

STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

Resources Overview & Scrutiny Panel

17 November 2021

TITLE:	Use of Enforcement Agents
PORTFOLIO HOLDER:	Councillor Ralphs - Council Leader SMDC
CONTACT OFFICER:	John Betts - Interim Executive Director Finance and Revenues & Benefits
WARDS INVOLVED:	All

1. Reason for the Report

- 1.1 At the previous meeting of the committee (on 22 September 2021) there was a request for a report on the use of enforcement agents.

2. Recommendations

- 2.1 That the Committee notes the contents of this report.

3. Executive Summary

- 3.1 The Council currently utilises Enforcement Agents (EAs) to undertake enforcement action after a liability order has been obtained from the magistrates court. Enforcement Agents were previously referred to as “bailiffs”. The Enforcement Agents work to a set of principles agreed with the Council and in keeping with the Taking Control of Goods Regulations of 2013 and 2014. The Council has also agreed with the Enforcement Agents a set of principles when seeking recovery of debts from those who may be considered vulnerable. Management within the Revenue & Benefits service have regular monitoring meetings with enforcement liaison officers, including reviewing performance against Service Level Agreements set by the Council.

4. How this Report Links to Corporate Priorities

- 4.1 The report contributes primarily to Aim 2 – *to use resources effectively and provide value for money* and also Aim 1 - *to help create a safer and healthier environment: for our communities to live and work*, by helping citizens to manage their debt, rather than resort to illegal money lenders such as loan sharks.

5. Options and Analysis

- 5.1 There are options to not use Enforcement Agents, but this would not provide value for money (as unpaid debts would rise). Previous analysis has indicated that using Enforcement Agents is less expensive than creating an in-house service, due primarily to high levels of overheads (for example, management and training costs and costs incurred in respect of taking possession of goods and for the sale of goods).

6. Implications

- 6.1 Community Safety - (Crime and Disorder Act 1998)
None.
- 6.2 Workforce
None.
- 6.3 Equality and Diversity/Equality Impact Assessment
This report has been prepared in accordance with the Council's Equality and Diversity policies.
- 6.4 Financial Considerations
The need to balance the protection to council tax (and business rates) payers with the need to ensure proportionate action is taken to recover debt alongside the consideration of vulnerable citizens is considered in the report.
- 6.5 Legal
The impact of the Taking Control of Goods Regulations 2013 & 2014 and the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 are all contained in the report.
- 6.6 Sustainability
None
- 6.7 External Consultation
None
- 6.8 External Consultation
None are considered in the body of the report.

JOHN BETTS

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**Web Links and
Background Papers**

Location

Contact details

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Background

7.1. At the previous meeting of the committee there was a request for a briefing on the use of enforcement agents. The Council currently utilises Enforcement Agents (EAs) to undertake enforcement action after a liability order has been obtained from the magistrates court.

7.2. To place this in context, it is helpful to briefly outline the debt recovery process. The debt recovery process is based on the following principles:

- Firm but fair application of legislation
- Consistency of approach – *we strive to apply the Council's policies consistently so that individual citizens do not feel they are being inequitably treated, relative to others*
- Excellent customer service – *although citizens may not always appreciate being chased for payment, the service aims to treat debtors sensitively and provide an excellent quality of service and that action taken is proportionate*
- Discretion in genuine circumstances only – *to ensure consistency of approach to all, discretion needs to be managed appropriately, ensuring that deviation from normal processes only applies in genuine circumstances*
- Increase collection rate – *to ensure fair treatment to all council and business rate taxpayers, increased collection rates (thereby reducing the burden to all) is a goal*
- Encourage Direct Debit take-up – *this helps citizens manage the repayment of debt and is more efficient for the Council*
- Reduce cost of collection

7.3. These principles are applied as follows (using the council tax debt process as an example):

Step 1 - a Reminder Notice is issued 7 days after the instalment is unpaid

- If the outstanding debt is then paid, the instalment process continues
- If there is no payment, or only partial payment, then a summons can be issued 14 days after.

Step 2 - a Reminder issued for the second default 7 days after the instalment is unpaid

- If the outstanding debt is then paid, the instalment process continues
- If there is no payment, or only partial payment, then a summons can be issued 14 days after

(NB: a maximum of two reminders will be issued within one financial year)

Step 3 - a Final Notice is issued where an instalment remains outstanding for the third time or in respect of previous year arrears

- In this case the full year's charge is due and the citizen will only avoid a summons if the account is brought up-to-date and a Direct Debit is set up.
- The Council will accept cash arrangements in exceptional circumstances at this stage e.g. payment card, online payments etc.

Step 4 Summons

- Where the final notice remains unpaid a summons can be issued 7 days later
- Arrangements can be made and income details requested during this period.
- Also, if the Council holds employer details it will attempt to collect the debt via earnings, before sending the liability order to the Enforcement Agents.

7.4. There are some exceptions to this process that the Council follows. For example, Individuals or sole traders who are not VAT registered and are struggling with debt have the ability to put a pause on debt collection activity against them for at least 60 days. This is termed a 'breathing space'¹. In addition, there is a mental health crisis breathing space available to someone who is receiving mental health crisis treatment and this process has some stronger protections for the debtor, including lasting as long as the person's mental health crisis treatment, plus 30 days. Debts included in a breathing space must be "qualifying debts". This includes if all instalments for that financial year have fallen due and have not been paid. If a debtor has been served with a 'reminder notice' to pay a council tax bill, the remaining liability for the financial year is a qualifying debt. However, council tax liabilities that have not yet fallen due are not qualifying debts.

7.5. At summons stage a Liability Order (LO) is applied for unless the balance on the account is paid in full. The LO secures the debt and gives the go ahead for the Council to take enforcement action. This is where "bailiffs", now known as Enforcement Agents, are introduced into the process. Under the Taking Control of Goods Regulations (2014) bailiffs became officially known as 'enforcement agents' and the changes introduced aimed to:

- Prevent bailiffs entering homes when only children were present, visiting people after 9pm or before 6am, or taking basic domestic items such as a cooker or microwave, refrigerator or washing machine.
- Ensure a notice period of seven days is sent before bailiffs can visit to take control of goods (although this can be shortened on application to a court).
- Prevent bailiffs from selling goods, unless seven days have passed from the date the goods were removed.
- Introduce a complete set of statutory prescribed forms that must be used by bailiffs throughout the taking control of goods process.
- Introduce further protections for people in vulnerable circumstances.
- Set a 'competence criterion' for entry into the bailiff profession and a mandatory training regime.

¹ This is formally known as "The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020"

- 7.6. The Council currently utilises three enforcement companies, with one company – Bristow & Sutor – used for the majority of council tax arrears². As part of which, they currently issue a pre-compliance letter, warning of further enforcement action after a liability order has been obtained (following checks, this information is currently uploaded to the company system from the council tax system). The Pre-Compliance Letter is issued by the Enforcement Agents, although under the new Enforcement Regulations, this is no longer a requirement. It does, therefore, offer the debtor more time to resolve the situation. Alternative arrangements for repaying the debt are still acceptable at this point in time. The Council focuses on ensuring that payment collection services remain ethical and equitable for all and that enforcement charges are only incurred by debtors as a measure of last resort; after all reasonable attempts have been made to engage with debtors to make arrangements.
- 7.7. However, when those avenues have been exhausted then the following post Liability Order options are available:
- Attachment of earnings / benefits
 - Enforcement Action (for which additional costs may apply)
 - Charging Orders / Bankruptcy
 - Committal application
 - Write-off
- 7.8. Enforcement Agents will always try to establish the vulnerability of the debtor at the earliest opportunity. Vulnerability does not mean that a person is exempt from paying their debts, or that the enforcement agent company returns the account back to the Council. It does, however, require the company to identify vulnerability and act accordingly.
- 7.9. The Taking Control of Goods Regulations 2013 (TCoG) make no stipulation as to certain categories of vulnerability. Anyone can be vulnerable at any time. Where a person is recognised as vulnerable, consideration is always given by the Enforcement Agents to their circumstances. Regulation 12 of the TCoG (Fees) Regulations 2014 states that they must give: “*Adequate opportunity to get advice & assistance in relation to the exercise of enforcement power*”.
- 7.10. Even after establishing an individual is vulnerable, the Enforcement Agents may still be advised to continue with action by the Council. The action they take will depend on the severity of the vulnerability and how it affects the individuals’ ability to deal with this. In doing so, the Enforcement Agents abide by the following principles:
- Always remain calm, professional and patient
 - Encourage disclosure

² The other enforcement companies that the Authority engages with are Dukes and JTR Collections.

- Establish and understand the severity of the situation
- Consider how that situation affects the citizen and their ability to pay / deal with us
- Ensure the individual understands the situation
- Summarise discussions and what happens next with the citizen
- Consider both internal and external solutions
- Helping to improve the quality of responses to vulnerability