

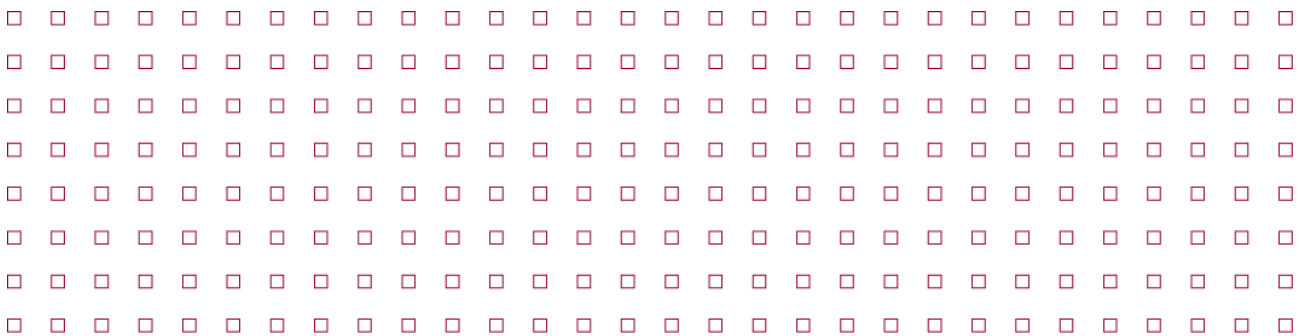


Ministry
of Justice

Taking Control of Goods: National Standards

April 2014

6 April 2014



Introduction

1. 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 established a set of common standards to cover this activity supporting the underpinning legislation. 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.
2. 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.
3. 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.

Terms used

4. In this document we have used the following terms:

Creditor: this includes - 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 the commercial rent arrears recovery (CRAR) process. .

Debtor: 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: we mean the lawful process of warrant or writ execution, and taking control of goods.

Enforcement Agency: 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: someone who is responsible for the enforcement of court orders against goods (warrants of control) or the person (arrest warrants); we include those employed in the public and private sector, bailiffs and High Court Enforcement Officers.

Creditors' Responsibilities

5. In order for the enforcement process to work effectively, creditors must be fully aware of their own responsibilities. The primary purpose of this guidance for creditors is to draw their attention to their responsibilities when instructing and dealing with enforcement agents/agencies to recover debts on their behalf.
6. The creditors responsibilities 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 so that these are adequate, fair and appropriate for the work involved.

7. Creditors should remember that enforcement agents are acting on their behalf and that ultimately they are responsible, and accountable, for the enforcement agents acting on their behalf.
8. Creditors should act proportionately when seeking to recover debt, taking into account debtors' circumstances.
9. Creditors must notify the enforcement agency of all payments received and other contacts with the debtor, including repayment agreements made with the debtor.
10. 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.
11. 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 for the work they have undertaken.
12. 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.
13. 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.
14. Creditors must consider the appropriateness of referring debtors in potentially vulnerable situations to enforcement agents and, if they choose to proceed, must alert the enforcement agent to this situation.
15. Creditors should ensure that there are clear protocols agreed with their enforcement agents governing the approach that should be taken when a debtor has been identified as vulnerable.
16. Should a debtor be identified as vulnerable, creditors should be prepared to take control of the case, at any time, if necessary.
17. 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.
18. Creditors should have a clear complaints procedure in place to address complaints regarding their own enforcement agents or external enforcement agents acting on their behalf.

Professionalism and conduct of the enforcement agent

19. Enforcement agents must act within the law at all times, including all 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.
20. 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 by that agent
 - 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

- Falsely implying or stating that a debtor refusing entry to a property is classed as an offence.
21. 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, their families, appointed third parties or property.
 22. 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).
 23. Enforcement agents, for the purpose of taking control of goods shall, without the use of unlawful force, gain access to the goods. The enforcement agent must produce all relevant notices and documents, such as controlled goods agreements, that are required by regulations or statute.
 24. Debtors must not be pressed to make unrealistic offers and should be asked to consider carefully any offer they voluntarily make and where possible refer to free debt advice.
 25. Where a creditor has indicated they will accept a reasonable repayment offer, enforcement agents must refer such offers onto the creditor.
 26. 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.
 27. 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)
 28. Enforcement agents must act in accordance with the Human Rights Act 1998 and the Equality Act 2010. They must not discriminate unfairly on any grounds including those of age, disability, ethnicity, gender, race, religion or sexual orientation.
 29. 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.
 30. Where enforcement agents have identified vulnerable debtors or situations, they should alert the creditor and ensure they act in accordance with all relevant legislation.
 31. Enforcement agents must not seek to enforce the recovery of fees where an enforcement power has ceased to be exercisable.

Statutory or Financial Requirements for Enforcement Agencies¹

32. Enforcement agencies should ensure that audited accounts are available, where required by law. 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.
33. Enforcement agencies must comply with statutory obligations, for example, the Companies Act, HMRC provisions, Data Protection, Health & Safety etc.
34. 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.
35. Enforcement agencies must keep a complete record of all financial transactions in whatever capacity undertaken.
36. Enforcement agencies must maintain suitable and comprehensive insurance cover for both professional indemnity and other risks including employer's liability and public liability.

Training and Certification

37. 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, professionally and within the bounds of the relevant legislation. This training should be provided at the commencement of employment and at intervals afterwards to ensure that their knowledge is kept up to date.
38. Professional training/assessment should be to a standard that complies with relevant legislation.
39. Enforcement agencies must ensure that legislation restricting the enforcement activity to enforcement agents is complied with²
40. Enforcement agencies must ensure that all employees, contractors and agents will at all times act within the scope of current legislation, for example The Companies Act, HMRC provisions, Data Protection, Health and Safety, Equality, and Human Rights Act etc, and have an appropriate knowledge and understanding of it and be aware of any statutory obligations and provide relevant training.
41. 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.
42. Enforcement agents should be trained to recognise vulnerable debtors, to alert creditors where they have identified such debtors and when to withdraw from such a situation.

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

² The Tribunals, Courts and Enforcement Act 2007.

Complaints/Discipline

43. Enforcement agencies must operate complaints and disciplinary procedures with which their agents must be fully aware of.
44. The debtor should be able to easily find out how to make a complaint and obstacles should not be placed in their way.
45. The complaints procedure should be set out in plain English, have a main point of contact, set time limits for dealing with complaints and include an independent appeal process where appropriate. A register should be maintained to record all complaints and complainants should be notified of the outcome of disputes.
46. 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.
47. The enforcement agent must make available details of their own and the creditor's complaints procedure on request or when circumstances indicate it would be appropriate to do so.

Information and confidentiality

48. All notices, correspondence and documentation issued by the enforcement agent/agency must be clear, complete and unambiguous and to the satisfaction of the creditor. They must not use unhelpful legal or technical language and should comply with relevant legislation.
49. 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, where appropriate, paid for by the creditor.
50. All information obtained during the administration and enforcement of warrants must be treated as confidential between the enforcement agent, debtor, the creditor and any third parties nominated by the debtor.
51. Enforcement agents should provide clear and prompt information to debtors and where appropriate, creditors.
52. Enforcement agents should, so far as it is practical, avoid disclosing the purpose of their visit to anyone other than the debtor or a third party nominated by the debtor, for example an advice agency representative. Where the debtor is not seen, the relevant documents must be left at the address in a sealed envelope addressed to the debtor.
53. Enforcement agents should make debtors aware of the possible additional costs of enforcement which will be incurred if further action becomes necessary. If a written request is made, an itemised account should be provided.
54. Enforcement agents will clearly explain and give in writing, the consequences of taking control of a debtor's goods.

Times and Hours

55. Enforcement agents should be respectful of the religion and culture of others at all times. They should carefully consider the appropriateness of undertaking enforcement on any day of religious or cultural observance or during any major religious or cultural festival.

56. Enforcement action should only be carried out between the hours of 6.00am and 9.00pm, or at any time during trading hours, unless otherwise authorised by a court. Existing legislation must be observed.

Mode of entry

57. Enforcement agents should not seek to gain peaceable entry to premises under false pretences; for example asking to use the toilet, or to use the telephone. They should be clear as to why they are seeking entry to the premises.
58. Enforcement agents should only enter premises as part of the enforcement process.
59. Enforcement agents must only use a door or usual means of entry to enter premises.
60. A power to enter premises by force exists for the execution of High Court and County Court debts at business premises or at any premises where an enforcement agent is enforcing criminal penalties. This power should only be used to the extent that it is reasonably required and only after the debtor has been warned that the power exists and the consequences of a wilful refusal to co-operate.
61. A power to re-enter premises by force applies to both residential and business premises where a controlled goods agreement is in place and the goods remain on the premises but the debtor has failed to comply with the repayment terms of the controlled goods agreement. This power should only be used to the extent that it is reasonably required and only after the debtor has been given notice of the enforcement agent's intention to re-enter.

Goods

62. 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.
63. Enforcement agents must ensure that goods are handled with proper care so that they do not suffer any damage or cause damage to other goods or property, whilst in their possession. Enforcement agents should have insurance in place for goods in transit so that if damage occurs this is covered by the policy.
64. 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) or items clearly identifiable as required for the care and treatment of the disabled, elderly and seriously ill.
65. A detailed and complete receipt for the goods removed should be given to the debtor or left at the premises in accordance with the appropriate regulations.
66. Enforcement agents should take all reasonable steps to satisfy themselves that the value of the goods taken into control to cover the sum outstanding is proportional to the value of the debt and fees owed.
67. Enforcement agents should not take control or remove goods clearly belonging solely to a third party not responsible for the debt. Where a claim is made, the third party should be given clear instructions on the process required to recover their goods.

68. Enforcement agents should be aware of circumstances where a “no goods” valuation may be appropriate – for example where no goods of sufficient value have been identified; or where the removal of goods would lead to severe hardship for the debtor. In such instances the enforcement agent should make the creditor aware of this situation.

Multiple warrants

69. Where enforcement agents have multiple warrants for a single debtor, an enforcement agent must take control of goods, and sell or dispose of these goods, on the same occasion except where it is not practical to do so.

Vulnerable situations

70. 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.
71. 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.
72. Enforcement agents must withdraw from domestic premises if the only person present is, or appears to be, under the age of 16 or is deemed to be vulnerable by the enforcement agent; they can ask when the debtor will be home - if appropriate.
73. Enforcement agents must withdraw without making enquiries if the only persons present are children who appear to be under the age of 12.
74. A debtor may be considered vulnerable if, for reasons of age, health or disability they are unable to safeguard their personal welfare or the personal welfare of other members of the household.
75. The enforcement agent must be sure that the debtor or the person to whom they are entering into a controlled goods agreement understands the agreement and the consequences if the agreement is not complied with.
76. Enforcement agents should be aware that vulnerability may not be immediately obvious.
77. Some groups who might be vulnerable are listed below. However, this list is not exhaustive. Care should be taken to assess each situation on a case by case basis.
- 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.
78. Wherever possible, enforcement agents should have arrangements in place for rapidly accessing interpretation services (including British Sign Language), when these are needed, and provide on request information in large print or in Braille for debtors with impaired sight.