

**Manchester City Council  
Report for Resolution**

**Report To:** Resources and Governance Overview and Scrutiny Committee - 4 March 2010

**Subject:** The Council's use of bailiff companies to recover debts owed to the Council

**Report of:** City Treasurer

---

**Summary**

The Council uses bailiffs and other debt collection companies when necessary and within the appropriate legislative frameworks to collect debts owed to the Council.

Bailiffs provide an important service, employed as the Council's agent to recover monies owed. This money is then used to fund essential services to all Manchester residents. Due to the nature and profile of this work, the Council must be satisfied that the correct contractual arrangements are in place and that bailiff activity and associated fees and charges are monitored closely.

**Recommendations**

Members are asked to note the report and the use of bailiffs and other collection agencies to recover debts owed to the Council.

---

**Wards Affected:**

The use of bailiffs to recover debts affects all wards in the city.

---

**Contact Officers:**

Richard Paver E-mail	City Treasurer richard.paver@manchester.gov.uk	234 3564
Julie Price E-mail	Head of Revenues and Benefits j.price2@manchester.gov.uk	953 8202
Martin Lee Email	Head of Street Management m.lee1@manchester.gov.uk	234 4084
Brendan Rainsford Email	Deputy Head of Neighbourhood Services (Legal) b.rainsford@manchester.gov.uk	234 3102

**Background documents (available for public inspection):**

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

- Association of Greater Manchester Authorities (AGMA) Council Tax and Business Rates tender document
- AGMA bailiff contract
- Council Tax Debt Recovery Policy document
- Council Tax Bailiff Code of Practice document
- Parking Services Bailiff Code of Practice document
- Distress for Rent Rules 1988 Statutory Instrument 1988 No 2050
- Local Government Finance Acts
- The Traffic Management Act 2004,
- The Civil Enforcement of Parking Contraventions (England) General Regulations 2007,
- The Civil Enforcement of Parking Contraventions (England) Representation and Appeals Regulations 2007,
- The Transport Act 2000, Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005 (The Regulations).
- The Road Traffic Act 1991
- The Enforcement of Road Traffic Debts (Certified Bailiffs) Regulations 1993

## 1. Introduction

The Scrutiny Committee has requested this report to look at how the Council lets contracts for bailiffs that are used to recover debts owed to the Council and how it exercises quality control and performance management.

This report was commissioned by the Scrutiny Committee following correspondence between Mr Mike Wolfe, a resident of Whalley Range and the Council. A summary of the correspondence is included at appendix 2. Mr Wolfe has been invited to attend the meeting of the Scrutiny Committee.

This report will cover the use of bailiff across all areas of the Council and will cover the following:

- The legal definition and role of a bailiff;
- How the Council uses bailiffs and which debts are recovered by this method;
- The contractual position of bailiffs being used by the Council;
- The charging structure and associated costs; and
- The quality control and performance management arrangements.

The report will also cover the use of external collection agencies and how these are used.

## 2. Background

### 2.1 Bailiff companies

A bailiff is a person who is employed to obtain payment of a debt whether by removal, or the threatened removal, of goods.

There are several types of bailiff, including:

- Certificated bailiffs;
- County Court bailiffs;
- High Court enforcement officers; and
- Civilian enforcement officers (CEOs) Magistrates Court.

In addition to bailiff activity, legislation allows the representatives of the following agencies to seize and sell goods to recover unpaid debts where they have specific authority:

- Tax collectors for unpaid taxes;
- Revenues and Customs for customs and excise duties; and
- Child Maintenance and Enforcement Commission for child support maintenance payments.

### 2.2 Debt collection/recovery companies

In addition to bailiff companies collection/debt recovery companies are employed by the Council to recover debts owed. They do not have the legal

powers of a bailiff and are not authorised to seize and sell goods. They usually work on a percentage recovery rate and any charges are paid by the Council.

They are usually used when the type of debt does not allow the legal use of a certified bailiff and are used as a collection method before more formal action, such as requesting a County Court judgement or for the collection of low value debts where advanced legal recovery action may be more costly than the value of the debt itself.

### **3 Certified bailiffs**

The Council uses certificated bailiffs for the recovery of debt owed. They can enforce on a variety of debts owed and can sell property to recover debts. They have to hold a certificate that enables them to levy distress for commercial rent, road traffic debts, Council Tax and Business Rates. The certificate issued by County Court is valid for 2 years and is accompanied by £10,000 bond.

The training process that all prospective certificated bailiffs complete consists of a combination of classroom and field based training whilst accompanying an experienced certificated bailiff. All new recruits go through a City and Guilds accredited training course.

Following completion of the course, the recruit accompanies an experienced bailiff on visits where they learn how to apply the theory. In addition they all complete a minimum of one day a week classroom based training focusing on customer care issues and collection techniques.

When the recruit is considered ready to apply for their certificate an application is made to the court accompanied by a current County Court judgement search, a Criminal Records Bureau search, a reference and a statement from the employing bailiff company confirming that the training has been completed, together with a bond for £10,000. The application is then advertised in newspapers local to the area the bailiff intends to work (Manchester Evening News) inviting anyone who wishes to object to do so to the court. Once this process is completed the applicant will attend court, and appear in front of a judge in open court where they will be questioned on their knowledge before the certificate is granted.

#### **3.1 The use of certificated bailiffs within the Council**

The following areas of the Council use bailiff companies (certificated) for the recovery of debts owed to the Council.

- Revenues and Benefits Unit for the recovery of Council Tax and Business Rates debt;
- Parking Services for the collection of parking fines and bus lane enforcement fines; and
- Legal Services for the recovery of commercial rents.

The Council has always used external companies to carry out this work. This is because the use of external bailiffs is considered to be the most cost effective method. The bailiff companies cover the costs of all training, overheads and legal responsibilities and, due to the charging structure, there are minimal costs to the Council.

Before using a bailiff company to recover debt owed, the Council will always try to secure a mutually acceptable payment plan. The vast majority of bailiff activity in Manchester takes place due to the debtor's refusal to engage with the Council in order to come to mutually acceptable arrangements to repay the money owed.

### **3.2 Council Tax & Business Rates debt**

#### **3.2.1 Legal position**

The use of bailiffs for Council Tax and Business Rates recovery is covered by sections within the Local Government Finance Acts.

Once the Council has obtained a Liability Order from the Magistrates Court in respect of unpaid Council Tax or Business Rates it has the power to use other recovery methods to collect the debt owed. This includes bailiff activity.

Before the recovery process can be escalated to include committal to prison action for non payment of Council Tax or Business Rates debts, bailiff action must have been attempted and a certificate obtained from the bailiff to demonstrate there were no goods or insufficient goods to pay the debt. In reality, this means that for Council Tax, in the vast majority of cases where details of who the debtor works for are not known, and the debtor still does not engage with the Council to make arrangements to clear the debt, cases are passed to bailiffs for collection 28 days after the date of the Liability Order Court hearing.

For Business Rates, once the reminders and the summons have been issued and a Liability Order obtained from the Magistrates Court, action by bailiffs is the default method of enforcement in the vast majority of cases. This is because other enforcement options are limited. Ratepayers are given ample opportunity to demonstrate a willingness and ability to pay prior to the debt being referred to a bailiff for collection.

#### **3.2.2 Contractual position**

There are currently six companies on the 'preferred supplier' list in use in Greater Manchester for Council Tax and Business Rates collection. These companies were selected as part of a joint AGMA procurement exercise (led by Stockport MBC) whereby eight of the Greater Manchester Councils jointly tendered for the procurement of bailiff services. The six successful companies were appointed on 1 July 2008 for an initial period of four years. This period is extendable, on review, every two years, up to a maximum of ten years from the contract start date.

The contracts in force with these six companies are for the supply of bailiff services in respect of the collection of Council Tax and Business Rates. Also covered are 'other services', for example execution of both warrants of arrest (this relates to committal proceedings where debtors fail to attend a court hearing) and warrants for the collection of commercial rents. The contract allows for councils to choose which of the preferred suppliers that they allocate work to and there is no guarantee of any specific amount of work being issued to individual companies.

The following bailiff companies were selected for the AGMA preferred supplier list after completion of the joint procurement exercise:

- Rossendales: Wavell House, Holcombe Road, Helmshore,
- Equita: 42-44 Henry Street, Northampton,
- Bristow & Sutor: Bartleet Road, Washford, Redditch, Worcestershire,
- Dukes: Dukes Court, 8 Newcastle Street, Stone, Staffs,
- Marstons: 50 Broadway, Westminster, London,
- Jacobs: 4 Europa Boulevard, Birkenhead, Merseyside,

Within Manchester, Council Tax collection is currently undertaken by Rossendales, Bristow and Sutor, Equita and Dukes and Business Rates collection is currently undertaken by Rossendales, Equita and Marstons. However Bristow & Sutor gave three months formal notice on 5 January 2010 that they no longer wish to work for Manchester.

### 3.2.3 Charging structure and associated costs

Certain fees and charges incurred by the bailiff are detailed in statute, for example the charge for a bailiff attending a property for the first time to recover either Council Tax or Business Rates is £24.50, the second visit is £18.00 and 'walking possession' is £12.00 (this is where the resident signs an agreement which allows the goods to stay on the premises until payment is made or the goods are removed for sale).

Other charges are described as 'reasonable costs and fees' in the legislation governing bailiff activity and are not prescribed, for example attendance at the debtor's premises with a van to remove goods, van waiting times and credit card charges.

As part of the AGMA contract there is an agreed schedule of fees and charges that forms part of the contract with each company. These schedules are currently based on the proposals made by the individual companies themselves when they tendered for the work in early 2008.

The AGMA contract did not stipulate that these reasonable costs and fees had to be consistent across all companies and there are currently some areas where the charges vary between bailiffs. The main differences in costs are in some discretionary areas including van fees, although the average is around £110.00 for a Council Tax debt.

As part of activity during 2010, the Council is planning to work with the preferred list of bailiff companies to look to introduce a consistent set of fees and charges that can be levied when working for the Council to recover Council Tax and Business Rates debt.

All fees associated with the bailiff action are payable by the debtor first and are retained by the bailiff companies as payment for their work before they start collecting the Council's debt. The Council does not make any payments to bailiff companies for bailiff work – if they do not succeed in collecting the debts, together with their associated costs, then they do not get paid.

#### 3.2.4 Quality Control and Performance Management

Quarterly meetings, attended by representatives of all eight AGMA councils are held, at which performance issues are discussed and addressed. At every other meeting (once every six months) representatives from the bailiff companies attend and issues of joint concern are raised with them.

Statistics on the collection performance of the companies are compiled centrally (again by Stockport Council) and shared amongst all group members, and with the bailiffs themselves, so that everyone is aware of how each company is performing in each authority. The aim of this is to drive up performance standards so that all group members can make better informed decisions as to which companies are likely to perform best for them.

#### 3.2.5 Bailiff Code of Practice

Attached to this report is a copy of the Bailiff Code of Practice and this forms part of the contract with the bailiff companies. This covers required performance expectations and customer service standards.

In addition to the quarterly performance management meetings, individual performance is also managed by complaints monitoring. This can include the legal position, the conduct and behaviour of the bailiff and any associated costs. If there are complaints about bailiff activity these are coordinated and managed by the Council in accordance with the Council's policies.

#### 3.2.6 Bailiff performance

Council Tax Measures:

Bailiff performance is measured across three main areas:

- Percentage of debt collected per account issued
- Average cash collected per account issued
- Fees added and retained as a % of cash collected by the bailiff

Over the course of a year the Council sends around 40,000 Council Tax accounts to the bailiffs and over an extended period of time the bailiff will usually collect around 25% of the debt.

The overall target for 2009/10 is to increase the total amount of Council Tax collected by the bailiffs from £3.69M (2008/09 actual performance) to a minimum of £4.M (an 8.5% increase).

Each of the four companies currently involved in the Council Tax collection process has also been challenged to collect £1.125M in the current financial year. Roughly one quarter of the workload is currently shared between four companies on a geographic ward basis. It is envisaged that any company that achieves this extremely challenging target will be rewarded by an increased allocation of work during the following financial year.

### Business Rates

The AGMA statistics are used to monitor the performance of bailiffs. Certain measures used by Council Tax to monitor performance such as average cash or debt collected per account are not relevant as the debts themselves have a far greater range of value. Such statistics can be easily skewed, by one single extremely large debt for example, to become almost meaningless. Cash targets have not been employed either as it has been felt preferable to incentivise bailiff companies in other ways. For example by passing Business Rates debts from the City Centre to the bailiff that has the best performance overall in the preceding financial year.

It is widely recognised that collection of Business Rates is far more profitable for bailiff companies than collecting Council Tax. Therefore in an effort to drive up performance across the board it has been made clear to bailiffs that collect both debt types for the Council, that they will be expected to allocate appropriate resources to Council Tax collection. Recent performance across both Council Tax and Business Rates is considered when deciding how future work is allocated to bailiffs.

#### 3.2.7 Dealing with customer feedback and complaints

The contract contains provisions in this area to make clear Manchester's requirements when dealing with customer complaints and feedback.

Of the 40,000 accounts issued to the bailiffs to date this financial year, there have been 114 complaints about the bailiffs' conduct, processes or the levels of fees charged.

The Council Tax Service also has six monthly meetings with local Citizen's Advice Bureaux (CAB) network representatives where bailiff activity is discussed. In addition separate contact numbers are provided solely for CAB advisor use.

### 3.3 Parking fines and bus lane enforcement penalties



### 3.3.1 Legal position

The Council's Parking Service issues Penalty Charge Notices (PCNs) for contraventions of Parking Regulations, using powers contained within the following regulations:

- The Traffic Management Act 2004;
- The Civil Enforcement of Parking Contraventions Regulation 2007; and
- The Civil Enforcement of Parking Contraventions Representation and Appeals Regulations 2007.

In relation to contravention of Bus Lane Regulations, the powers are contained in:

- The Transport Act 2000; and
- The Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) Regulations 2005.

Following the issuing of a PCN if the notice remains unpaid, a debt will be registered with the County Court and a distress warrant is requested from the Court. The distress warrant is then issued to the bailiff company, who will rely on legislation in The Enforcement of Road Traffic Debts (Certified Bailiffs) Regulations 1993 to recover the debt.

### 3.3.2 Contractual position

The current bailiff companies, Marstons and Equita were procured in 2005 through a competitive tendering process. The two companies selected are also on the AGMA select list for the collection of Council Tax and Business Rates.

The current contracts are due to expire in October 2010. As an experiment and taking advantage of the 2008 AGMA contract, two other bailiff companies, Bristow and Sutor and Dukes, were given a number of returned warrants to work on for a limited period in 2009.

Two other companies JBW and Phoenix (not on any preferred list) were also used for a pilot exercise in relation to returned warrants for a two week period in September 2009. This exercise is now complete and there are no plans to use bailiff companies that are not on the Council's select list for any activity in the future.

### 3.3.3 Charging structure and associated costs

The PCN Charge is set by the Secretary of State and is £50, £60 or £70 depending on the contravention, which increases by 50% if not paid within prescribed time limits. When the debt is registered at the court, the £5 cost of registering the debt is added; therefore the debt will be either £80, £95 or £110 when it reaches the bailiffs. For example a £60 bus lane charge + 50% (£30) + £5 = £95.

The regulation stipulates the following fees and charges are payable by the debtor:

- For the first letter sent by the bailiff to the debtor, a charge of £11.20 is applied for the serving/delivery of the letter of Intended Action.
- Should no payment be received following this first letter, the bailiff will attend the property to Levy Distress. If the total debt is less than £100 then a £28 'fixed' fee is incurred. If the debt is more than £100 then the fee is calculated at 28% of the outstanding debt, including any fees for the first letter. The bailiff is only able to attend the property on a maximum 3 occasions.
- Bailiffs are also able to charge 'reasonable' fees when attending to remove goods (this charge can only be applied once). The following is the current level of attending to remove fees charged by the 2 contracted bailiffs.
  - i. Marstons apply a £175 fee to attend to remove goods.
  - ii. Equita apply a £150 fee to attend to remove goods.

Further fees can be incurred in a situation where goods/vehicles are removed and where the bailiff company use an auctioneer to dispose of the goods. Costs are charged and deducted from the sale, in accordance with regulations.

Because of the nature of this debt, in that there is usually a vehicle involved, it is rare for bailiffs to levy on household goods and there haven't been any cases of this in the last twelve months. Even the seizure of vehicles is not frequently used as a means of enforcement, with only 2 vehicles removed in the past 6 months.

### 3.3.4 Quality Control and Performance Management

Parking Services monitor bailiff companies in relation to the following performance indicators and meet with representatives from each company, formally on a monthly basis

- Reasonable Fees and Charges
- Timely recovery of Debts within 3 months
- Payment rates equal to or better than 25%
- Number of upheld Complaints

Over the course of this financial year the Council will send around 16,000 accounts to the bailiff and similar to Council Tax, the bailiff will eventually collect around approximately 25% of this debt. This year the bailiffs are on target to collect approximately £467,000. This covers both parking fines and bus lane enforcement.

The Service is also in the process of producing a Bailiff Code of Conduct document covering the expectations in terms of performance and customer

service. This is in final draft format awaiting sign off and is similar to the existing document used for Council Tax collection.

Any complaints about bailiff activity are coordinated from within the Council to ensure that Parking Services are aware of any issues that may affect the contract or future working practices. In the financial year to date there have been 42 complaints about bailiff conduct, processes or the associated costs out of the 16,000 accounts sent for collection.

### **3.4 Commercial rents - Legal Services**

#### 3.4.1 Legal position

The relevant legislation covering the use of bailiffs for the recovery of commercial rents is the Distress for Rent Rules 1988.

#### 3.4.2 Charging structure and associated costs

The fees are also governed by this legislation and are set as follows:

- 12.5% on first £100;
- 4% on next £400;
- 2.5% on next £1,500;
- 1% on next £8,000; and
- Thereafter, 0.25% on any additional sum.

These fees are paid by the tenant and the bailiff deducts them from the amount recovered from the tenant before paying the money over to the Council.

#### 3.4.3 Contractual position

Legal Services have selected bailiffs using the Council's select list for Council Tax collection and have used the same company, Rossendales Ltd since 2002

#### 3.4.4 Bailiff collection performance

Debt Recovery Managers monitor warrants that have been issued and have regular two monthly meetings with Corporate Property and their agents to discuss progress in rent recovery. There is also regular daily email and telephone contact with the bailiff regarding casework as required.

#### 3.4.5 Dealing with customer feedback and complaints

From 2002 when the Council started working with Rossendales Ltd to recover commercial rents, there have not been any complaints made about them by Council tenants. However, the Council does have procedures and if one were received it would be thoroughly investigated and a report prepared in accordance with City Solicitors internal procedures.

Under the Distress for Rent Rules a complaint is made to the county court which granted the certificate.

#### **4. County Court bailiffs and High Court enforcement officers (Sheriffs)**

The majority of invoices raised by the Council for miscellaneous debt, (this includes interpretation/translation costs, building regulations, selective licensing (Housing), premises licences, child care fees, livery charges, catering and room hire, catering fees) are now managed by the Council's SAP computer system. Unpaid invoices will automatically be progressed to the issue of warning letters and ultimately to issue of legal proceedings and entry of a legal judgment (Court Order) if the debt remains unpaid.

County Court judgments may only be enforced by County Court Bailiffs but if the value of the debt exceeds £600 the judgment may be transferred to the High Court. At this stage it will be enforced by the High Court Sheriffs who are generally perceived to be more successful in recovering the debt.

County and High Court Bailiffs are regulated by statute which also governs their conduct (County Courts Act 1984 and Court Act 2003 respectively). Their fees are prescribed by the Lord Chancellor and if they are successful in recovering the debt, their fees will also be recovered from the debtor.

#### **5. Collection/debt recovery companies**

Before formal action through the Council's solicitor and the County Court process, the Council attempts collection using collection/debt recovery companies to recover debts owed.

The Council uses collection/debt recovery companies in the recovery of the following debts:

- Miscellaneous debts;
- Former tenants arrears; and
- Benefit overpayments.

##### **5.1 Miscellaneous Debts**

Miscellaneous debt includes, meals on wheels, interpretation/translation costs, building regulations, selective licensing (Housing), premises licences, child care fees, livery charges, catering and room hire

Two external collection agents are used to recovery this debt, the Lewis Group and Jacobs Collection Services. Both companies operate on a letter basis (no personal visits) only and charge the Council 15% +VAT of any monies collected as their fee. This area of work has not been subject to any formal tender exercise.

##### **5.2 Former tenants arrears**

The recovery of former tenants' arrears is managed within Housing Services. Since 2001 they have used Moorcroft Debt Recovery who operate on a letter, phone call and personal visit basis and charge the Council 22% of any monies recovered. This area of work has not been subject to any formal tender exercise.

### **5.3 Benefit overpayments**

The Council cannot use bailiffs for the recovery of benefit overpayments. However, as part of the tendering process for bailiff services for the recovery of Council Tax and Business Rates the contract allowed the successful companies to be used for other services.

As a result the Council has been using three of the companies for collection/debt recovery services only. This includes written and telephone contact and home visits.

Equita and Rossendales charge the Council 18% commission and Dukes charge 15% commission +VAT of any monies recovered.

## **6. Conclusions**

Bailiffs provide a necessary service acting as the Council's agent to recover debts owed.

As part of the work pulling together this report it has been recognised that there is further capacity for closer working between Council departments in this area, particularly in the two areas of high volume debt collection, Parking Services and Revenues and Benefits. As a result, meetings have now been set up between the two services to harmonise the current processes for complaints management and reporting. There is also capacity to look at how the bailiffs work across Council departments and any impact on costs of joint activity and how contracts are managed.

## **Appendix 1**

### **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, evidence of which must be supplied to the Council on demand.

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 distraint. 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 debtor's 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 judgment 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.

## **Appendix 2**

### **Correspondence between Mr Mike Wolfe and the Council regarding the use of private bailiffs for parking fines.**

Mr Wolfe purchased a house in 2009 which had been repossessed from the previous owner. He inherited a number of debt demands from creditors and wrote to them to explain that the previous occupant had left and that there was no known forwarding address. Mr Wolfe's home address was visited by a bailiff in October 2009 who delivered a "notice of bailiff having visited" without ringing the doorbell or knocking. The notice stated that a bailiff had called to collect £299.98 for an unpaid parking fine and would return tomorrow to collect an increased amount or remove goods.

Following this experience Mr Wolfe related the events above to Sir Howard Bernstein, Chief Executive of the Council, and raised seven points of policy with him. These points were addressed in turn in a response by Martin Lee, the Council's Head of Street Management. The issues raised and the responses to them are included below.

#### **POINT 1 - Bailiffs are apparently claiming to "visit" people (for which they are entitled to add costs to the monies they collect) when, in fact they merely deliver a letter.**

RESPONSE - The Enforcement of Road Traffic Debts (Certified Bailiffs) Regulations 1993 as amended provides a Table of Fees, Charges and Expenses that Bailiffs can charge in relation to unpaid parking fines. The fee charged for the serving/delivery of the first letter is £11.20 and subsequently attending the property (levying distress) a further fee is incurred, based on the percentage of the debt, in this case £34.00 plus VAT. Although these charges are laid down in the regulations they can be challenged in Court by any debtor if they consider them unreasonable.

In relation to the visit to you we have investigated your concerns that the Bailiff did not attempt to knock on the door to speak with you prior to posting the letter and as we have not received a satisfactory explanation we have taken action to cease using this particular company.

#### **POINT 2 - Bailiffs are delivering threats of distress action within 24 hours of that action-taking place. Had I been away from home, the likelihood is that my property would have been broken into and goods seized tomorrow.**

RESPONSE - The Council has strict operational instructions setting out how Bailiffs must operate. This instruction specifies that in recovering any debts the starting point should be negotiation with the debtor. Only in exceptional circumstances will Bailiffs attempt to seize goods. It is illegal for bailiffs to break into a property and this is clearly something we would not sanction under any circumstances.

#### **POINT 3 - Bailiffs are delivering unsigned notices of an intimidating nature in the name of the Council without any reference to debt advice etc that may be available.**

RESPONSE - While the procedure to recover unpaid Penalty Charge Notices, is set out in legislation, in both the Traffic Management Act 2004 and the Enforcement of Road Traffic Debts (Certified Bailiffs) Regulations 1993 we will consider any mitigating circumstances relating to an individual, on a case by case basis at each stage of the process. Where hardship can be demonstrated we do adopt a reasonable and proportionate approach including referring individuals to debt counselling.

**POINT 4 - Bailiff action is increasing TENFOLD the amount owed on a parking ticket, which could have been settled for £30. Of the extra £270 claimed from my unfortunate predecessors only £30 would have reached the public purse and £240 (plus the costs of today's visit and tomorrows if that had happened) would have been the bailiff's profit. Bailiffs know that they can increase their profit by making spurious visits such as the one to my home for which they can charge debtors.**

RESPONSE - The original parking ticket in this case was issued for £70.00 and had it been paid within the 14-day discount period it could have been settled at £35.00. The actual debt in this case is £155.20 made up of £110 owed to the Council, and £45.20 owed to the Bailiff Company.

In subsequent correspondence it transpired that the information in the response was based on out-of-date information provided by the bailiffs company. The figures provided should have included an attendance charge of £120 plus VAT taking the figure to £299.98.

**POINT 5 - The Council Revenue section does not seem to link movements of people about which you know from the Council tax register, to debt collection.**

RESPONSE - We recognise that on this occasion we failed to act on your letter confirming that the debtor no longer lived at your address. For this we apologise. While checks are undertaken with the DVLA and we can access the published electoral register we do not have access to Council Tax records.

**POINT 6 - The Council Revenue section does not appear to note information of removals received from other sources (in this case, a new occupier).**

RESPONSE - On receipt of your letter informing us that the previous occupant no longer lived at your address we should have checked as above however without a forwarding address further checks may have been needed such as a visit to the last known address.

**POINT 7 - The Council Revenue section is sanctioning a recovery policy that would not be tolerated in the private sector and which is disproportionate in its effect on the poorest residents, expensive to the public purse (as families are plunged into crisis by licensed bullies on their doorstep) and draining to the local economy (as bailiffs profits are spent outside the city).**

RESPONSE - The Council closely monitor the operations of its Bailiff contractors to ensure they act reasonably in the recovery of debts and would not sanction any action which we considered disproportionate in relation to residents means to pay