



**MANCHESTER
CITY COUNCIL**

Council Tax Service Revenues and Benefits Unit

Bailiff Code of Practice and Council expectations

Introduction

This code of practice outlines the way that any bailiff company collecting debts on behalf of Manchester City Council's Revenues Service should conduct themselves. It includes:

- The professional standards they must adhere to;
- The procedures they must follow;
- Guidance on how quickly the money should be repaid; and
- When it is inappropriate to take action.

Professional standards

The Council and the bailiff firm will ensure that all bailiffs, employees, contractors and agents have an appropriate knowledge and understanding of all relevant legislation, case law and powers, and at all times act in accordance with them. The bailiff must comply with Data Protection legislation where applicable and should be aware of the relevant Articles in Human Rights legislation.

Bailiffs and employees, contractors and agents of the bailiff firm must be aware that they represent the Council in their dealings with debtors. They should at all times act lawfully and in accordance with the provisions of the Local Government Finance Act 1992. They should also act in a responsible, professional and courteous manner and be aware that their behaviour, appearance and attitude have a great influence on the success of the debt recovery process.

The bailiff firm must at all times have:

- Professional indemnity insurance, ensuring the fullest indemnity against legal proceedings resulting in compensation awards due to illegal or irregular distress. Details of such insurance should be made available to the Council on request. The bailiff firm must also maintain a separate client bank account for monies received from debtors,
- The bailiff must adopt a firm but correct attitude when dealing with the public, they must be polite and courteous and avoid being provoked by vexatious debtors. In the event of a breach of the peace occurring as a result of a bailiff visit, the Council must be debriefed of the circumstances as soon as practicable. At all times, they must carry:
- Photographic proof of their identity (County Court general certificate issued under Section 7 of the Law of Distress amendments Act 1888) which must be shown when

visiting a property to distrain. The bailiff must at all times make clear to the debtor the purpose of his visit and the fact that he is acting on behalf of, and, as agent of the Council. Visits to be after 8am and before 9pm, with no visits on Sundays or bank holidays.

- Written authorisation of the Council should be shown on request and the bailiff must hand to the debtor or leave on the premises the relevant documentation including details of costs incurred and procedure, legislation (Reg. 45) relating to distress and any additional guidance notes. The debtor will be invited and is required to sign any walking possession agreement (which lists all goods distrained upon) at the time that the distress is levied, in presence of the debtor or the partner only after its meaning has been explained and understood by the debtor.

Levying distress

This means entering a debtors property and listing goods belonging to the debtor that may be removed and sold at auction with the proceeds being paid towards the amount owed to the Council and costs incurred by the bailiff. Only a bailiff properly vetted and trained by the authorised firm and under the control of a bailiff who is certificated by the County Court may levy distress or remove goods in respect of Liability orders on behalf of the Council.

Upon receipt of any instruction to levy distress, the bailiff company shall ensure that a visit is made to levy distress within 14 days from receipt of the instruction. Where more than one Liability order is held for a debtor, the bailiff, where practicable, will attend the property for all Liability orders at the same time, with only one set of first and second call visit costs being made. 'First call' and 'second call' visits must be made on different days.

Where a levy takes place and there are liability orders for more than one year's debt, the bailiff is required by law to levy on each individual liability order and charge a fee for each levy.

Arrangements to pay the debt

If, on attendance, contact is made with the debtor, the bailiff should attempt to recover the amount as quickly as possible, taking into account the circumstances of the debtor. Wherever possible, if payment is not made in full at the time of the first visit, the debtor should be given the opportunity to enter into a walking possession agreement or instalment arrangement (instalment arrangement at no cost to the debtor other than the direct cost of making a payment). Enquiries should be made about possible eligibility to a discount or rebate. Information regarding employers or benefit details should be requested and passed to the Council.

Arrangements for payment of the total amount due can be agreed at the bailiff's discretion over a period of up to three months for Business Rates. Council Tax arrangements should be made over a period of up to six months but a period of up to 52 weeks can be considered if the debtor's circumstances warrant this. If the arrangement for payment offered is beyond these timescales and the bailiff considers it inappropriate to remove goods or there are exceptional circumstances the bailiff should refer back to the Council before agreeing to an arrangement exceeding these timescales.

When the bailiff should consider taking no action

The bailiff should at all times use his professional judgement to refer back to the Council if he considers that, due to the personal circumstances of the debtor, it would be inappropriate to proceed to levy distress. In particular, 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, discount or any other relief not yet granted. Under these circumstances the bailiff should levy distress and then report to the Council.
4. 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 Works and Pension (DWP) and details are obtained of the debtor's National Insurance number.
8. Has severe long term sickness or illness including the terminally ill.

Please note: Points 2, 4 and 7 do not apply to Business Rates.

Where a debtor states that they have raised their case with their local councillor or Member of Parliament the bailiff should call the Council to seek advice.

The bailiff must take no action if it appears that no responsible adult is present at the debtor's address. If an adult is present, the bailiff must attempt to establish their identity. If the debtor is unavailable the bailiff must ascertain when they will be available. No reference will be made to the nature or purpose of their visit. The bailiff should be aware of the sensitive and confidential nature of this work and should take care to ensure that information regarding the debtor's circumstances are not passed on to, or discussed with, a third party. If children are present the debtor should be encouraged to ask them to leave the room. Any documents must be left, marked 'Private and Confidential', in a sealed, clearly addressed plain envelope.

Removing goods from a debtor's home

Before attending to remove goods, the bailiff must send a letter to the debtor warning of the intention to send a van and also warning of the costs involved if this happens. However, if there are circumstances that indicate that by telling the debtor it may compromise the ability to remove goods (for example if a company is about to go into liquidation or the debtor is about to abscond) then attendance can be made without a letter being issued.

It is important that bailiffs be aware that they should not attend at a Company Director's personal address when the liability order is not in his specific name.

In the event of the need to force entry to the debtor's premises, the bailiff must obtain the express permission of the Council's representative before doing so.

In the case of Council Tax debts, no goods should be removed from sale which fall within the categories listed in (The Council Tax Administration and Enforcement) Regulations 1992 (as amended) being:

1. Basic clothing, beds, bedding and household linen.
2. The main form of cooking - if the debtor has a cooker and a microwave oven, it would be in order to seize the microwave oven. If the debtor only has a microwave oven, this must not be seized.
3. Fridges, freezers and essential room heaters.
4. Dining table and chairs.
5. Washing machine, vacuum cleaner and 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 Social Fund loan or grant.
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.
13. Such tools, books, vehicles and other items of equipment as are necessary to the debtor for use personally by him or her in his or her employment or business.

(Please note: in the case of Business Rates, point 13 does not apply).

Only goods belonging to the debtor may be seized. Goods subject to higher purchase or credit sale agreements will not be removed (in accordance with the Consumer Credits Act 1974). Costs charged to the debtor should be strictly in accordance with the provisions of the Council Tax (Administration and Enforcement) (Amendment) (No.2) Regulations 1993 (as amended) or the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (as amended) as appropriate.

When the debtors goods are removed and sold at public auction, 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 and return 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. The bailiff 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 5 to give an approximate value if auctioned.

(Please note: For Business Rates in some cases the bailiff may still remove goods if the value is less than 30 - 50%, i.e. so that ongoing trading ceases or if it is likely to become insolvent.)

Where the bailiff is unsuccessful

A minimum of 3 unsuccessful visits to the debtor's address are required before the case is returned to the Council as unpaid. At least one of these visits should be made to the debtor's address outside normal office hours (Monday to Friday 8am or 9am to 5pm). Documentation issued to debtors must be agreed with the Council and be in plain English. Documentation must be left at the property after each visit is made and give details of the date and time of the visit the debt and charges incurred; it must give the name of the bailiffs and a contact telephone number. It must be left in a sealed envelope addressed to the debtor.

Where the bailiff is unsuccessful in his attempts to obtain payment and the Liability order is to be returned to the Council, it should clearly show that the person making distress was unable (for whatever reason) to find any or sufficient goods of the debtor on which to levy. It should also be returned with a report summarising the action taken by the bailiff together with any details ascertained concerning the financial or personal circumstances of the debtor.

Where the debtor has left the property

If the debtor is no longer resident, the bailiff should make appropriate discreet local enquiries to ascertain the debtor's date of leaving and new address. This information (or lack of it) should be referred back to the Council. If the debtor has moved locally within the Council boundaries, the bailiff may levy at the new address and then refer the information back to the Council.

In the normal course of events, cases should be completed within six months of being issued by the Council as debtors have either paid in full or the bailiffs have not been able to make contact or collect money.

Reporting requirements

Payments and payment schedules must be submitted weekly to the Council on the agreed days. The company must account for all monies received and provide a proper system for dealing with unpaid cheques.

Monthly statistical reports in the agreed format must be submitted to the Contracts and Compliance Manager.

Monthly reports must be submitted to the Council for those cases that are still outstanding after six months. Where a case has been outstanding for eight months or more the report must contain full details of all action taken.

Responsibility

The Authorised Officer together with the Principal of the bailiff firm, will be responsible for the operation of this Code of Practice and for resolving any complaints from the debtor. The bailiff firm must establish and maintain an internal complaints procedure overseen by a senior member of staff. The Authorised Officer shall be responsible for ensuring that any complaints received from debtors or their authorised representatives by the Council are handled efficiently and promptly.

The Council reserves the right to make amendments and add new procedures at any time resulting from changing practices. The bailiff will be notified in writing of any proposed changes and invited to make comments.

Complaints

Bailiff action will be held by the Council for a minimum of fourteen days in all cases where a complaint is received about the actions of a bailiff company.

The complaint will be logged at stage one of the Council's own complaints procedure. If a complaint is received by the bailiff which alleges actual violence, theft, fraud, discrimination or deliberate damage to property. The bailiff company must notify a senior manager within the Council immediately.

All complaints will follow the Council's three stage complaints process with an option to contact the Ombudsman if still not satisfied at the end of this process.

The Council will monitor both individual complaint as well as any trends, hotspots or issues relating to a specific bailiff company.