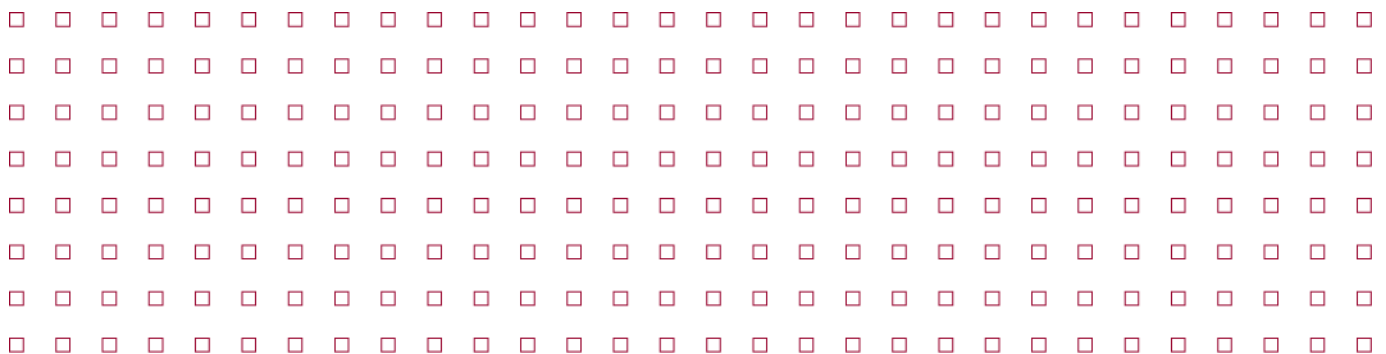




National Standards for Enforcement Agents

January 2012



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This information is also available on the Ministry of Justice website: www.justice.gov.uk

Introduction

These standards are intended for use by all enforcement agents, public and private, the enforcement agencies that employ them and the major creditors who use their services. Private sector enforcement agents who are recovering debts owed to the public sector perform the vast majority of enforcement work, and this document has for the first time established a set of common standards to cover this activity. In order to improve the public's perception of the profession, enforcement agents and those who employ them, or use their services, must maintain high standards of business ethics and practice.

This national guidance does not replace local agreements, existing agency codes of practice or legislation; rather it sets out what the Ministry of Justice, those in the industry and some major users regard as minimum standards.

We recognise this document is not legally binding, but offer it as a helpful tool for the industry and for creditors which, it is hoped, will inform their own arrangements and against which they may benchmark their professional standards.

These standards have been endorsed by the Civil Enforcement Association (CIVEA) and the High Court Enforcement Officers Association (HCEOA)

Terms used

In this document we have used the following terms:

- **Creditor:** for these standards which identify some responsibilities for creditors we include - a local authority, major or frequent judgment creditors in the civil courts, Government Departments and HM Courts and Tribunals Service to whom financial penalties are paid, 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. The term "debtor" where appropriate and applicable, also covers individuals who are being wrongly pursued for a debt in respect of which they are not the actual debtor.
- **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, High Court Enforcement Officers and distrainers.

Creditors' Responsibilities

So far as creditors are concerned, the primary purpose of this guidance is to draw their attention to their responsibilities when instructing and dealing with enforcement agents/agencies to recover debts on their behalf.

- 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 agreement with their enforcement agent/agency. They should consider carefully any specific requirements for financial guarantees etc so that these are adequate, fair and appropriate for the work involved.
- Creditors must not seek payment from an enforcement agent or enforcement agency 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 tell the debtor that if payment is not made within a specified period of time, action may be taken to enforce payment.
- Creditors agreeing the suspension of a warrant or making direct payment arrangements with debtors must give appropriate notification to and should pay appropriate fees due to the enforcement agent.
- Creditors must not issue a warrant knowing that the debtor is not at the address, as a means of tracing the debtor at no cost.
- 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 should inform the enforcement agency if they have any cause to believe that the debtor may present a risk to the safety of the enforcement agent.

Professionalism and conduct of the enforcement agent

- 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.
- Enforcement agents must not be deceitful by misrepresenting their powers, qualifications, capacities, experience or abilities, including, but not restricted to;
 - Falsely implying or stating that action can or will, be taken when legally it cannot be taken
 - Falsely implying or stating that a particular course of action will ensue before it is possible to know whether such action would be permissible
 - Falsely implying or stating that action has been taken when it has not
- Enforcement agents must not act in a threatening manner when visiting the debtor by making gestures or taking actions which could reasonably be construed as suggesting harm or risk of harm to debtors.
- Enforcement agents should always produce relevant identification to the debtor, such as a badge or ID card, together with any written authorisation to act on behalf of the creditor (in appropriate debt types).
- Enforcement agents, for the purpose of distress or execution shall, without the use of unlawful force, gain access to the goods. The enforcement agent will produce an inventory of the goods seized and leave it with the debtor, or at the premises, with any other documents that are required by regulations or statute.
- Enforcement agents must carry out their duties in a professional, calm and dignified manner. They must dress and speak appropriately and act with discretion and fairness.

- Enforcement agents must not act in a way likely to be publicly embarrassing to the debtor, either deliberately or negligently (that is to say through lack of care)
- Enforcement agents must not discriminate unfairly on any grounds including those of age, disability, ethnicity, gender, race, religion or sexual orientation.
- In circumstances where the enforcement agency requires it, and always where there have been previous acts of, or threats of violence by a debtor, a risk assessment should be undertaken prior to the enforcement agent attending a debtor's premises.

Statutory or Financial Requirements for Enforcement Agencies¹

- Enforcement agencies should ensure that audited accounts are available on request, where it is appropriate that these are kept. An annual audit of the agency's accounts by independent accountants should be undertaken at least once a year for businesses where this is appropriate.
- Enforcement agencies must comply with statutory obligations, for example, the Companies Act, Value Added Tax, Inland Revenue provisions, Data Protection, Health & Safety etc.
- 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.
- Enforcement agencies must keep a complete record of all financial transactions in whatever capacity undertaken.
- Enforcement agencies must maintain suitable and comprehensive insurance cover for both professional indemnity and other risks including employer's liability and public liability.

¹ Separate provisions regarding financial accounting and insurance may apply to public sector organisations who directly employ their own enforcement agents

Training and Certification

- 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. This training should be provided at the commencement of employment and at intervals afterwards to ensure that the agent's knowledge is kept up to date.
- Professional training/assessment should be to an appropriate standard for example CIVEA training and examination or other externally accredited courses such as IRRV and City and Guilds or membership of the High Court Enforcement Officers Association.
- Enforcement agencies must ensure that legislation restricting the enforcement activity to certificated bailiffs is complied with²
- Enforcement agencies must ensure that all employees, contractors and agents will at all times act within the scope of current legislation, i.e. The Companies Act, VAT, Inland Revenue provisions, Data Protection, Health and Safety etc, and have an appropriate knowledge and understanding of it and be aware of any statutory obligations and provide relevant training.
- 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.

Complaints/Discipline

- Enforcement agencies must operate complaints and disciplinary procedures with which agents must be fully conversant.
- The complaints procedure should be set out in plain English, have a main point of contact, set time limits for dealing with complaints and an independent appeal process where appropriate. A register should be maintained to record all complaints.
- Enforcement agents/agencies are encouraged to make use of the complaints and disciplinary procedures of professional associations such as *The Civil Enforcement Association* or the *High Court Enforcement Officers Association*.

² *Distress for Rent Rules 1988*

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

Information and confidentiality

- All notices, correspondence and documentation issued by the enforcement agent/agency must be clear and unambiguous and to the satisfaction of the creditor avoiding unnecessary and unhelpful use of legal and technical language
- On returning any un-executed warrants, the enforcement agent should report the outcome to the creditor and provide further appropriate information, where this is requested and paid for by the creditor.
- All information obtained during the administration and enforcement of warrants must be treated as confidential.
- Enforcement agents should provide clear and prompt information to debtors and where appropriate, creditors.
- 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.
- Enforcement agents will on each and every occasion when a visit is made to a debtor's property which incurs a fee for 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 an itemised account of fees will be provided.
- Enforcement agents will clearly explain and give in writing, the consequences of the seizure of a debtor's goods and ensure that debtors are aware of the additional charges that will be incurred.

Times and Hours

- Enforcement should not be undertaken on Sundays, on Good Friday or on Christmas Day, unless the court specifically orders otherwise or in situations where 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, existing legislation must be observed.
- Enforcement agents should be respectful of the religion and culture of others at all times. They should 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.

Goods

- Enforcement agents must only take goods in accordance with the appropriate regulations or statute. In addition creditors may agree other restrictions with agents acting on their behalf.
- 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.
- Enforcement agents should not remove anything clearly identifiable as an item belonging to, or for the exclusive use of a child (person under the age of 16).
- A receipt for the goods removed should be given to the debtor or left at the premises.
- Enforcement agents should take all reasonable steps to satisfy themselves that the value of the goods impounded in satisfaction of the judgment is proportional to the value of the debt and charges owed.

Vulnerable situations

- Enforcement agents/agencies 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 evidence of a 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 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.

Professional Organisations

Organisation

Civil Enforcement Association
513 Bradford Road, Batley,
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Contact

Tel: 0844 893 3922
Fax: 0844 854 6322
Email: admin@civea.co.uk

High Court Enforcement
Officers' Association
50 Broadway, London SW1H 0RG

Tel: 020 7152 4017
Fax: 020 7152 4001
Email: enquiries@hceo.org.uk

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