning computer security, which must be adhered to.

2.6 Insurance

The Company must at all times ensure appropriate cover for Public and Employer’s Liability and carry professional indemnity insurance, ensuring the fullest indemnity against legal proceedings resulting in compensation awards due to illegal or irregular distress. Details of such insurance covers must be provided to the Council annually.

3. FEES

The Company will provide a service to the Council based solely on allowable fees in accordance with the provisions of the Taking Control of Goods (Fees) Regulations 2014.

The Company will on each and every occasion when a visit is made to a debtor’s property which incurs a fee, leave a notice detailing the fee charged to date including the ones for that visit, and the fees that could be incurred if further action becomes necessary. If a written request is made an itemised account of all fees must be provided.

4. CUSTOMER CARE

Enforcement Agents must comply with the Taking Control of Goods Regulations 2013 in dealing with cases of vulnerability.

Enforcement agents/agencies and the Council each recognise that they 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 the Council 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 Council and report the circumstances in situations where there is evidence of a potential cause for concern.

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

The enforcement agent must be sure that the debtor or the person to whom they are entering into a controlled goods agreement understands the agreement and the consequences if the agreement is not complied with.

Enforcement agents should be aware that vulnerability may not be immediately obvious. Some groups who might be vulnerable are listed below. However, this list is not exhaustive. Care should be taken to assess each situation on a case by case basis.

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

If a debtor is identified as being vulnerable, the Enforcement Agent shall contact the Recovery Team Manager for instruction of how to proceed.

Enforcement agents must at all times maintain the highest standards of professional and business ethics, integrity and practice. They must carry out their duties in a calm, dignified, and polite manner, and shall do nothing to prejudice the reputation and integrity of the Council. Such personnel shall at all times act in a way to minimise embarrassment, inconvenience and distress to the debtor and/or his/her family.

Enforcement agents must not act in a threatening manner when visiting the debtor by making gestures or taking actions which could reasonably be construed as suggesting harm or risk of harm to debtors, their families, appointed third parties or property. Enforcement agents must not act in a way likely to be publicly embarrassing to the debtor, either deliberately or negligently (that is to say through lack of care).

As a representative of the Council they must be presentable in their manner of dress, and act with discretion and fairness. Enforcement agents must not drink alcohol or smoke whilst working on behalf of the Council. If an enforcement agent experiences verbal abuse they must not respond, they are expected to remain calm and objective.

Enforcement agents must act in accordance with the Human Rights Act 1998 and the Equality Act 2010. They must not discriminate unfairly on any grounds including those of age, disability, ethnicity, gender, race, religion or sexual orientation

The enforcement agent should be mindful and respectful to the religions and cultures of others, and the observance by them (the debtor) of certain days as both religious and cultural festivals. Upon becoming, or having been made, aware of a particular religious or cultural day of a debtor, the enforcement agent should consider the appropriateness of proceeding further with action on that day. In such circumstances that the enforcement agent is unsure of the appropriate action the enforcement agent should seek the advice of both the council and their own office.

Any enforcement agent acting on behalf of the Council must fully observe the enforcement agent organisation's Code of Practice and those issued by the Association of Civil Enforcement Agencies.

All enforcement agents must hold a valid certificate issued by a County Court Judge. Where an enforcement agent is contracted on a self-employed basis they must have gone through identical vetting procedures and follow the same operational and company procedures as agents employed directly by the company.

The Company must reply to correspondence from the debtor within 7 working days and on request from the Council provide copies of this correspondence and its reply along with a history of the action taken and a full breakdown of costs incurred.

5. TAKING CONTROL OF GOODS AND REMOVAL OF GOODS FOR SALE

The Council's approach to debt recovery is "firm but fair" and in this context Enforcement Agents will be expected to explore other avenues before removal of goods or chattels is carried out.

The Company will ensure that a certificated enforcement agent will always directly supervise the removal of goods.

The enforcement agent should at all times use his/her professional judgement to refer back to the Council if he/she considers that, due to the personal circumstances of the debtor, it would be inappropriate to take control of goods. Such cases may be where the debtor:

- Appears to be elderly and it appears may be easily confused.
- Appears to be physically or mentally ill, severely disabled or suffering mental confusion.
- Has young children under 5 years old and severe social deprivation is evident.
- Is disputing liability or claims to have paid.
- Is heavily pregnant.
- Is in mourning due to recent bereavement.

- Is having difficulty communicating due to profound deafness, blindness or language difficulties.
- Long term sickness or serious illness including the terminally ill.

Should the enforcement agent come across extreme hardship, appropriate evidence in the form of an enforcement agent report should be submitted to the Council to include the debtor's means, assets and financial lifestyle.

The Council has made arrangements for independent financial advice to be provided to debtors in appropriate circumstances. If it is clear to the enforcement agent that the debtor urgently requires such advice the enforcement agent should immediately contact the Recovery Team Manager for guidance.

No goods should be removed for sale that fall within the categories listed as being exempt from removal in any Statute or Regulation applicable to the type of debt being collected, including The Enforcement of Road Traffic Debts Order 1993 (as amended), The Taking Control of Goods Regulations 2013 Reg. 4 SI 2013/1894 and/or such legislation as may apply.

Goods may be removed for sale only with the permission of a designated Council Officer. If the debtor contacts the enforcement agents prior to the removal with an acceptable offer of payment this should be accepted.

If the debtor claims that any goods are subject to hire purchase, or are otherwise not in their ownership, or part ownership, the enforcement agent should ask to see a copy of the relevant documentation.

The Company must ensure that when taking control of goods, any 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.

A receipt for any goods removed should be given to the debtor or left at the premises.

The enforcement agent should take all reasonable steps to satisfy themselves when taking control of goods that the value of the goods is proportionate to the value of the debt and charges owed, and avoid excess.

When the debtor's goods are removed and sold, the Council must be provided with a full statement itemising the goods sold, the amount realised, a breakdown of the costs incurred and a statement of the amount subsequently outstanding or overpaid, as appropriate.

6. COMPLAINTS

The Company will provide the Council with a copy of the response to complaints made concerning the activities of enforcement agents within seven days of the complaint being received and will provide copies of any documents which are considered relevant to the complaint.

The Company will also inform the Council of any complaints with which they have dealt directly and provide copies of all correspondence to and from the complainants. Complaints made directly to the Company should receive an acknowledgement within five days from the receipt of the complaint. A full reply should be provided to the customer within 14 days. Where this is not possible owing to the complexity of the case a holding letter should be sent to the customer providing a revised timescale in which the complaint is expected to be dealt with.

The Company will notify the Council of any legal challenges to their actions and their response to the same within 3 days of receipt of such a challenge.

A register should be maintained to record all complaints.

All complaint procedures should be set out in plain English, show a main point of contact, set time limits for dealing with complaints and demonstrate an independent appeal process where appropriate.

The Company must make available details of their comments and complaints procedure upon request or when circumstances indicate it would be appropriate to do so.

7. VARIATIONS

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