



# **Code of Practice for Debt Enforcement Services**

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## **1. Definition and Scope**

1.1. This is a Service Level Agreement (SLA) between Rhondda Cynon Taf CBC ('the Council') and any company ('the Company') appointed by the Council to undertake debt enforcement activity.

1.2. The SLA is multipurpose and may cover any of the following:

- The collection and enforcement of local taxation debts (Council Tax and National Non Domestic Rates (NNDR) secured by liability orders.
- The collection and enforcement of Road Traffic debts (TMA) secured by warrants.

1.3. By way of definition the following terms are used in this document:

- EA ~ Enforcement Agent
- TCOG ~ Taking Control of Goods

## **2 Purpose and Management**

2.1 The purpose of the SLA is to maintain an efficient and professional framework of understanding of the responsibilities and expectations of both parties in respect of the work areas concerned.

2.2 Both parties will review the agreement on an annual basis to ensure it remains fit for purpose, however amendments may be made at other times by agreement.

2.3 All amendments and changes will only be made after discussion and agreement between the parties.

2.4 Neither party will terminate the arrangement without giving a minimum of 2 months notice.

2.5 Liaison officers for this SLA will be the Revenues Manager or another appointed representative for the Council; the account manager and/or the Managing Director for the Company.

2.6 The Monitoring Officer(s) for Council will be the Revenues Manager and the Team Manager (Enforcement).

## **3 Governance**

3.1 The Company will ensure that they, their employees and EA's possess all necessary licences and certificates and manage the introduction of any new EA certification process to ensure statutory compliance at all times.

3.2 The Company must be a member of the Civil Enforcement Association (CivEA).

3.3 The Company, its employees and EA's will always conduct themselves and act on behalf of the Council in a courteous and professional manner and will comply with and work within the law and all agreed procedures. The Company, its employees, contractors and agents must at all times be

conscious of the need to maintain the highest standards of practice so as not to bring the Council into disrepute.

- 3.4 In particular, the Company and their employees and EAs will be aware of and conform to:
  - this SLA
  - the National Standards for Enforcement Agents (January 2012).
- 3.5 A letter of Authority to Act will be provided by the Council, appended to this SLA (Appendix 2) and will be treated as conclusive authority for the Company to act on its behalf. No further written authority will normally be required for example, to take control of or remove controlled goods.
- 3.6 The Company will obtain and maintain adequate insurance cover against all risks and will provide evidence to this effect to Council either on an annual basis or at a frequency agreed otherwise. Where a situation arises resulting in a settlement from this insurance cover, the Company will be fully liable to Council for any excess amount not covered by their insurance cover.
- 3.7 The Company will not disclose, exchange or benefit financially from any data supplied by the Council. For the purposes of compliance, the Company is registered under the Data Protection Act 1998. The Company, its employees, EAs and agents will not divulge to any third party, information which comes into their possession in the course of providing the Service.
- 3.8 The Company may disclose information to official bodies (e.g. police) for the purposes of the prevention and detection of crime and the apprehension and prosecution of offenders if a Company considers that withholding such information would be likely to prejudice (that is, significantly harm) an ongoing investigation. When a data request extends to the disclosure of debtor information the Company will direct the request to Council.
- 3.9 The Company will maintain the security, records and management information for the purposes of providing the Service. The Council is entitled to inspect storage facilities and information systems at any time to ensure compliance and security of personal data, as required under the Seventh Data Protection Principle Schedule 1 to the 1998 Act.
- 3.10 The Company acknowledge that title to all intellectual property rights created as a result of the supply or use of the information or the performance or use of the Services or the performance of the contract generally, shall rest wholly with the Council as data supplier.
- 3.11 The Company understands and acknowledges the Council is subject to the requirements of the Freedom of Information Act 2000 and agrees to assist and co-operate to enable it to comply fully with its disclosure obligations including supplying requested information within 48 hours of being asked to do so by the Council.
- 3.12 The Company will maintain a separate client bank account for all monies collected. Any unidentified payment will be held in a suspense account and

any relevant and proper information regarding these accounts will be provided within 5 working days of any request made by the Council.

- 3.13 The Company will supply the Council with copies of all forms and stationery used by them and will discuss any amendments with the Council before introducing any changes. A full set of the statutory notices to be issued will be provided by the Company to the Council prior to their use. Such notices will be written in plain English and will not be ambiguous or misleading. The Company will ensure all notices issued to debtors and other parties like co-owners adhere to the prescribed content detailed in the TCOG regulations and supporting legislation.
- 3.14 Liaison meetings will be usually at the Council offices and on a quarterly basis although the frequency can be varied by mutual agreement. The main purpose of these meetings is to consider service delivery matters such as collection rates, turn-around times, any complaints and any other relevant business. The Company will be represented by either the Managing Director and/or a Client Account Manager and Council will be represented usually by the Revenues Manager and/or a member of staff suitably experienced in enforcement matters.
- 3.15 The Council and the Company will nominate liaison officers who will be responsible for individual and bulk casework liaison. All staff in both organisations will be informed of the names of these liaison officers.
- 3.16 The Council may request a range of reports in respect of their caseload to be supplied in a variety of formats; these will be supplied within a maximum of 10 working days.

#### **4 Operations**

- 4.1 Before instructing the Company for any debt Council will ensure that any legally required warning notices have been properly issued and that legal timescales have been complied with.
- 4.2 Council will issue instructions to the Company regarding debts to be collected at specified intervals in an agreed format and with clear reference to the debt scheme the cases should be applied to. These instructions will be sent by secure IT interface provided by the Company who will load the cases electronically to its case management system within 24 hours of receipt and issue a reconciliation report within 24 hours of the instructions being received.
- 4.3 Instructions issued by the Council may include special requirements on some cases and these will be clearly indicated at the time of instruction. Multiple debt cases will also be identified wherever possible, although the Company will ensure their systems are programmed to identify and group multiple debts for individual debtors and households.
- 4.4 Once instructions have been referred, the Council will dissuade debtors from paying them direct and whenever possible recommend them to make payment to the Company. Generally, direct payments will only be accepted by the Council where full payment, including fees, is offered. If full payment of the liability order (s) is to be taken by Council the amount of fees will be debited to

the debtor's account and as soon as payment has cleared the Company will be informed and will then issue an invoice to Council for the fees.

- 4.5 The main aim of the Company's involvement is to engage with debtors from compliance stage, progressing if required through to enforcement, as a means to obtain full payment. The numbers of letters sent at compliance stage and the timeframe within which these will be issued prior to cases progressing to enforcement have been agreed with the Council although this may be subject to change through time. Any such amendments will be documented and appended to the Code of Practice.
- 4.6 The Company must ensure that they have adequate phone lines available to enable debtors to make telephone contact with their offices and that the telephone contact can be made at the price of a local call. There should be trained staff available to deal with these calls during normal office hours, with answer phone facility at other times.
- 4.7 Instructions that progress from compliance to enforcement will be administered in accordance with the TCOG regulations. The 'enforcement stage' will be administered through a series of visits in an effort to obtain full payment or enter into a payment arrangement that meets the terms agreed with the Council. The number of visits on any given day is not restricted unless the Council advises otherwise and the Company will undertake visits on a minimum of three separate days and at varied times in an effort to engage with the debtor, secure payment in full or a payment arrangement except where the first visit establishes that (either) the debtor is no longer at that address (or) there are insufficient goods to justify further action.
- 4.8. Debtors who refuse to sign a TCOG agreement are faced with the immediate removal of goods as the EA has no re-entry power otherwise. However, the EA **must** seek authorisation from the Council before removing goods and:
  - a) Council **does not** sanction the EA to conduct the removal without the need for authorisation **outside** normal office hours (8:30-5:00pm). If authorisation is required Council understands a decision will be required while the EA is on the premises.
  - b) Council **does not** sanction the EA to remove debtor tools of the trade exceeding £1350 in value without the need for authorisation **outside** normal office hours (8:30-5:00pm). If authorisation is required Council understands a decision will be required while the EA is on the premises.
  - c) Council **authorises** the use of immobilisation devices at the EA's discretion **without** the need for further approval on an individual case basis.

- 4.9. The TCOG regulations permit visits on any day of the week and in general between the hours of 6:00am and 9:00pm. Visits are also permitted outside of this period to enable attendance at premises with trading hours outside of the standard visiting times but for the purposes of this SLA the:
- a) Council permits more than one EA visit to be made on any given day.
  - b) Council will retain an option to permit Sunday visits on specified dates to be agreed with the Revenues Manager or his appointed officer.
- 4.10. The Council may require the Company to operate a specified payment arrangement on any case.
- 4.11. For arrangements made at enforcement stage the debtor; an authorised person; or a person in apparent authority will need to enter into a controlled goods agreement in accordance with the requirements laid down in the TCOG regulations; failure to do so may result in goods being removed for potential sale without further visits.
- 4.12. Where a payment is taken on site a company receipt will always be issued. Where a payment is made by post a receipt will be issued if requested provided a stamp addressed envelope is supplied. All receipts will clearly show a reference number, how much has been paid, what it is in respect of, what balance remains outstanding and will provide contact details.
- 4.13. Documentation will normally be given to the debtor or left at the service address at the time each action is carried out. Content is prescribed under the TCOG regulations and will clearly state, together with other details, what the debt is for, what action has been taken, the current balance due including a full break-down of all fees, how and when payment needs to be made and contact details for queries.
- 4.14. The Company will make available to debtors a variety of payment methods intended to make payment as easy as possible, all at no cost. They will recover all statutorily prescribed fees (and reasonably incurred statutory disbursements) and apply them in the priority and manner defined by the TCOG fees regulations.
- 4.15. All monies received by the Company will be regarded as cleared within 15 days from receipt. Cash and cleared payments will be remitted to the Council at regular intervals as specified by the Council. These will be in an agreed format and with appropriate supporting information.
- 4.16. The Company will ensure details of all action taken are up-dated on its case management system in real time or as soon as practically possible. Where the information held is not up to date the Company will liaise directly with the EA and provide the Council with the latest position as quickly as possible, endeavouring to do so within 1 working day.
- 4.17. The Company will keep full and accurate records of all events and actions taken on cases and will provide a written report when required. Such reports will always be completed where any violence or damage to a vehicle occurs or where specific threats are made by a debtor.

- 4.18. The notification of amendment, request for hold action, or special instructions in respect of individual cases will, in the first instance, normally be given by Council via 'Client Web' instruction or alternatively, by telephone, email or facsimile communication.
- 4.19. Where all possible action has been taken or considered and the debt and fees are not fully paid, the Company will remove controlled goods for sale. The removal will always be supervised by a certificated EA, and if required during the removal, additional support will be provided by another EA and/or removal/auctioneer's staff. Exempt goods as prescribed in the TCOG regulations will not be taken and items will (generally) be selected on the basis of highest potential return price. A full inventory of the items taken will be issued at the time of removal to the debtor and any identified co-owner together with statutorily prescribed documentation that confirms what action needs to be taken to obtain re-possession of the items. Any removed controlled goods will be covered by adequate insurance whilst in the possession of the Company or their agents/auctioneers.
- 4.20. Removed controlled goods will be retained for a minimum of 7 clear days from their removal prior to sale unless they are perishable in nature and their saleability and/or value would be diminished in which case sale may occur the day after removal. The fees, reasonable disbursements and expenses and any co-owner sale share as detailed in the TCOG regulations will be met from the sale proceeds before the balance is applied to compliance, sale and, enforcement fees and Council debt in accordance with the allocation process detailed in the TCOG regulations.
- 4.21. The Council will generally avoid withdrawing cases from the Company but will have discretion to do so in appropriate circumstances. Where any case has been withdrawn, the Company will close it on the case management system and arrange for its inclusion on the returns file sent with the next remittance advice. The Company will not ask for a contribution towards fees incurred when cases are closed by the Council in any circumstances other than:
- a) Where the debtor has paid Council in full including fees.
  - b) Where the Company collect a debt in full including fees from the debtor and Council request a refund of the Council Tax / NNDR, the Company will seek to retain the fees collected.
  - c) Where the Company advise the Council that a removal of goods may not realise enough funds to pay for reasonable disbursements such as storage costs and auctioneer fees, and Council still require removal, against this advice, the Company request the Council to guarantee payment of any reasonable costs incurred that are not satisfied by the sale of the insufficient goods<sup>1</sup>.

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<sup>1</sup> *If any of the above (a-c) occur, the Company will issue an invoice for the relevant amount payable within 30 days of the invoice date. Any invoice under query will be notified to the Company and endorsed to that effect.*



- 4.22. Certificates of insufficiency (*Nulla Bona's [NB's]*) will be issued for all cases where full settlement has not been obtained. If a payment arrangement has previously been entered into any information concerning the debtor's employment will be included with the certificate. (NB's are not required for cases returned as absconded or cases withdrawn at the request of the Council).
- 4.23. Unresolved cases (other than NB cases) will be returned to the Council at monthly intervals and will include a report of all action taken, any information concerning the debtors circumstances (especially employment details) and the reason for the case being returned.
- 4.24. Where it is established that a debtor has moved out of the address, discreet enquiries will be made of the new occupier or close neighbours. Any information obtained will then be sent to the Council together with the returned case report. Where appropriate trace investigations will be undertaken and the findings added to the report.
- 4.25. The Company will place a hold on all action for a specified period of time when requested to do so by the Council and ensure that no further action occurs until instructed or until the hold elapses, whichever is the sooner. If a hold elapses action will proceed unless the Council arranges for a further hold to be applied.
- 4.26. The Company shall NOT implement a postal (only) service except with the agreement of Council.

## **5. The Enforcement Agent**

- 5.1. The Company will ensure that all of their employees and EAs receive appropriate training to ensure that they have a proper understanding of the relevant legislation.
  - 5.2. The Enforcement Agent must never sub-contract any of the work authorised to be done by the Council.
  - 5.3. All EA's and employees of the Company will exercise proper care at all times and will not place themselves at undue risk. When necessary, assistance will be requested from the police. In such cases no action should be attempted until the police arrive.
  - 5.4. All EA's and employees of the Company will maintain an acceptable standard of dress when visiting debtors' premises and will conduct themselves in a professional manner.
  - 5.5. All Company EA's will carry with them identification (which will include a photograph and a telephone number for verification purposes), a copy of their authority to act on behalf of Council and a copy of their EA certificate.
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- 5.6. When dealing with a case the Company will ensure that they only speak to the debtor(s), an authorised person or a person in apparent authority. Care will be taken not to divulge the nature of the business to any other person. The absence of the debtor will not automatically prevent the action continuing but the situation will be properly considered before a decision is taken to proceed. Identification must always be shown at the start of the action and authority to act or the EA's certificate must be shown if asked for by anyone who has good reason.

## **6. Vulnerability**

- 6.1. Particular attention will be paid at compliance and enforcement stages to identify any debtors where caution may need to be exercised in administering their case. Where the EA becomes aware of a debtor's circumstances (or those of their partner or a dependant child living in the household) and concludes that further action may cause undue suffering or distress the EA will take advice from (either) their own line management or Council.

- 6.2. Examples of such circumstances include (but are not restricted to):

- a) The mentally disabled;
- b) Cases where the debtor (or the debtor's partner) is suffering from serious long-term or acute illness, or is fragile because of age or disability;
- c) Cases where there has been recent bereavement of a close member of the family (i.e. spouse, child, or parent);
- d) Recent marital break-up;
- e) Where someone resident at the premises appears to be in the final weeks of pregnancy;
- f) Where the welfare of young children would be put at risk;
- g) Where the debtor is deaf, dumb or blind;
- h) Any other circumstances where the further pursuit of the debt could be construed as not being in the best interests of the Council.

***Where there is any doubt about whether this clause applies, the Council should be consulted before any further enforcement action is taken.***

- 6.3. The Council will advise the Company of any known domestic information regarding a debtor that may assist in the management of their case. Council will also advise at the time of instruction and at any time thereafter when it becomes known, the details of any potentially violent or aggressive person.

## **7. Complaints & Redress**

- 7.1. Complaints received by the Company direct from debtors will be investigated promptly and in an objective manner. Complaints received by Council will (generally) be referred to the Company to be dealt with but may be

administered by Council at their discretion. Until a complaint has been considered and responded to, a hold will be placed on all further action unless agreed otherwise with Council.

- 7.2. All complaints will be responded to in writing within 10 working days with a full response sent to Council if this is requested. Where a full response cannot be issued within 10 days a holding response letter will be sent and intended outcomes explained.
- 7.3. Where a complaint is not resolved to the debtor's satisfaction they will be informed of their right to have the matter referred to CivEA for further consideration. Alternatively, the matter may be considered further using the Council Complaints Procedure.
- 7.4. If a debtor commences court action in respect of how their case has been administered the Company will supply all necessary information within 5 working days of a request. They will also provide any necessary witness to attend court.
- 7.5. In dealing with all cases both the Company and Council will recognise that debtors may wish to seek advice from a solicitor or Third Sector organisations like Citizens Advice Bureau. Both parties will co-operate with any such involvement and will provide all relevant information when requested, ensuring that the requirements of the Data Protection Act are complied with where another party becomes involved.

## **8. Additional Services**

### **8.1. Debt Collection Services**

- a) When passing a debt for collection, the Council will provide the following information: -
  - Name of debtor
  - Current address and telephone number (\*if known)
  - Previous address
  - Date tenancy ceased (if former tenant) or period of the debt
  - Balance outstanding
  - The Council's reference number

The Council would also provide any other relevant information that is available.

- b) The Council will require the Enforcement Agent to use the following methods to collect debts: -
  - Telephone
  - Letters
  - Door to door collection

The debtor should be contacted within 7 working days of the debt being referred by the Council.

c) Telephone and Letters

- *The Council* expects that where the debtor's telephone number is known, contact must be made by this method in conjunction with letters.
- *Debtors* may be contacted by telephone between 7.00 a.m. and 9.00 p.m. on Mondays to Saturdays (excluding bank holidays and public holidays) unless the case circumstances are exceptional.
- At least three telephone calls must be attempted and three letters sent before the debt is referred back to *the Council*.

d) Door To Door Collection

- Debtors may be contacted between the hours of 7.00 a.m. to 9.00 p.m. on Mondays to Fridays and 7.00 a.m. to 6.00 p.m. on Saturdays (excluding bank holidays and public holidays) unless the case circumstances are exceptional. If the debtor is to be visited outside these hours, prior approval from the Council must be sought.
- The debtor must be visited at least three times and at least one of these visits must be made outside normal office hours (i.e. 8.30 a.m. to 5.00 p.m. Monday to Friday). The Enforcement Agent will take no further action and will refer back the Council any "vulnerable" cases.

8.2. Executing Arrest Warrants

- a) Persons executing Warrants of Arrest on behalf of the Council must, at all time, be conscious of the need to maintain the highest standards of practice and integrity so as not to bring the Council into disrepute.
- b) Persons executing Warrants must carry their authorisation to act at all times and this must be presented to the debtor **prior** to executing a Warrant.
- c) At least three (3) attempts must be made to execute Warrants of Arrest before they can be returned to the council. The Enforcement Agent must not retain Warrants of Arrest for a period exceeding 3 months.
- d) Warrants of Arrest backed with bail, must be executed to enable the defendant to appear at the Court date/hearing indicated on the Warrant.
- e) Debtors for whom the company hold a Warrant of Arrest without bail, must be taken into custody immediately and the Enforcement Team Manager or relevant Team Leader contacted, even if outside normal office hours (8.30 a.m. - 5.00 p.m. Monday to Friday). Warrants of arrest may only be executed outside normal office hours with the prior agreement of the Enforcement Team Manager. Custody shall not extend beyond 4 hours, without prior agreement of the Enforcement Team Manager or other nominated officer of the Council.

- f) The only exception to (d) and (e) above is where: -
- The defendant pays in full
  - Employer details are supplied to the Council to enable an Attachment of Earnings Order to be considered
  - Income Support details are supplied to the Council to enable an Attachment of Benefit Order to be considered.
- g) Warrants of Arrest backed with bail must still be executed notwithstanding any offer of a payment.
- h) Persons falling into one or more of the following categories must not be taken into custody without the prior approval of the Enforcement Team Manager or other nominated officer of the Council: -
- Pensioners - persons of retirement age whose sole income is a pension.
  - Disabled - applies to both mental and physical disablement (for the physically disabled, the condition must affect their mobility, or documentary evidence can be produced which verifies that such an action would be detrimental to their health).
  - Serious illness of the debtor - this includes terminal illness or an illness that seriously affects the individual's ability to deal with his or her own affairs.
  - Recent bereavement of a spouse or partner, mother, father, son or daughter
  - Recent serious marital problems, i.e. divorce, separation, desertion.
  - Serious illness of a spouse, partner or child.
- i) Warrants of Arrest without bail should not be executed if the children of the debtor are in any way exposed to neglect, or adequate child-care arrangements cannot be made.
- Where there is any doubt whether (g) or (h) above applies, the Council should be consulted before taking the debtor into custody.**
- j) Absconded debtors should be traced where possible and the agreed fee charged to the Council.
- k) Where the debtor has agreed to surrender voluntarily to the Court and fails to appear the Company's representative will escort the defendant to the next appropriate Court.

## 9. Signatures of Agreement

Signed: \_\_\_\_\_

(On behalf of Rhondda Cynon Taf County Borough Council)

**Name:**

**Position:**

**Date**

Signed: \_\_\_\_\_

(On behalf of the Company )

**Name:**

**Position:**

**Date:**

## **10. Circulation**

Copies of this Service Level Agreement are held by:

- Rhondda Cynon Taf County Borough Council
- the Company
- Citizens Advice Bureau

**Council's Agreed Approach (Compliance)**

