

**Report To: Cabinet**

**Date of Meeting: 25<sup>th</sup> April 2014**

**Lead Member / Officer: Julian Thompson-Hill / Paul McGrady**

**Report Author: Rod Urquhart, Head of Revenues and Benefits**

**Title: Bailiff Reform**

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**1. What is the report about?**

To advise members of the changes in government legislation, the impact to DCC and our customers, effective from 6th April 2014. It must also be noted this will also have a direct impact on our commercial agreement with Conwy County Council, for whom we act as a bailiff service provider.

**2. What is the reason for making this report?**

To understand the financial implications associated with these changes, to seek approval for the minimum levels of debt to be sent to the bailiff and associated operational procedures, including the adoption of a vulnerability policy, designed to protect vulnerable customers.

**3. What are the Recommendations?**

- That members approve the minimum debt value to be issued to the enforcement agent, as set out in paragraph 4.13 below and note the new processes as shown in Appendix C.

**4. Report details.**

**Background**

**4.1** For a number of years the Ministry of Justice has undertaken a review on how Civil Enforcement, through the use of Bailiffs is working. A large proportion of the industry, consumer groups, Local Authorities, Debt Agencies and other interested parties have called for a more transparent system, which would be equitable to both the end customer and the industry.

**4.2** During 2012/13 a lengthy consultation exercise was undertaken, from which phase 1 of the Tribunals and Courts Act was passed in parliament. The next set of the regulations 'the control of goods regulations' was laid in July 2013 and the regulations governing the levels of fees and prescribed documents / processes was laid in January 2014, effective from 6<sup>th</sup> April 2014. There are still some minor, consequential regulations to be laid, which will cover the 'transitional period' where we move from one set of regulations to the other,

both from a customer view and from a new certification process and also the treatment of VAT.

**4.3** One of the key strands within the legislation is the necessity to treat all customers fairly and consistently. The policy intention is that organisations pursuing debts are more focussed at resolving and negotiating with the debtor at the initial phase, where a set fee is charged, rather than issue the case automatically to the bailiff to visit the customer.

**4.4** If within the first phase no agreement can be reached or an arrangement is broken, then subsequent phases of recovery, including the seizure and sale off goods, will commence, again within defined timescales and levels of fees.

### **Current Issues**

**4.5** DCC currently has an in-house bailiff team, which collects the majority of cases passed through and raises fees, in line with the current legislation. We also act as a collecting agent for Conwy CC, who pays an agreed annual fee. There are a number of cases that are passed to a private sector company, where the debtor has left our area and it is not cost effective for us to pursue it further.

**4.6** The defined levels of fees to be charged for Non High Court debt are shown below, details of the recovery criteria and stages are shown as an appendix to this report.

- Compliance Notice (£75)
- Enforcement Stage (£235) + 7.5% of the Value after £1500
- Sale of goods (£110) + 7.5% of the Value after £1500
- Reasonable disbursements (to include Auction Fees, Storage Fees etc)

**4.7** As stated in 4.3 above the desire from central government is that 'Enforcement Agencies' will attempt to secure a form of payment arrangement from the debtor at the compliance note phase, hence there is a defined minimum amount of contact and prescribed forms and process to follow. It should be noted that as soon as the compliance notice has been issued the fee of £75 is automatically charged to the client.

**4.8** Since December 2013 the Revenues Team has trialled a telephone debt strategy, contacting the client and encouraging payment. This has been very successful with large numbers of customers contacted and payments received. This has set the foundations for the changes post 6th April 2014 but we will need to monitor this carefully in terms of performance and resources.

**4.9** As mentioned in 4.4 above if no contact is received or the debtor fails to keep to an arrangement then the process moves to the second phase, where by different prescribed documents are sent to the customer, explaining the situation and potential consequences and a fee of £235 is automatically charged. During this stage the enforcement agent will again attempt to secure

payment through an arrangement but if necessary and appropriate will mark aside a schedule of goods to be removed and sold if payment is not forthcoming.

- 4.10** Where the enforcement agent finds out that the customer is vulnerable the legislation, again is prescriptive in that the agent must give the customer 7 days to get suitable advice or assistance in dealing with their affairs and the £235 fee is then rescinded. In these cases we would refer the customer to a debt advice organisation and suspend action for 30 days. All cases for DCC would be subject to the Safeguarding Policy, which clearly defines vulnerable adults and children.
- 4.11** If the customer does not respond to the second stage and if there are sufficient goods to cover the debt then the final sale stage will be initiated. Again there are prescribed forms and time in between notice of seizure / sale for the debtor to come to a payment arrangement. If however this is not forthcoming then the goods will be sold, the disbursements taken off the sale price and the balance of the proceeds passed to the Local Authority.
- 4.12** DCC uses Jacobs Ltd to action cases out of our area as they have a nationwide service. The contract with them allows us to serve notice, giving 4 weeks written notice. We also use Jacobs where we have no contact with the debtor, despite numerous attempts, which is known in the industry as 'recycling the debt'. An initial discussion with two competitor enforcement companies has shown that there is a strong desire within the industry to take on these cases. DCC will go out to tender for this service to secure the best deal for us and gain some value added benefits.
- 4.13** As with any new legislation being implemented there will be a great deal of scrutiny, particularly from the press. As such it is essential that whilst we are protecting the public purse and pursuing non-payment, that we are also being fair and equitable to the customer. Given the amount of extra effort and resources being put in to secure payment at an earlier stage of the recovery process we need to decide on a minimum value of debt to be passed through to the enforcement stage, as the costs to the debtor increase dramatically. The suggested options are shown below.

Debt Value	Compliance Notice Fee	Enforcement Fee
Less than £75	No	No
Between £75 - £150	Yes , £75 Charged	No
Greater than £150	Yes , £75 Charged	Yes , £235 Charged

Any cases where payment was not made would be reviewed on an individual basis.

- 4.14** The same process would be followed for Businesses; however the final sanction of removing goods would in some cases cause the business to close down. As such it is suggested that the final decision in terms of removal of goods in these circumstances is delegated to the Head of Finance in

conjunction with the Lead Member for Finance and Assets and the Head of Revenues and Benefits.

- 4.15** Details of current processes are shown in appendices A and B and the future processes are shown in appendix C .

**5. How does the decision contribute to the Corporate Priorities?**

By implementing this solution it will meet the modernisation agenda and also the aspiration to be an efficient Council.

**6. What will it cost and how will it affect other services?**

There is a cost associated with the implementation of a new Bailiff Software System (One Step), associated equipment and interface development, of approximately £20k, it has been agreed with Conwy that they will contribute 50% towards the set up costs. The remaining £10k has been allocated from existing budgets so that overall it is cost neutral to DCC..

**7. What are the main conclusions of the Equality Impact Assessment (EqIA) undertaken on the decision? The completed EqIA template should be attached as an appendix to the report.**

Not applicable as the Eqia has already been completed by Ministry of Justice

**8. What consultations have been carried out with Scrutiny and others?**

None as this is a legislative change, however it is suggested that a report could be provided in November / December 2014 to Scrutiny and or Cabinet giving an update on the changes and their impacts.

**9. Chief Finance Officer Statement**

The Council relies heavily on income generated through Council Tax, Business Rates and Sundry Debts. It is therefore important to have a robust recovery process that is also balanced and fair. The appendices show the effort the Council goes to to avoid the need for bailiff intervention. The proposals above aim to strike the balance between recovery and preventing unnecessary fees increasing a person's debt.

**10. What risks are there and is there anything we can do to reduce them?**

There is a risk with the new legislation that we will need to get the balance right between genuine payers with hardship against payers who refuse to pay.

**11. Power to make the Decision**

Taking Control of Goods SI 2013 No 1894 and SI 2014 No.1  
Tribunals and Court Enforcement Act 2007