

CIVEA Code of Conduct and Good Practice Guide

October 2012

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Terms used:

In this document we have adopted the terminology used in the original standards:

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.

Third Party Advisor: by this we mean anyone seeking to advise a debtor in relation to their debt.

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 (liability orders, 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.

Enforcement Agencies - Obligations

Enforcement agencies must ensure that enforcement is conducted in accordance with prevailing legislation and in a professional, ethical and proportionate manner. The objective should be the recovery of the sum outstanding as quickly as possible, without causing unnecessary hardship.

Agencies have a responsibility to ensure that all personnel engaged to enforce warrants and orders are properly vetted and security screened and possess an appropriate knowledge and understanding of all relevant legislation, case law and powers, and at all times act in accordance with them.

The training that is provided to individual Enforcement Agents must be adequate, covering as a minimum: laws of distress; conduct and relevant codes or practice; Health and Safety and conflict reduction. Such courses should be provided at the commencement of employment and should include regular refresher training as the basis for the continued professional development of enforcement agents.

Procedures must be in place to ensure that all agents are subject to regular appraisal and performance reviews, at a minimum of yearly intervals. Such appraisal should

include identification of training needs as well as a review of incidents and complaints.

Enforcement agencies must work in a way, that so far as possible, allows them to take into account individual personal circumstances

A certificate from an independent auditor, or a declaration from an independent chartered or certificated accountant depending upon the size of the member company and its consequent accounting obligations, shall be provided to the association at least once a year.

Enforcement agencies must keep a complete record of all financial transactions in whatever capacity undertaken. A separate account for monies due to the creditor should be maintained.

Comprehensive insurance must be in place, to include:

- professional indemnity
- public and employers liability
- cover for seized goods including goods in transit.

All enforcement agencies must maintain sufficient telephone lines, with sufficient trained and competent staff available to answer debtor calls. Telephone calls must be answered within a reasonable time limit and where a caller may be held in a queue this should be at an appropriate local rate.

Enforcement agencies must comply with the requirements of the Data Protection Act.

Enforcement agencies must ensure that legislation restricting the enforcement activity to certificated bailiffs is complied with.

Initial Contact:

First contact with a debtor will ordinarily be by letter or visit, to explain the role of the enforcement company in relation to the outstanding debt and invite settlement prior to escalation. The consequences of non-payment, including the costs charged, must be clear and unambiguous.

Recruitment:

Only staff who have been subject to appropriate pre - employment vetting and who are able to provide verifiable and satisfactory references must be engaged as an Enforcement Agent.

Training:

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, guidelines and codes of practice.

The training provided must be an appropriate mixture of formal classroom training, together with supervised vocational training. All enforcement agents must be able to produce objective evidence that they have achieved a minimum standard of knowledge.

Formal training should be provided at the commencement of employment and at regular intervals to ensure that the agent's knowledge is kept up to date. Refresher training must be provided. Details of all training must be maintained in the relevant personnel file.

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 and CIVEA will work to develop an industry accredited package.

Attendance at the Debtor's Address:

Enforcement agents must carry out their duties in a professional, calm and dignified manner. They must dress appropriately and act with discretion and fairness. Officers must conduct themselves in a humane, firm but fair manner and will act responsibly and shall do nothing to prejudice the reputation and integrity of their client or employing organisation.

Enforcement agents must not misrepresent their powers, qualifications, capacities, experience or abilities and must not discriminate unfairly on any grounds including those of age, disability, ethnicity, gender, race, religion or sexual orientation.

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.

When attending a property, the enforcement agent shall take reasonable steps to ensure he/she is speaking directly to the debtor, before identifying himself or herself as a bailiff. Every effort should be made not discuss the nature/purpose of their visit with anyone other than the debtor and the enforcement agent shall take care to ensure that the debtor's circumstances are not given to or discussed with a third party. This might be relaxed when speaking with a spouse/partner or close relative of the debtor.

The enforcement agent shall clearly state to the debtor the purpose of the visit, informing the debtor which enforcement agency they are employed / engaged by and that they are acting on behalf of a particular (named) client.

It is a fundamental principle of this code that all agents must properly identify themselves when asked to do so and must not attempt to misrepresent their status or powers.

Agents must not imply that they are anything to do with the police or any other

government agency.

Photographic proof of identity must be carried at all times. (Or any other document that may be introduced as a consequence the TCE Bill licensing procedures.)

When required by legislation, the written authorisation of the relevant local authority must also be shown to the debtor if it is requested.

Enforcement agents shall at all times attempt to act in a way to minimise embarrassment, inconvenience and distress to the debtor and/or his/her family. In particular, they must avoid responding unreasonably to provocation.

The name of the actual agent attending the premises must be made clear on any documents left with the debtor or left at the premises. All relevant contacts and telephone numbers should be clearly displayed, as should the relevant reference number(s).

The purpose of the enforcement agent's visit must be explained to the debtor. The warrant or order instructs the enforcement agent to levy distress, which means seize goods, to secure payment of the debt under threat of the removal and sale of those goods. There is no requirement for the enforcement agent to make contact with a debtor, or to invite settlement, prior to seizing goods.

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.

Any levy of distress must be conducted in a humane and fair manner and in accordance with the relevant regulations and codes of practice. Goods should not normally be removed where the sale price achieved at auction is unlikely to exceed just the costs of removal.

A levy must be lawful and an agent must not purport to levy on goods to which no physical access is available.

Enforcement agents shall, at all times, act in such a way as to minimise any embarrassment to debtors. Wherever possible the debtor should be interviewed in private unless the debtor wishes otherwise or declines the invitation.

When distress is levied, a complete inventory of the goods covered by the seizure must be made. The inventory must detail individual items and not include "catch all" items purporting to cover goods not specifically listed. There must be no doubt as to which goods are in the enforcement agent's legal possession.

Attendance / Time:

Enforcement should not normally be undertaken on Sundays, on Bank Holidays, on Good Friday or on Christmas Day, unless specifically required and where the relevant legislation permits it.

Enforcement agents will be aware of the guidance given in the NSEA for visits to be made between 6.00am and 9.00pm or at any time during trading. However as this time frame is only for guidance the enforcement agents can act in accordance with creditor instructions providing they comply with the relevant legislation and law.

Entry to Premises

Before seeking access to premises an enforcement agent should ensure, where possible, that the debtor is still resident at the property. Force may only be used to gain entry in limited circumstances and an enforcement agent must not misrepresent his power to force entry.

A power to enter premises by force exists for the execution of warrants of distress to enforce criminal penalties. This power should only be used to the extent that it is reasonably required and only after the debtor has been warned that the power exists and the consequences of a wilful refusal to co-operate.

Removal of Goods

Enforcement agents must only take goods in accordance with the appropriate regulations or statute. When goods have to be removed the agent must ensure that sufficient and appropriately skilled personnel are available.

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.

Removed goods must be transported in vehicles suitable for the purpose and packed and secured in such a way as to prevent damage to them. Goods must be stored in such a place and manner as to prevent theft, damage or deterioration.

Any sub-contractors engaged to assist in a removal must be directly supervised by the enforcement agent.

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 the charges owed. Goods belonging to, or for the exclusive use of a child should not be removed.

When goods are removed the contractor must leave a list of the goods removed with the debtor or the debtor's representative, if present. Otherwise, the list must be left in a prominent place at the premises from which the goods have been removed. The list is to be complete and sufficiently detailed to avoid doubt as to which goods have been removed.

Reasonable care must be taken of the debtor's goods pending sale, including suitable and secure storage facilities and adequate insurance cover. Any sale which takes place must be properly publicised and as many potential buyers as possible are encouraged to attend, to secure the best price available.

The costs of carrying out a sale of a debtor's goods and the cost of transporting those goods to the place of sale should be reasonable and in keeping with the type of goods that are removed.

Fees

The Enforcement Agent must provide details of any direct charges to the debtor. A copy of the regulations relating to bailiff charges, including details of their own charges, shall be left with the debtor when a levy is carried out.

Enforcement agents will on each and every occasion when a visit is made to a debtor's property which incurs a fee to the debtor, leave a notice detailing the fees charged to date, including the one for that visit. If a written request is made (which includes a stamped addressed envelope) an itemised account of fees will be provided.

Enforcement agents will clearly explain to the debtor the consequences of a seizure of goods and ensure that debtors are aware of any additional charges that will be incurred.

Enforcement Agencies must make payments to clients on account of monies collected at agreed intervals. Each payment must be supported by a schedule giving sufficient information to enable the client to credit each debtor's account correctly.

There must be adequate facilities available to allow the debtor to make payment by telephone to an office location and directly to the enforcement agent. Facilities to accept and process payment in various formats i.e. Cash, Cheque, Maestro, Visa, BACS, Standing Order, Internet etc, should be provided.

Fees charged to the debtor should be strictly in accordance with any relevant regulations or legislation.

Complaints

Enforcement agencies must aim to provide a high level of customer care and must operate comprehensive complaints and disciplinary procedures with which enforcement agents must be fully conversant. How to make a complaint should be easily ascertainable by the debtor and obstacles must not be placed in the way of complainants.

It is recommended that within 10 working days of receiving a complaint, the enforcement agency write to the debtor, acknowledging receipt of the complaint and enclosing a copy of their complaints procedure, and informing the debtor that the complaint has been registered and will be investigated in accordance with that procedure. The complaints procedure must detail any escalation procedure, set out timeframes and provide details of the CIVEA complaints process.

Enforcement agencies must make available details of the comments and complaints procedure on request or when circumstances indicate it would be appropriate to do so.

Information & Confidentiality

All information obtained during the administration and enforcement of warrants or orders must be treated as confidential.

The enforcement agency, its employees or agents should not divulge to any third party, any information that comes into its or their possession during the enforcement

of the relevant warrant unless duly authorised by the debtor.

The enforcement agents themselves must comply with Data Protection and Human Rights legislation.

Vulnerable Persons

Enforcement agencies/agents 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 and seek clarification to determine 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 or their client 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.

In such cases enforcement should cease and the matter referred back to the client for guidance.

Third Party Advisors

An enforcement agency is not legally obliged to deal with a third party advisor. Agencies will normally deal with bona fide organisations, but only if they are in possession of evidence that they are empowered to act and if their involvement is beneficial to clearing the debt.