

CIVEA Code of Conduct and Good Practice Guide



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Confidentiality

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Introduction

In 2002 the then Lord Chancellor's Department produced the first *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 (enforcement) sector".

CIVEA believes that the enactment of the Tribunals, Courts and Enforcement Act 2007, provides an excellent opportunity to review, and where appropriate revise and expand the original guidance.

CIVEA wishes to work with the Ministry of Justice to develop detailed regulations and to produce a set of common standards for all enforcement activities in order to improve the perception of the enforcement profession, at the same time as raising standards within the industry.

The enforcement of penalties, taxes, and judgments has a crucial role to play in the legal system, criminal and civil and in a modern democratic society. CIVEA supports the aims and objectives for reform of 'bailiff law', as set out in the Effective Enforcement white paper published in March 2003.

There must be ways to enforce payments due and to provide the necessary incentive to payment for those who without an effective enforcement process, would fail to pay or comply with the relevant order. CIVEA supports reform of the law and agrees that,

"An adequate regulatory mechanism, unified law and fairer fee structure are needed for all enforcement agents to enable straightforward effective warrant enforcement and offer protection to vulnerable debtors who genuinely cannot pay".

CIVEA also believes that the debtor and any third party advisor has a role to play and has an equal responsibility to deal promptly with promoting early settlement of debts.

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 (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 distinguish between debtors who can't pay and those who could pay or who won't pay.

An audit of the agency's accounts by independent accountants should be undertaken at least once a year. This requirement should be mandatory and accordingly applies in the case of small companies and sole traders.

An audit of individual enforcement agents must be conducted at least annually. Ideally this audit should be independent of the officer's line management.

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 and accurate books and accounts should be kept and made available to establish monies owed to the creditor.

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 maintain strict confidentiality and compliance with the relevant data protection regulations.

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 initial 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.

Further contact should be by letter, telephone or other agreed method(s) within agreed time scale for domestic premises prior to referral to door step collection.

All documents, whether posted or hand delivered to the debtors address must not be ambiguous or misleading.

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.

All staff that will be engaged in a direct customer facing position must be subject to a check with the Criminal Records Bureau. 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 the seizure of goods (distress) 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 judgements made against them.

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 and have undertaken a minimum number of on-going continuous training to maintain their on-going competence.

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, as a minimum, be provided bi-annually. 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. If the debtor is unavailable the enforcement agent must ascertain when they will be available. 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. When it is a legal requirement for an enforcement agent (bailiff) to be certificated by a County Court, the identification must be the bailiffs County Court general certificate issued under Section 7 of the Law of Distress amendments Act 1888. (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.

The relevant documentation, including details of costs incurred to date and the legislation relating to distress must be handed to the debtor, or left at the premises.

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.

If on attendance, contact is made with the debtor, the enforcement agent should attempt to recover the full amount owed, as quickly as possible, taking into account the circumstances of the individual debtor.

The consequences of a failure to pay, together with the details of the fees that have already been incurred and any additional fees / costs that may be incurred, must be fully explained. If settlement is not immediately forthcoming the enforcement agent having seized goods outside the premises, or having gained peaceable entry to premises and having seized goods, should consider the appropriateness of a walking possession agreement, with a suitable payment arrangement.

Debtors must not be pressed to make unrealistic offers and should be asked to consider carefully any offer they voluntarily make.

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.

A family member or other 3rd party should not be pressured into paying the sum due on behalf of the debtor, though the enforcement agent may accept a voluntary payment, if tendered, and which might avoid goods being seized or removed.

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.

All reasonable attempts should be made to ensure that the debtor is present when distress is levied. If this is not practicable, distress should normally only be levied in the presence of a person who has some connection with the debtor and appears to be aged at least eighteen.

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.

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. The rules detailed in specific legislation must be observed.

Enforcement agents should be respectful of the religion and culture of others at all times. They should attempt to 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.

Initial attendance will normally be at the debtor's registered or normal address, however, for most forms of distress goods can be seized wherever they are found.

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 should not normally be used to gain entry to premises in the first instance and deception should never be employed to gain physical access to premises. Force may only be used to gain entry in limited circumstances and an enforcement officer 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.

Only goods that belong to the debtor or in which he/she has an actual interest may be seized.

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 are kept to the absolute minimum.

Certain goods are protected from seizure and removal. Whether an exemption applies will depend on the particular circumstances and a clear distinction must be made between commercial and domestic premises.

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, and the fees which will be incurred if further action becomes necessary. 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, Switch, Visa, BACS, Standing Order, Internet etc, should be provided.

Costs charged to the debtor should be strictly in accordance with the relevant regulations.

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 shall not divulge to any third party, any information that comes into its or their possession during the enforcement of the relevant warrant.

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 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.

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.

Where a debtor is discovered to have:

- serious illness
- mental impairment
- learning difficulties
- physical disabilities

Then enforcement should cease and the matter should be referred back to the client for guidance.

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 the service level agreement (SLA) with their enforcement agent/agency.

Creditors must not seek payment from an enforcement agency or enforcement agent 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 advise all debtors that if payment is not made within a specified period of time, action may be taken to enforce payment.

Creditors must not issue an instruction knowing that the debtor is not at the address, as a means of tracing the debtor at no cost. All background information relating to the debtors circumstance or health / welfare, together with any relevant case history, should be given to the enforcement agency when they are instructed to collect the debt.

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.

Creditors will avoid using enforcement agencies when they have evidence that a debtor falls within the category considered 'vulnerable'. Vulnerable persons may include:-

- Disabled persons
- The long term sick or seriously ill
- The recently bereaved
- Those experiencing communication difficulties

Debtors Obligations

A debtor is equally responsible for ensuring that an enforcement encounter is concluded in a civil, polite, honest and non-threatening manner. An enforcement agent is entitled to be treated with respect and courtesy and should not be subjected to violence, threats or intimidation.

Attendance by an enforcement agent is never the first course of action by a creditor and consequently the enforcement agent is entitled to assume that the debtor is fully aware of the liability. The agent is equally entitled to assume that the debtor has received and understood any postal documentation sent by the enforcement agency or the creditor.

Debtors should ensure that they respond immediately to correspondence and should not attempt to delay matters by making false claims or attempt to conceal their true identity. A failure to respond to correspondence and/or contact from the enforcement agency will inevitably result in the matter being escalated, with the potential for goods to be seized and removed, thus incurring additional costs, charges and fees.

Debtors should understand that any documents posted or delivered to the debtor's address by the enforcement agents will be deemed to have been delivered.

If a debtor believes that they have a legitimate challenge to the debt, this must be raised immediately and progressed without delay. The grounds of any challenge must be communicated to both the creditor and the enforcement agency, supported by evidence.

Debtors who may feel that they fall into a vulnerable or hardship category must inform the enforcement agency immediately of their circumstances. They should be aware that such claims must be corroborated, which may involve a personal visit to observe their circumstances.

If a debtor does not understand what is happening or needs help in dealing with their debt then they should seek the assistance of a free advisory service immediately. If doing so they should provide that agency with **ALL** documentation they have received.

Debtors should realise that delay increases costs, fees and charges, ignoring a debt does not make it go away, it merely delays the inevitable and increases costs, charges and fees.

The warrant or order that is being enforced empowers the immediate seizure of goods and there is no automatic right to have an extended payment arrangement or instalment plan. When an enforcement agent first demands payment they are seeking full payment any agreement for extended terms is solely at the enforcement agent's discretion.

If a payment is promised or an agreement or arrangement is reached for settlement of a debt, the debtor must keep to the strict terms of that contract. Should the terms of an agreement be breached or broken the debtor should understand that the enforcement agent will proceed to recover the full remaining debt, with additional costs.

If paying by debit/credit card or by cheque, a debtor should ensure that there are sufficient funds by which to pay the amount and realise that if the payment by card is declined or the bank return a cheque unpaid then the enforcement agent will return and further costs, charges and fees will be applied.

It is common practice for advisory agencies to recommend that a debtor should deny access to the enforcement agent and refuse to sign any documentation. The debtor should realise that by accepting this advice they could be prejudicing the potential for an instalment plan to be agreed and any accessible goods could be removed immediately.

If a debtor disputes the level or appropriateness of any cost, charge, or fee they can apply to the court for those items to be assessed, once payment has been made.

A debtor should be aware that if the enforcement agent is not successful in recovering the debt due, then the creditor, subject to the relevant legislation, has several other options open to them to achieve recovery of their money, which can include; attachment of earnings or benefit, administration or sequestration orders, bankruptcy or liquidation, or committal to prison.

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.

Advisors should restrict themselves to relevant issues, namely **settlement or discussion of the actual debt**. Making uncorroborated and possibly unfounded claims or allegations against the actual agent or their company is not constructive to bringing the matter to an amicable conclusion.

If an advisor believes that the debtor has a genuine grievance in respect of their treatment, this should be addressed as a separate issue, firstly to the agent or the relevant enforcement agency. If the grievance is not resolved at this first stage, it can then be escalated to the CIVEA Complaints system.

The recovery agents are not bound to accept any offer made by an advisor and may refuse such offers if they are felt to be unreasonable.