

Code of Practice for Enforcement Agent Services



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1. Introduction

Sefton Council uses the services of external firms of Enforcement Agents in the recovery of outstanding arrears of Sundry Debt/Other income, Housing Benefit Overpayments, Council Tax, Business Rates, Business Improvement District Levy (BID levies) and Parking Fines.

From 6 April 2014 bailiffs were replaced by Enforcement Agents. This Code of Practice for Enforcement Agents replaces the Sefton Code of Practice for Bailiffs dated August 2013 and reflects the changes required under the Tribunals Courts and Enforcement Act 2007 and subsequent regulations.

The main objective for an Enforcement Agent, together with the Council, is to provide an effective and efficient Enforcement service in the collection of debt.

This Code of Practice has been drawn up in an endeavour to achieve the very best practice in the conduct that is expected of our Enforcement Agents.

Failure to comply with the requirements of this Code of Practice and the relevant legislation may result in the Council terminating with the services of the firm of Enforcement Agents.

This document will be subject to periodic review.

2. Core Requirements

The Enforcement Agency company (referred to as the company) will ensure that all employees, contractors and Agents will act strictly within the scope of current legislation at all time and will not commit any illegal act whilst working on behalf of the Council.

The company will ensure that their employees receive adequate training to keep their knowledge up to date and are informed of this Code of Practice.

The company must ensure that its employees use the title Enforcement Agent only in appropriate work (for instance not when acting as debt-collectors or tracing Agents).

The company must at all times consist of at least 2 partners or directors who are members of the Enforcement Services Association.

All Enforcement Agents carrying out the lawful act of taking control of goods shall hold a current certificate issued by the county court in accordance with legal requirements.

3. Communication with the debtor

All documents proposed to be left or posted to debtors must be agreed by the Council before use.

The company will ensure that all notices and other documentation left with or sent to the debtor are in Plain English, unambiguous and not misleading.

All documents must be correctly completed in a legible manner, be signed and carry the appropriate reference numbers (including the Council's account/reference number).

Pre-printed stationery must not be altered, or added to, in any way except to advise of proposed subsequent visits, balances outstanding etc.

The company shall ensure that debtors are able to contact the company during reasonable office hours by telephone and should publicise the appropriate telephone number on all documentation.

Except where handed to a debtor any notices or documents must be sent or left at the premises in a sealed envelope addressed to the debtor by name.

The company must make available to the Council, upon request, all correspondence relating to debtors and any supporting documents and working papers.

4. Enforcement Agency Procedures

Compliance Stage

When an account is referred to the Enforcement Agency the company shall maximise efforts to make contact with debtors and negotiate payment by use of letters, email and telephone calls.

The company should issue a statutory Notice of Enforcement to the debtor by post within one working day of being instructed by the Council. The statutory compliance fee of £75 is to be added to each case by the company upon receipt of the instruction. The company will seek to recover their fee and the outstanding debt through a combination of different contact methods.

Where, during the Compliance Stage, the debtor makes contact with the company the company should in the first instance seek payment in full.

In cases where the debtor is unable to pay in full the company should at this stage request details of the debtor's financial circumstances and their employer, then negotiate a suitable payment plan. Where the debtor is in receipt of welfare benefits a National Insurance number and their date of birth should be obtained, and the company should request evidence that the debtor is in receipt of welfare benefits. In these cases an agreement should be made for payments at least equal to the deductions that would be made by the Department of Work and Pensions.

In the event that the debtor is unwilling to provide information about their income and expenditure the company may negotiate a short term payment plan if a reasonable offer of payment is made, but is under no obligation to do so.

The company should provide clear indication in all communications that the earlier a debtor makes contact the less fees will be incurred. Furthermore, documentation must detail the appropriate legal timescales for taking control of goods together with a warning of potential future costs: an Enforcement fee £235 when the first visit is made and the additional 7.5% costs on any amount over £1500.

There may be exceptional occasions that on the basis of information known about the debtor the company may request that the Enforcement stage is advanced. The company must seek approval from the Council to do so.

Where the debtor fails to agree a payment arrangement and not before seven clear days after the issue of the Notice of Enforcement the company shall;

a) In the case of Business Rates Rate and Business Improvement District Levy debts, progress to Enforcement Stage.

b) In the case of other debts, send a second (non-statutory) notice warning of the intention to take Enforcement action and make further attempts to contact the debtor before issuing a Final (non-statutory) notice warning of the escalation to Enforcement Stage if payment is not made. Timescales for the issue of second, further and final notices to be agreed with the Council.

If it is ascertained that the debtor is no longer resident, the company shall make the appropriate local discreet enquiries to ascertain the date of leaving and the new address and then refer back to the Council with either the relevant information or to the effect that no further information is available. If the debtor has moved a very short distance within the Borough, the company may proceed to take control of goods at the new address and then refer back to the Council with the relevant information.

On certain occasions the Council will require the Enforcement Agency to prioritise certain cases, and the company will be expected to respond promptly.

Details of all attempted contacts must be formally recorded on the debtors record held by the company. Details of these must be made available to the Council on request.

Before the Enforcement Agency adds the Enforcement fee, they must, using their professional judgement, explicitly consider whether the debtor falls into the following vulnerability categories and should report this back to the Council. Where the debtor:

1. Appears to be severely mentally impaired or suffering severe mental confusion.
2. Has young children and severe social deprivation is evident.
3. Is disputing liability or claims to have paid, applied for a rebate, Council Tax Support, discount or any other relief not yet granted.

4. Is heavily pregnant, or the spouse of the debtor is heavily pregnant, and there are no other adults available in the household.
5. Is in mourning due to recent bereavement (within one month).
6. Is having difficulty communicating due to profound deafness, blindness or language difficulties. In these cases the Council would make arrangements for the appropriate support in terms of a signer or translation services etc.
7. Is currently unemployed and provides proof that they are in receipt of Income Support or Job Seekers Allowance (Income Based) payments from the Department for Work and Pensions (DWP) and details are obtained of the debtor's National Insurance Number.
8. Has severe long term sickness or illness including the terminally ill.
9. Appears to be over 70 years of age.
10. Is consulting his or her Councillor or Member of Parliament.

This judgement must be based on telephone conversations, written responses, visits by company employees not acting as Enforcement Agents and visits by Enforcement Agents. A clear statement that the debtor's vulnerability has been considered must be recorded on the debtor's record before the Enforcement fee is added. When an Enforcement Agent makes the first visit to the property and decides that the debtor is vulnerable, no Enforcement fee should be added and the account should be returned to the Council

Enforcement Stage

When an Enforcement Agent visits a debtor

Where more than one liability order is held for a debtor, the Enforcement Agent where practicable will attend the property for all liability orders at the same time charging one Enforcement fee.

When an Enforcement Agent visits a debtor he/she 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 may be agreed with the Council.

An Enforcement Agent must not misrepresent their powers, qualifications, capacities, experience or abilities.

The company will ensure that the removal of goods is always directly supervised by a certificated Enforcement Agent.

The nature of the work demands that the Enforcement Agent should adopt a firm but correct attitude with debtors and other people they contact in the course of their duties. Should the debtor dispute liability the Enforcement Agent will contact the Council before proceeding further.

The Enforcement Agent must inform their company of any visit they receive where a conflict of interest may exist. A conflict of interest could be where a debtor is known to them personally, for example a friend relative or associate.

The Enforcement Agent must not use their position or powers for personal gain. Gifts or bribes must always be reported to the company.

The Enforcement Agent must always try to contact the debtor personally. If this is not possible, the Enforcement Agent will speak to the debtor's partner or other responsible adult to establish when the debtor is likely to be at home.

The Enforcement Agent will not enter the debtor's premises if it appears that the only people present are young people under the age of 18, but in such circumstances the Enforcement Agent may enquire as to when the debtor is likely to be at home.

The Enforcement Agent should take reasonable steps to ensure that he/she is speaking directly with the debtor, before identifying himself or herself as an Enforcement Agent.

The Enforcement Agent should seek to establish the identity of all persons present, and inform the debtor (when present) of the purpose of the visit, and explain the powers of the Enforcement Agent.

The absence of the debtor should not automatically prevent the Enforcement Agent from taking control of goods (particularly where the debtor is a business), but the Enforcement Agent will be expected to take all relevant circumstances into account before deciding whether to take control of goods.

The Enforcement Agent's initial visit will be with the intention of taking control of goods. If the debtor tenders payment in full including all costs incurred, the Enforcement Agent must not take control of goods.

When the Enforcement Agent has taken control of goods, the debtor should normally be invited to sign a Controlled Goods Agreement. If the debtor refuses to sign, or refuses to make payment, or defaults on payment, the goods should (subject to contrary instructions from the Council) be removed at the earliest opportunity.

The Enforcement Agent must not remove goods without first consulting the Council.

The Enforcement Agent must at all times:-

- carry the written authorisation of Sefton Council, to be shown to the debtor on request.
- carry on their person an identity card containing a photograph and contact telephone number which should be produced to the debtor.
- make clear to the debtor the purpose of their visit and the fact that he/she is acting as an Agent of the Council but is not directly employed by the Council.
- carry out their duties in a calm, dignified and polite manner and do nothing to prejudice the reputation of the Council.
- act in a way to minimise embarrassment, inconvenience and distress to the debtor and his/her family.
- respect confidentiality when third parties are present.
- not conduct enquiries by involving children and young people under the age of 18 or the elderly/infirm.
- be presentable in their manner and dress.
- act with discretion and fairness.
- not consume or be under the influence of alcohol or drugs (other than prescription or routine medication) whilst working.
- not smoke in front of or whilst on the premises of the debtor.
- not respond to verbal abuse under any circumstances and remain calm and objective at all times.
- avoid physical confrontation and call the police if a breach of peace is suspected.

Before attending with a van in order to remove goods, the Enforcement Agency must send to the debtor a letter warning of the intention to send a van and to remove goods. The debtor must also be warned of the potential costs of the sale process.

Unless circumstances are exceptional, the Enforcement Agent must not remove goods from domestic premises during the period from 18th December to 1st January inclusive. The Enforcement Agent should also be sensitive to other circumstances where there is information that indicates that the debtor is observing a religious holiday.

Arrangements to pay the debt

The debtor must immediately be given an acknowledgement of payment or an official receipt for all payments made in person. All payments must be handed in for banking no later than the following working day. Where payment is made by post or left at an office which is closed, an official receipt must be sent within 3 working days where a prepaid self-addressed envelope accompanies the payment. The company shall offer a convenient method of payment for example, via the Post Office, or other payment network, by telephone or by Internet.

Where the Enforcement Agent takes control of goods with a view to securing payment in the future or over an agreed period of time, the debtor should be invited to sign a controlled goods agreement which details the arrangement made regarding payment.

The Enforcement Agent should attempt to collect the amount due to the Council including costs as quickly as possible, taking into account the circumstances of the debtor, If payment is not made in full immediately the debtor should be given the opportunity to enter into an agreement or an instalment arrangement of up to 6 months.

Only in exceptional circumstances, and only with the agreement of the Council, should an arrangement to pay be accepted which exceeds a period 6 months

Where no payment arrangement can be made

Where no arrangement can be made, the Enforcement Agent will attempt to take control of the debtor's goods.

This means entering a debtor's property and listing goods belonging to the debtor that may be removed and sold at auction with the proceeds being distributed between the fees and the Council debt in accordance with legislation.

Removing goods from the debtor's home

Before attending to remove goods, the Enforcement Agent must send a letter to the debtor warning of the intention to remove goods and also warning of the additional sale fee that will be added to the account if goods removed are sold. The Enforcement Agent should also indicate the additional costs that will be incurred in respect of the removal.

If there are circumstances that indicate that by telling the debtor it may compromise the ability to remove goods (for example where a company is about to go into liquidation or the debtor about to abscond) then attendance can be made without a letter being issued.

Enforcement Agents should not attend at a company director's personal address where the liability order is not in his/her specific name unless they have reason to believe that company assets are being held at the director's home.

Under no circumstances must an Enforcement Agent force entry into a debtor's premises without prior agreement by the Council.

Before goods are removed approval must be sought from the Council.

For Council Tax debts, no goods should be removed for sale which falls within the categories listed in The Council Tax (Administration and Enforcement) Regulations 1992 (as amended) and the Tribunals, Courts and Enforcement Act 2007 being:

1. Basic clothing, beds, bedding and household linen.
2. a Cooker or a microwave
3. a Refrigerator, freezers and essential room heaters.
4. Dining table and chairs.
5. A Washing machine, a vacuum cleaner and an iron.
6. Toys primarily for the use of any child who is a member of the debtor's household.
7. Articles reasonably required for the care or upbringing of a child who is a member of the debtor's household.
8. Medical aids or medical equipment reasonably required for the use of the debtor or any members of the debtor's household.
9. Articles which are required for safety reasons in the home.
10. Any goods bought with a DWP budgeting loan or under the Council's Welfare Provision Scheme.
11. Any items of a personal nature with a nominal or no cash value, for example, videos of family occasions, family photographs or pictures, etc.
12. Any other items protected by law.

Only goods belonging to the debtor may be listed on the control of goods order. Goods subject to higher purchase or credit sale agreements will not be removed (in accordance with the Consumer Credits Act 1974).

Sale Stage

When the debtor's goods are removed and sold at public auction, 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. The Enforcement Agent should not remove goods for sale unless it is anticipated that the sum realised will be sufficient to settle a substantial proportion of the amount outstanding, including costs. "Substantial proportion" may be defined by the Council. No goods should be removed for sale if they fall into the categories protected by legislation.

When the debtor's goods are removed, at least seven days must pass before they can be sold at public auction. After the sale, the Council and the debtor must be provided with a full statement which:

- lists the goods sold;
- lists the amount realised;
- lists the costs incurred; and
- details the amount subsequently outstanding, or overpaid, as appropriate.

The debtor should be notified of the date, time and place of sale, to give them the opportunity to make payment of the full amount owed to the Council including all costs and arrange the collection and return of their goods. Any goods taken must be transported and stored with due care and attention whilst in their care including relevant security and insurance provisions. Any disbursements incurred during this process can be recovered by the Enforcement Agent in the form of additional costs (e.g. storage, cost of locksmith, auctioneers fees). The Enforcement Agent should not remove goods for sale unless it is anticipated that the sum realised will be sufficient to settle a reasonable proportion of the account outstanding to the Council (30% to 50%), including costs. As a general rule, the value of the goods can be divided by five to give an approximate value if auctioned.

Information and Confidentiality

The Enforcement Agent and the company shall ensure that all information coming into their possession during the performance of the contract is treated with strict confidence and is not to be used for any purpose other than performance of the contract.

All data must be processed in accordance with data protection legislation, Freedom of Information legislation and with any guidance issued by the Information Commissioner.

The company is responsible for putting in place suitable arrangements to ensure the security of data in its possession at all times and shall only exchange data with the Council in a secure manner agreed by the Council.

5. Complaints

The Enforcement Agency Company will provide the Council with a full response to complaints made by debtors direct to the Council 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 Council will then respond directly to the complainant in accordance with the Council's complaints procedures.

The Enforcement Agency 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 Enforcement Agency Company should receive a response within 5 working days from the receipt of the complaint.

The Council should be notified of any complaints made against the Enforcement Agency to the Enforcement Services Association, or the Association of Civil Enforcement Agents. Also, any complaint made to the county court if representation is made that an Enforcement Agent is not fit to hold a certificate, the Enforcement Agency Company must notify Sefton Council.

A register should be maintained to record all complaints.

The Enforcement Agency must make available details of their comments and complaints procedure upon demand.

6. Management Information/Access to Records/Instructions

The Enforcement Agency Company will provide Management Information, reports, the content and frequency of which will be agreed with the Council.

7. Data Protection Act

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

All Enforcement Agency companies must comply with the provisions of the Data Protection Acts 1984 and 1998. All data passed to the Enforcement Agency Company 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.

8. Data Security

The Enforcement Agency Company will provide the Council with their data protection & security policies for the Council to approve.

9. 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 Enforcement Agency 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.

10. Contact Details

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