

Review of bailiff services**REPORT TO RESOURCES SCRUTINY COMMITTEE**

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PORTFOLIO	Resources and Performance Management
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PURPOSE

1. To inform members of changes to the law around how the bailiff system must operate from April 2014 governing how debts can be enforced
2. To present members with options for future delivery of enforcing debts in respect of local taxation for consideration.

RECOMMENDATION

3. That members note the changes in legislation from April 2014 and comment on the options presented in the report for future enforcement/bailiff action in respect of local taxation.

REASONS FOR RECOMMENDATION

4. To ensure members are fully aware of the changes to the system of enforcing debts from April 2014 and to give members an opportunity to comment on the options available to the Council before a formal decision is made.

SUMMARY OF KEY POINTS

5. **Background - the current system of bailiff action** The current system of enforcing debts through bailiff activity or 'distress' is enshrined in common law and can be traced back to Anglo- Saxon and Viking days. It is not written down comprehensively in one place and is based on case law built up over a number of years. The government has focussed on reviewing the system of enforcement and this review started back in 1998 and the Tribunal, Courts and Enforcement Act was passed in 2007. There has been a long delay in regulations being laid down detailing how enforcement should be carried out and the Taking Control of Good regulations were laid down in 2013. Additional regulations governing the fee structure and also the process by which individuals can be certificated to act as bailiffs are due soon. The change to the bailiff system will take place from April 2014.
6. **The proposed change to the system** The Tribunal, Courts and Enforcement Act abolishes all existing powers to use common law distress. The term 'bailiff' will no longer be used and instead Enforcement Agents (the new term to describe those carrying out

this work) will take control of goods when debts are outstanding. Enforcement Agents (EAs) will be regulated in order to improve public perceptions of how they operate. The rules of operation and the fees structure will be clear so that the public know their rights and that EAs cannot abuse their powers. The same rules will apply to all debts e.g. council tax, business rates and parking debts to ensure clarity.

7. **The new rules** The taking control of goods regulations (SI 2013/1894) detail the procedure by which goods can be seized in order to obtain payment of money owed. The government's policy intention in clearly setting out the process is to ensure that EAs do not misrepresent their powers, overcharge debtors and indulge in aggressive behaviour. The EA can work on any day between the hours of 6am and 9pm and must access the property by door or normal means of entry. Goods cannot be taken if the debtor is a child or if the only person present is a child or vulnerable person. Goods that cannot be taken include :-

- Tools of the trade up to £1,350 (this does not apply to business rates debts)
- Essential household and personal items for example cooker, fridge, washing machine
- Items required for a child or disabled person

8. **Stages of Enforcement** The new rules introduce set stages for enforcement and a clear fees strategy that debtors will be able to understand. The final fee structure has not yet been laid down in regulations but the indicative fee strategy is listed below
The first stage is the administration stage. This results in a fee of £75 and gives the debtor notice of enforcement. The notice period before any enforcement takes place is at least seven days and this will give the debtor time to negotiate a payment arrangement before enforcement action starts. The government intends that this will avoid unnecessary and costly bailiff visits and gives the debtor fair warning of the action that may follow.

The second stage is the enforcement stage and this covers physical attendance at the debtor's property. Enforcement action must take place within 12 months of the notice of enforcement and a set fee of £230 covers all work carried out at the enforcement stage and this will avoid the practice of generating unnecessary visits and costs. A further charge of 7.5% of any debt value over £1,500 will also be applied.

The third stage of enforcement is the sale of goods stage. The costs that apply here are £105 plus 7.5% of any debt value over £1,500. The trigger for the fee is the removal of goods. The reasonable costs of selling the goods at internet or public auction etc can also be added to the debt. At least seven days must have elapsed from removing the goods before they can be sold and a notice of sale must be provided to the debtor.

9. **Current system of bailiff activity at Burnley Council.** This Council currently uses external bailiff companies for business rates debts and out of area accounts. Council Tax debts are enforced by in-house Council bailiffs. Most other local authorities have externalised their bailiff services now and Burnley is the only Council in Lancashire still carrying out in-house bailiff activity. Burnley Council has retained its own bailiff service over the years to enable the Council to monitor and control its own service. The rationale behind this is that :-

- complaints about bailiff activity would be kept to a minimum
- the primary objective in collecting the debts would be to collect Council Tax not to

- maximise the amount of costs applied to an account
- the bailiffs could also act as advice agents informing debtors of potential entitlements to discounts, exemptions and benefits.
- The Council could retain any costs income – currently around £50k per year applied at a collection rate of 23% (£11,500)

The Council can currently charge the statutory bailiff fees of £24.50 for a first visit and £18 for a second visit. Other charges can apply for the seizure, removal and sale of goods; some defined as ‘reasonable’ others subject to statutory charges and percentage rates. The new rules and charging mechanism gives clarity to the debtor about the stages and fees charged per stage. However, the new charges could mean that for many debtors the costs could increase from £42.50 to £305 if enforcement action takes place.

10. **Options for the Council** The Council has a number of options open to it in relation to bailiff activity from April 2014.

Option 1 Continue with an in-house bailiff service and modernise the service. This would potentially increase the Council’s income in respect of enforcement activity. In 2012, 2,252 debtors were subject to bailiff action. This means that for compliance activity alone costs could reach £168,750 and for enforcement activity this could amount to £258,980 although a high provision for bad debt would apply, see table below. However, one of the government’s policy intentions in setting up the new scheme is to deter creditors from engaging in unnecessary enforcement action in favour of a stronger focus on the compliance stage. Private enforcement companies are likely to set up or expand their pre-enforcement activity to do this. This will include expanding call centre operations, utilising other technology including use of sms texting, identifying mobile numbers and address searches. They will also contact debtors outside of normal working hours to maximise the opportunities to make pre-enforcement arrangements and will undertake more customer contacts before the costly £230 enforcement stage commences. The Council would need to modernise its own compliance activity in order to avoid a situation where the Council was carrying out fewer customer contacts at the compliance stage than external enforcement agents and doing so with outdated resources. Bailiff/enforcement services are a specialist service and large enforcement companies have wider resources and continually invest in improving their enforcement activity as this is their core business. There is an argument that the Council in carrying out this work alongside a wider range of revenues and benefits work, is too small to provide this service economically and efficiently in isolation. Debtors may benefit from larger organisations providing an extensive service aimed at reducing overall the volume of enforcement action carried out while maintaining the level of debts recovered. Providing a resilient and modern in-house service would require the provision of additional resources, setting up an out of hours service and investment in enforcement software. Indicative costs for modernising the service are estimated at :-

Income	Costs	Net income
Compliance only £168,750 @ 23% collection rate	Software	
£38,813	£14,400	
Enforcement Assuming 50% of cases go forward for enforcement £258,980 @ 23% collection rate	Additional staffing resources	
£59,565	£50,270	

* indicative amounts based on standard fees for 2,252 cases		Postages/searches /calls	£10,000	
		Mobile technology	£5,000	
Total income	£98,378	Total costs	£79,670	£18,708 p.a.

Option 2 Outsource the bailiff service to private enforcement agents. If we did this we could reduce in-house staffing resources that are currently used to carry out bailiff activity although in-house bailiff cost income would also be lost. Any enforcement cost income under an outsourced service would go to the private enforcement company. The Council would need to determine the accounts to go to the external provider, manage the externalised service and be clear in contracting with any provider what the expectations were around actions at enforcement stage. This would ensure clear service level agreements were in place around how debts and debtors should be handled and expectations around workflow and complaint monitoring. This option would bring the Council in line with most other Revenues and Benefits services in managing enforcement action. Larger specialist enforcement organisations would be in a stronger position in terms of resources to operate a debt recovery system aimed at reducing overall the volume of enforcement action while maintaining the level of debts recovered.

Saving	Income loss	Net savings
staffing resources	Loss of current in-house bailiff income £50k @ 23% collection rate	
Saving £51,299	Income loss £11,500	£39,799 p.a.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

11. As detailed in the report

POLICY IMPLICATIONS

12. As detailed in the report

DETAILS OF CONSULTATION

13. Helen Seechurn – Director of Resources

14. Councillor Mark Townsend – Executive member for Resources and Performance Management

BACKGROUND PAPERS

15.

FURTHER INFORMATION

PLEASE CONTACT:

ALSO: