

Dear sir/madam,

26<sup>th</sup> January 2015

**Freedom of Information request regarding the handling of public money.**

I am looking for clarification on the legislative position regarding direct payments in respect of overdue Council Tax to your Local Authority after Enforcement Agents have been instructed. I am hoping for a clear, informed reply and I provide the following information to assist you. I appreciate that it is a lengthy correspondence and that you may have had previous enquiries on this matter.

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When a person has defaulted on their Council Tax, a Liability Order is sought, and eventually the Local Authority can instruct Enforcement Agents to recover that debt.

Should a person then pay the sum stated on the Liability Order as adjudged in court (by way of cash to a cashier or by way of the online payment system) without any goods being removed in execution of the warrant (and without any disbursements being paid in connection with removing goods), it has been stated that this sum may be given to the Enforcement Agent to enable them to subtract their fees and return the balance to pursuant (apparently) to the Regulation 13 of the Taking Control of Goods (Fees) Regulations 2014 which states;

*(1) Subject to paragraph 50 (6) of Schedule 12, when the proceeds from the exercise of an enforcement power are less than the amount outstanding, they must be applied in accordance with this regulation.*

*(2) Where the goods are sold or disposed of at public auction (other than by internet auction), the proceeds must be applied first in payment of the auctioneer's fees calculated in accordance with regulation 9 (2) or (3) as appropriate.*

"Paragraph 50" means paragraph 50 of Schedule 12 of the Tribunals Courts & Enforcement Act 2007. This paragraph at 50 (2) defines "proceeds" as;

*(2) Proceeds are any of these—*

*(a) proceeds of sale or disposal of controlled goods;*

*(b) money taken in exercise of the power, if paragraph 37(1) does not apply to it.*

The Taking Control Of Goods (Fees) Regulations 2014 section 4 states:

*4. (1) — The enforcement agent may recover from the debtor the fees indicated in the Schedule in accordance with this regulation and regulations 11, 12, 13, 16 and 17, by reference to the stage, or stages, of enforcement for which enforcement-related services have been supplied.*

*(2) The fees referred to in paragraph (1) may be recovered out of proceeds.*

Clearly these regulations confirm that an Enforcement Agent can **only** collect his fees from the **proceeds of enforcement**; proceeds is defined above as money taken by the Enforcement Agent or through the sale of the defaulter's goods. There is absolutely no other provision in legislation regarding how an Enforcement Agent collects his fees.

This is further confirmed in the explanatory note that accompanies section 13:

*Regulation 13 provides for the order of application of **the proceeds** where the **amount recovered** is less than the amount outstanding. Any fees and expenses owed to an auctioneer, and the compliance stage fee for the enforcement agent, are prioritised, with the remaining **proceeds** being divided pro-rata between payment of the debt and payment of the remaining fees and disbursements due to the enforcement agent.*

*“The remaining proceeds being divided pro-rata” confirms that section 13 applies (and only ever intended to be applied) when actual enforcement and control has taken place, as if the Enforcement Agent had only reached the compliance stage, there could be no further fees to be split pro-rata from the remaining direct payment and section 13 could not be followed. This confirms that direct payments cannot be subject to section 13 for any direct payments.*

The Tribunals Courts & Enforcement Act 2007 schedule 12, 50 (2) (b) states that proceeds can be:

*(b) money taken in exercise of the power, if paragraph 37(1) does not apply to it.*

Those who are able to exercise the power has been clarified in that same act at, Regulation 63 (2)

*(2) An individual may act as an enforcement agent only if one of these applies—*

*(a) he acts under a certificate under section 64;*

*(b) he is exempt;*

*(c) he acts in the presence and under the direction of a person to whom paragraph (a) or (b) applies.*

Clearly, a Local Authority cashier or automated payment service has **no** authority to act as an Enforcement Agent, thus anything they take as payment cannot be taken in the exercise of the power of enforcement, thus cannot be called proceeds of enforcement. If they did have the power then it would follow that they could also take control of a defaulter's goods.

It is therefore clear that a direct payment cannot be controlled goods; a defaulter who has paid directly has clearly had no goods or money taken into control by an Enforcement Agent.

As already established, proceeds has been defined as the sale of controlled goods or money taken in the exercise of the power. Neither of these has occurred with a direct payment. An Enforcement Agent can clearly only collect their fees from the proceeds of enforcement that they perform.

I would also draw your attention to the explanatory notes that accompany the Taking Control Of Goods (Fees) Regulations 2014 where it states:

*These Regulations apply whenever an enforcement agent uses the Schedule 12 procedure (regulation 3), including in exercise of commercial rent arrears recovery.*

That must be read that only an Enforcement Agent can use these regulations. It therefore must follow that a cashier cannot use the regulations and only an Enforcement Agent can take control of goods or money in the exercise of an enforcement power. As proceeds can only come from the exercise of an enforcement power, and as an Enforcement Agent can only collect their fees from proceeds, paying money direct to anyone other than an Enforcement Agent cannot be proceeds, thus fees cannot be deducted from direct payments.

I would additionally add that the Local Authority has no remit to act as a fee collection service for Enforcement Agents.

I am advised that Local Authorities may be relying on the judgement of R-v-Hereford and Worcester Magistrates' Court, ex-parte MacRea (1998 ref 163JP433). However this judgement is regarding the withdrawal of a warrant and nothing to do with direct payments.

However, in light of R v Hereford & Worcester, paragraph 6.31 of the same document lays down categories derived from Page 9 which apply to contractors requiring that (amongst others):

*The Contractor shall not take any action to levy distress without prior reference to the court if the Defaulter.... produces evidence to show the account has been paid;*

When a direct payment to your Local Authority is made, a receipt of that payment is provided. This would be evidence that the original account (which will show only the amount of the fine) has been paid. It is of no concern of the person making payment should your Local Authority decide to pass on what is now their money to a contractor.

Considering the information I have provided, my questions are:

- 1) What happens at your Local Authority should a Council Tax account that has been passed to an Enforcement Agent receive a payment, either a full or part payment, direct from the debtor?
- 2) If you pass no money on to the Enforcement Agent, do you inform the agent of any payments made? Do you advise that they need to make their own arrangements to collect their fees?
- 3) If you pass all or any money onto the Enforcement Agent, please can you show the exact legislation that compels you to do so, directing me to the specific part?
- 4) If there is no such legislation, can you direct me to any policy, contract or service level agreement you have in place that compels you to pass on direct payments?
- 5) If a policy, contract or service level agreement is in place, what legislation or regulation makes that document legally binding on a defaulter when they have not agreed to its terms?
- 6) Should a defaulter make a direct payment to clear the arrears stated on the account and receive a receipt, does your Local Authority consider this proof that the original account has been paid?
- 7) From where does (or did) your Council Tax collection staff take their training or advice on the practice of taking direct payments in the circumstances outlined in this correspondence?

I ask that you fully address these questions and resist replying with a 'copy and paste' or 'template' answer. I ask you to appreciate the information I have provided and enquire at the highest level. It is important to me to know that your Local Authority is acting within legislation rather than under instruction or information provided by the Enforcement Agent Companies.

I am concerned that at present your Local Authority *is* acting under the advice of Enforcement Companies who are giving their own interpretation of the law to guarantee their revenue stream and independent interpretation has not been sought.

Yours sincerely,

Mr Edward Newnham

[kitfisto@inbox.com](mailto:kitfisto@inbox.com)