

# **MEDWAY COUNCIL**

## **Local Taxation Recovery & Enforcement Policy**

## **LOCAL TAXATION RECOVERY & ENFORCEMENT POLICY**

The Local Taxation Recovery & Enforcement Policy is designed to show Medway Council's commitment to the recovery of Local Taxation as laid down by:-

Council Tax - The Local Government Finance Act 1992 and subsequent regulations and amendments

National Non Domestic Rates (NNDR) - the Local Government Finance Act 1988 and subsequent regulations and amendments

It is recognised that each case should be reviewed on its own merits and that the appropriate action should be taken only after considering all the facts. However this guidance is intended to set a framework within which recovery decisions can be made.

The Council aims to comply wherever possible with The Lord Chancellor's Department's National Standards for Enforcement Agents (Appendix 1). Officers of the Council and contractors acting on its behalf in enforcement roles will comply with these standards.

## **1. INTRODUCTION**

### **1.1 Why we need a policy**

It is essential for Medway Council to demonstrate that it carries out administration and recovery of Council Tax & NNDR efficiently and effectively.

By doing so the Council:-

- reduces losses to Public Funds
- provides revenue for the Council
- deters fraud and error
- demonstrates the Council's commitment to accuracy and provision of a quality service to its customers as outlined in the Council's customer care charter.

### **1.2 Aim of the policy**

The aim of this policy is to act as a guide to the Council's Administration of Council Tax and NNDR recovery and to ensure that:-

- Debtors will be given clear and prompt information about any Council Tax/NNDR debts
- Flexible and convenient methods of payment will be provided
- Debtors will be treated with courtesy, empathy and in absolute Confidence
- Staff will be sensitive to debtor's individual circumstances
- Debts will be collected efficiently
- Any information given by the debtor will be treated as confidential unless the Council is under a statutory obligation to supply information
- Staff dealing with the collection of Council Tax/NNDR must follow clear written procedures and will receive training on debt collection.
- If required by the debtor, a private interview can be arranged so a member of the Council Tax/NNDR/Customer First staff can explain Medway Council's debt recovery procedures
- The Council Tax/NNDR/Customer First staff will work with recognised advice agencies whilst acknowledging their independence.

## **2. COUNCIL TAX/NNDR**

### **2.1 The Recovery Process**

- 2.1.1 Council tax and NNDR annual bills will be issued as soon as practical after the Council has set its Council Tax for the forthcoming year.
- 2.1.2 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.
- 2.1.3 All demand notices will be issued using the Council's corporate revenues systems.
- 2.1.4 Where a tax or ratepayer can demonstrate an inability to make payment on the set instalment date, staff authorised by the Revenues & Benefits Contract Manager 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.
- 2.1.5 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.
- 2.1.6 Summonses will be issued as soon as reasonably practicable after the default to which they relate.
- 2.1.7 Subject to para 2.2.3 below, failure for the summons to be paid in full will result in a liability order being obtained.

## 2.2 The Enforcement Process

2.2.1 All appropriate methods of enforcement of Liability Orders will be available for use. These include:-

Council Tax & NNDR:-

- 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

2.2.2 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.

2.2.3 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.

2.2.4 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.

### **3. DEBTS NOT RECOVERABLE**

- 3.1 The Council recognises 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 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.
- 3.2 Debts may be referred 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.
- 3.3 When making a decision to write off a Council Tax or NDR debt, the Council reserves its right to collect the amount at a later date, particularly where misleading information has led to the decision not to recover.

**'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**

| <b>Organisation</b>   | <b>Contact</b>  |
|---|---|
| Association of Civil Enforcement Agencies<br>Chesham House<br>150 Regent Street<br>London W1R 5FA                             | Tel: 020-7432 0366<br>Fax: 020-7432 0516<br>Email: <a href="mailto:sec@acea.org.uk">sec@acea.org.uk</a><br>website: <a href="http://www.acea.org.uk">www.acea.org.uk</a>                              |
| The Executive Director<br>Certificated Bailiffs Association<br>Ridgefield House<br>14 John Dalton Street<br>Manchester M2 6JR | Tel: 0161-839 7225<br>Fax: 0161-834 2433<br>e-mail: <a href="mailto:enquiries@bailiffs.org.uk">enquiries@bailiffs.org.uk</a><br>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: [www.irrv.org.uk](http://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 Toaks Court  
London EC4A 1LB

Tel 020-7025 2550  
Fax- 020-7025 2551  
Email: [j-hargrove@sheriffs.co.uk](mailto: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](mailto:barrie.minney@brighton-hove.gov.uk)  
Website: [www.lacef.org.uk](http://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