

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO POLICY AND FINANCE COMMITTEE

DECISION

Agenda Item No 9

meeting date: 25 MARCH 2014
title: TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007
submitted by: DIRECTOR OF RESOURCES
principal author: MARK EDMONDSON

1 PURPOSE

- 1.1 To inform members about the changes introduced by the Tribunals, Courts and Enforcement Act 2007 (TCE Act) which have been implemented by the Taking Control of Goods Regulation 2013 (TCG Regs).
- 1.2 To agree what action we will take to implement the changes.

2 BACKGROUND

- 2.1 The Act provides for several diverse matters relating to the law, some of them being significant changes to the structure of the courts and fundamental legal procedures. There are six parts to the Act. The primary focus of this report is Part 3.
- 2.2 Part 3 creates a new system of taking control of goods in order to enforce judgments and abolishes ancient common law writs and remedies such as fieri facias, replevin and distress for rent. It introduces a modern system of 'certified enforcement agents' and 'exempted enforcement agents' which includes civil servants such as court officers and County Court Bailiffs, civilian enforcement officers and police officers.
- 2.3 The regulations set out the procedure enforcement agents must follow when taking control of goods and, if necessary, selling them to recover a debt. The reforms follow the Government's consultation paper - 'Transforming Bailiff Action'. The consultation ran from 17 February 2012 to 31 May 2012 and was aimed at the public, the enforcement industry, the legal profession, the judiciary and the advice sector.
- 2.4 The Government stated the reason for the consultation was a desire to create a single piece of legislation dealing with bailiffs which tackles aggressive and unnecessary bailiff action and creates a straightforward system which is transparent with a fair cost structure.
- 2.5 The response to the consultation set out 19 recommendations and the intention to introduce legislation to implement them. A full copy of the Government's response has been placed in the members room.
- 2.6 As a result the TCG Regs 2013 (SI 2013/1894) were brought before parliament and come into force on 6 April 2014.
- 2.7 The recommendations are:
 - 1) To simplify and clarify the law
 - 2) To prevent the use of force against the person
 - 3) To clarify the powers of entry
 - 4) Enforcement Agents should consider the vulnerability of the debtor when deciding what action to take

- 5) To introduce a time limit of twelve months for action to be taken
- 6) Minimum period of notice of seven days
- 7) Enforcement agents can only enter via door or usual means of entry
- 8) Ability to enter premises any day with time limits of 6am to 9pm for residential premises
- 9) Debtor can authorise another person to enter into controlled goods agreement
- 10) Enforcement agent has power to secure premises if they believe goods will be removed
- 11) Minimum period of seven days before goods can be sold
- 12) Information from landlord (rent cases) clarified
- 13) Enforcement stages clearly identified
- 14) Threshold for percentage fees in non-High Court debt should be £1,500
- 15) Multiple warrants only attract one compliance stage fee
- 16) Separate charging structures for High Court and non-High Court debt
- 17) Payments distributed to creditor and enforcement agent pro rata
- 18) Enhances certification process for enforcement agents
- 19) Set competence criteria for entry in enforcement profession

2.8 This Council have used Rossendales Ltd as our bailiffs to enforce council tax and business rates collection for more than 20 years. We have had very few complaints regarding our bailiffs and their collection of our debt has always exceeded industry averages ie more than 60% of the debt referred. We have had a good working relationship with Rossendales over the years.

2.9 The number of cases and debt referred to Rossendales during the last three years is as follows:

Year	Council Tax		Business Rates	
	Number	Debt £	Number	Debt £
2013/14	359	224,385.27	39	173,367.17
2012/13	400	234,445.48	76	201,625.39
2011/12	530	318,024.84	59	200,370.05

2.10 You can see there has been a considerable reduction in the number of cases referred to our bailiffs despite challenging economic times and the changes to council tax benefit from 1 April 2013. This is particularly pleasing. The value of cases referred in the current year represents only 0.7% i.e. less than 1% of the total council tax to be collected.

2.11 Members will be aware we have one of the highest council tax collection rates in the country, and the highest in Lancashire by some distance. In 2012/13 our in year collection rate was

99.0%, our eventual collection rate will be nearer to 99.9%. The net total council tax to be collected this year is approximately £31m and our write-offs are not expected to exceed 0.1% i.e. £31,000.

3 ISSUES

- 3.1 The TCG Regs 2013 have effectively replaced distress in the recovery of council tax and business rates debts.
- 3.2 Bailiffs will in future be known as enforcement agents and terms such as 'levying', 'distress' and 'walking possession' will no longer apply.
- 3.3 The definition of exempt goods has been changed and now only tools of the trade with a value below £1,350 cannot be removed.
- 3.4 At present there is no time limit in relation to bailiff action but going forward it will be limited to twelve months from the issue of the notice of enforcement.

4 FEE STRUCTURE

- 4.1 The Government state the new fee structure aligns more closely with the cost of the activity carried out by the enforcement agent and will alter incentives to encourage more appropriate enforcement behaviour and be both clearer and fairer to debtors and enforcement agents. The proposed changes to the structures are set out below.

Non-High Court

MoJ Fees for non-High Court Enforcement			
Fee Stage	Fixed Fee	Percentage Fees	
		£0 - £1,500	>£1,500
Administration	£75.00	0%	0%
Enforcement	£235.00	0%	7.5%
Sale	£110.00	0%	7.5%

Fee Structure Features	
Stage Triggers	
Administration	Instruction received by Enforcement Agent Company
Enforcement	First attendance by Enforcement Agent to debtor's premises/'door step'
Sale	Goods taken to place of sale
Creditor Guaranteed Fee	None

- 4.2 The fee structure has been radically simplified from the current structure which is attached at Annex 1 for information. There will be a £75.00 fee at compliance stage followed by an enforcement fee of £235.00 + 7.5% on debts exceeding £1,500 when the enforcement agent makes a visit to the property and finally a sale fee of £110.00 + 7.5% on debts exceeding £1,500 when goods are removed.

4.3 Rossendales are proposing to dramatically increase their attempts to contact debtors at the compliance stage prior to visiting the property. This will include obtaining telephone contact details of the debtor and sending up to three letters to them detailing the consequences of non-compliance and costs associated with the next stage.

5 CONCLUSION

5.1 The main change will be the impact on debtors of the new fee structure. We will ensure that where council tax payers fall into arrears they are warned of the implications of a referral to the bailiffs.

5.2 We do not propose changing our bailiffs given our excellent collection rates, good working relationship and low level of complaints

5.3 We will closely monitor how Rossendales implement these changes and any impact on our collection rates.

6 RECOMMEND THAT COMMITTEE

6.1 Note the changes introduced by the Tribunals, Courts and Enforcement Act 2007 to how we collect council tax and business rates debts.

6.2 Agree to continue to use Rossendales Ltd to enforce the collection of these debts.

HEAD OF REVENUES AND BENEFITS

DIRECTOR OF RESOURCES

PF18-14/ME/AC

12 March 2014

For further information please ask for Mark Edmondson.

Schedule 5 – Charges Connected with Distress

<i>Matter connected with distress</i>	<i>Charge</i>
A. For making a visit to premises with a view to levying distress (where no levy is made):	
➤ where the visit is the first or only such visit:	£24.50
➤ where the visit is the second such visit.	£18.00
B. For levying distress	The lesser of:
	➤ amount of the costs and fees reasonably incurred; and
	➤ where the sum due at the time of the levy does not exceed £100, £24.50; or
	➤ where the sum due at the time of the levy exceeds £100, 24.5% on the first £100 of the sum due, 4% on the next £400, 2.5% on the next £1,500, 1% on the next £8,000 and 0.25% on any additional sum.
	(The sum due at any time for these purposes means so much of the amount in respect of which the Liability Order concerned was made as is outstanding at the time).
C. For one attendance with a vehicle with a view to the removal of goods (where, following the levy, goods are not removed):	Reasonable costs and fees incurred.
D. For the removal and storage of goods for the purposes of sale.	Reasonable costs and fees incurred.
E. For the possession of goods:	
➤ for close possession (the person in possession to provide her/his own board)	£15.00 a day
➤ for walking possession.	£12.00
F. For appraisalment of an item distrained, at the request in writing of the debtor:	Reasonable fees and expenses of the broker appraising.
No charge shall be payable under F in respect of the appraisalment of an item unless the debtor has been advised of the charge, and the manner of its calculation, before the appraisalment is made.	
G. For the other expenses of, and commission on, a sale by auction:	
➤ where the sale is held on the auctioneer's premises;	The auctioneer's commission fee and out-of-pocket expenses (but not exceeding in aggregate 15% of the sum realised), together with reasonable costs and fees incurred in respect of advertising.
➤ where the sale is held on the debtor's premises;	The auctioneer's commission fee (but not exceeding 7.5% of the sum realised), together with the auctioneer's out-of-pocket expenses and reasonable costs and fees incurred in respect of advertising.
H. Where no sale takes place by reason of payment.	Either £24.50 or the actual costs incurred, to maximum of 5% of the amount in respect of which the Liability Order was made, whichever is the greater.