

# **Equality Impact Assessment (EIA)**

Provision of Bailiff Services 2007-  
2010

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### **Details of Work Required**

<b>Part 1</b>	<b>General Details</b>
<b>1</b>	<b>Allocation of work</b>
<b>2</b>	<b>General requirements</b>
<b>3</b>	<b>General working Procedure</b>
<b>4</b>	<b>Training and Competence of the Contractor's Employees and Agents</b>
<b>5</b>	<b>Code of Practice</b>
<b>6</b>	<b>Priority of Debts</b>
<b>7</b>	<b>Complaints Procedure</b>
<b>8</b>	<b>Accounting Arrangements</b>

- Part 2**      **Requirements for Council Tax & Ndr**
- 1**      **General Working Procedure**
  - 2**      **Authorisation of Bailiffs**
  - 3**      **Issue of Warrants**
  - 4**      **Cases considered unsuitable for Bailiff Action**
  - 5**      **Contacting and Tracing Debtors**
  - 6**      **Offers of Payments**
  - 7**      **Execution of Distress Warrants**
  - 8**      **Removal, Storage and Sale of Goods**
  - 9**      **Fees and Charges**
  - 10**     **Return of warrants**
  - 11**     **Disputes and Queries**
  - 12**     **Reports**

- Part 3**      **Requirements for Parking Services**
- 1**      **Issue of warrants**
  - 2**      **Timescales**
  - 3**      **Return of warrants**
  - 4**      **Contacting and Tracing Debtors**
  - 5**      **Extreme hardship**
  - 6**      **Change of address**
  - 7**      **Vulnerable Groups / Special circumstances**
  - 8**      **Removal of goods**
  - 9**      **Goods on which distraint should not be made**
  - 10**     **Reporting**

## **PART 1 – GENERAL DETAILS**

### **1.1 ALLOCATION OF WORK**

1.1.1 The Council's requirement for bailiff services mainly involves:

- Recovery of unpaid council tax and business rates
- Recovery of unpaid parking debts

1.1.2 The Council may appoint more than one contractor for each area of work. If this is the case, the work for each area will be apportioned equally between the successful candidates.

### **1.2 GENERAL REQUIREMENTS**

1.2.1 References in this document to the contractor are to be taken to include any employees or agents of the contractor unless the context requires otherwise.

1.2.2 The contract will cover cases in which the Council issues an instruction to the contractor to recover debts on its behalf between 1 December 2007 and 30 November 2010, inclusive. The contract may, at the Council's discretion, and subject to the contractor's agreement, be extended for a further period of up to one year.

1.2.3 The volumes quoted cannot be guaranteed. The contract(s) mainly involve recovery of council tax, non-domestic rates or parking debts but may include other council debts.

1.2.4 The contract(s) will be managed on behalf of the Council by the Director of Resources or any officer nominated by him.

1.2.5 Any person tendering for the contract(s) must, at the time of submitting a tender, declare to the Council all interests of the tenderer in other companies or firms, all interests in the tenderer held by other companies or firms, and all memberships of other bodies held by the tenderer.

The contractor must immediately declare to the Council any such interests or memberships acquired or relinquished after the contract is awarded.

1.2.6 The contractor must hold, and maintain at not less than the amount of cover declared when tendering for the contract, insurance for:

1. professional indemnity
2. public and employers liability (minimum cover of £5,000,000 required)
3. fidelity guarantee
4. all reasonably foreseeable risks to goods in the possession of the contractor, including goods in transit.

The Council may require the contractor at any time to satisfy it that such cover is held.

1.2.7 The contractor must make available to the Council on request any

correspondence, accounts or other records relating to any case in which the Council has instructed the contractor to act on its behalf. Computer held records to be available immediately and statements from bailiffs or debt collectors within 24 hours.

1.2.8 The contractor must ensure that all information relating to cases in which the Council has instructed the contractor to act on its behalf which comes into the possession of the contractor is treated as being confidential. Such information is not to be used or disclosed for any purpose other than the performance of the contract.

1.2.9 All data held by the contractor in connection with the contract must be dealt with in accordance with current Data Protection Legislation.

All data passed to the contractor by the Council or obtained by the contractor in performance of duties and services remains confidential and the property of the Council at all times.

1.2.10 The contractor must not make, or take part in, any contact with the press, radio or TV.

1.2.11 The contractor must at all times properly maintain:

5. a separate bank account for clients monies
6. a suspense account which records all payments received which cannot be immediately credited to the account of a particular debtor. There must be robust procedures in place to ensure that such payments are promptly and appropriately credited to the correct debtor. The contractor must provide reports regarding clearance of its income suspense account when requested by the Council.

The contractor must immediately comply with any reasonable request by the Council's auditors to examine the records of these accounts.

1.2.12 The contents of Part 1 sections 1.3 to 1.5, Part 2 sections 2.1 to 2.11 and Part 3 sections 3.1 to 3.9 of this document will be made publicly available by the council. The contractor must supply a copy of the same sections to anyone who reasonably requests it.

### **1.3 GENERAL WORKING PROCEDURE**

1.3.1 The Council will appoint a supervising officer who will:

7. act as the Council's representative in matters relating to performing the contract
8. investigate complaints received by the Council about any actions of the contractor.

The contractor must help the supervising officer to investigate complaints when requested. (See also 1.7).

- 1.3.2 The contractor must maintain sufficient, qualified and competent bailiff and other staff to carry out enforcement and administration duties and services.
- 1.3.3 The Council and the contractor will ensure that staff are available to answer enquiries from the other party by telephone at all times between 8.30 am and 5.00 pm on Mondays to Thursdays, and 8.30 am to 4.30 pm on Fridays, excluding days on which the Council offices are not open.

The Council's preferred methods of contact are by telephone for bailiffs working in the field and by email for other office to office contact.

- 1.3.4 The contractor should ensure that their staff are provided with mobile telephones and that the telephone numbers are available to the Council.
- 1.3.5 The Council may at any time withdraw any instruction to act on its behalf.

#### **1.4 TRAINING AND COMPETENCE OF THE CONTRACTOR'S EMPLOYEES AND AGENTS**

- 1.4.1 The contractor must ensure that all employees and agents know and understand the law, administrative procedures and the Council's requirements to the extent necessary for them to perform properly any action they are required to take.
- 1.4.2 The contractor will ensure that employees dealing with Council debtors have sufficient knowledge of welfare benefits to identify those who may be able to claim them.
- 1.4.3 The contractor must ensure that formal training is given so as to achieve the above requirements.

#### **1.5 CODE OF PRACTICE**

In general, all bailiffs must maintain the highest standards of professional and business ethics, integrity and practice. The following paragraphs set out the Council's minimum requirements.

- 1.5.1 Bailiffs must fully observe the bailiff organisation's Code of Practice and those issued for (ACEA) and the Enforcement Services Association (ESA).
- 1.5.2 All bailiffs must hold a valid Certificate issued by a County Court judge and should carry and produce this together with their identity card as issued by the bailiff organisation and a copy of the warrant and/or other authority to act.
- 1.5.3 Every employee must show his/her proof of identity and bailiffs should also show their authorisation to act on behalf of the Council to anyone who reasonably asks to see it.
- 1.5.4 The contractor's employees should always act in accordance with the requirements stip
- 1.5.5 In particular the contractor must adhere to any Council's policy on anti-

poverty, equal opportunity, anti-racial or other harassment, and domestic violence as they are amended from time to time.

- 1.5.6 All bailiffs and other employees should at all time act in a proper, dignified, polite and correct manner and shall do nothing to prejudice the reputation and integrity of the Council. Such personnel shall at all time act in a way to minimise embarrassment, inconvenience and distress to the debtor and/or his/her family. In particular, they must avoid responding unreasonably to provocation.
- 1.5.7 Bailiffs are required to make it clear who they are, the purpose of the visit and their authority to execute warrants issued by the Council. They shall at all time act as stated in section 1.5.6 above and maintain a smart and professional appearance.
- 1.5.8 Every employee or agent of the contractor must avoid making misleading statements about his/her status, powers or duties, or about the legal position of any debtor. For example, the title of Bailiff should not be used when doing other types of work e.g. tracing debtors.
- 1.5.9 The Council can require the removal, from this contract, of any person employed or engaged by the Contractor if they fail to act in a proper and appropriate manner in relation to their work under this contract or they have been convicted of any offence involving dishonesty, deception, fraud or violence. Such removal shall be entirely at the Contractor's expense and the Contractor shall fully indemnify the Council in respect of any claims arising from this.

## **1.6 PRIORITY OF DEBTS**

When several debts are due from one person, they should be pursued in order of the date that the case was referred to the contractor, oldest first, regardless of amount.

## **1.7 COMPLAINTS PROCEDURE**

- 1.7.1 The contractor must maintain an internal complaints procedure under the supervision of a senior manager, to deal with complaints about any aspect of the contractor's business.
- 1.7.2 The contractor must reply to a complaint within 10 working days of receiving it. If a full response cannot be given within that time, a holding reply must be sent saying when a full reply is expected to be provided.
- 1.7.3 The contractor must provide quarterly summaries of complaints received which relate to any aspect of the Council's business.
- 1.7.4 The Council will deal with any complaints it receives about the contractor under its complaints procedure. The contractor must, on request, assist in any way the Council considers necessary to resolve such complaints.

## **1.8 ACCOUNTING ARRANGEMENTS**

1.8.1 The contractor must immediately give the debtor a receipt for all payments in cash and, on request, for any payment made by other means.

1.8.2 The contractor must make payments to the Council on account of monies collected at weekly intervals.

The payment method used should be agreed between the Council and the contractor.

1.8.3 Each payment must include all monies received by the contractor seven or more days before the payment is made. Reasonable payment delays to allow for non-cash collections to clear are to be agreed between the Council and the contractor.

1.8.4 Each payment must be supported by a schedule giving sufficient information to enable the Council to credit each debtor's account correctly.

1.8.5 The contractor must submit itemised invoices to the Council for any fees, charges or commission due.

## **PART 2 - REQUIREMENTS FOR COUNCIL TAX & NDR**

### **2.1 GENERAL WORKING PROCEDURE**

2.1.1 The contractor must act at all times in accordance with:

9. English law
10. any service level agreement which is in force between the council and the contractor
11. any general procedural guidelines or instructions about a particular case or cases which the Council may have issued.

2.1.2 The contractor must comply with the Lord Chancellor's Departments, National Standards for Enforcement Agents, or any subsequent standard issued under regulations, statute or Lord Chancellor's Department advice.

2.1.3 The purpose of instructing the contractor to act on behalf of the Council in any particular case is to obtain payment by one of the following methods, which are listed in order of the Council's preference:

1. By immediate and full payment without recourse to distraint.
2. By agreed instalments to the contractor or by full payment in a lump sum at a future date.
3. By obtaining information enabling the Council to make an attachment of earnings order or request for deductions from benefit.
4. By levy and sale of distress.

2.1.4 On receiving an instruction to act on behalf of the Council, the contractor is to visit the debtor within two weeks for Council Tax cases. In the case of non-domestic rates the first visit must be made within one week.

### **2.2 AUTHORISATION OF BAILIFFS**

2.2.1 The Council will issue an authorisation to each bailiff whom the contractor wishes to execute distress warrants (see 2.2.2, below) on behalf of the Council. This will authorise the bailiff to execute any warrant sent by the Council to the contractor.

2.2.2 The contractor must supply a list of the full names of all such bailiffs to the Council as soon as practicable after the award of the contract. The contractor must notify the Council of any additional bailiffs required to be authorised.

2.2.3 The contractor must not include in any such list any person who is not legally permitted to levy distress, and must immediately notify the Council of any person authorised by them who ceases to be so permitted.

2.2.4 The contractor must not cause or allow anyone to execute any distress warrant for the Council unless they are authorised to do so by the Council.

- 2.2.5 The Council may at any time cancel an authorisation to any bailiff.
- 2.2.6 The authorisation to each bailiff will be effective until cancelled by the Council, but it will automatically and immediately be deemed to have been cancelled if the bailiff ceases to be employed by the contractor

### **2.3 ISSUE OF WARRANTS**

- 2.3.1 It is expected that, in total, there will be approximately 5,000 council tax cases and 300 business rates cases requiring bailiff action, though these volumes cannot be guaranteed.
- 2.3.2 The Council will retain all liability orders which it has obtained against debtors.
- 2.3.3 Where the Council wishes the contractor to enforce a liability order it will issue an instruction to levy distress on behalf of the Council – a ‘distress warrant’
- 2.3.4 The Council will notify the contractor as far as possible in advance of any exceptionally large batches of warrants which are to be handed over.
- 2.3.5 The Council will do its best to ensure that all warrants and supporting papers handed to the contractor are correct, complete and up to date, and are regarded as suitable for bailiff action.
- 2.3.6 The Council will notify the contractor daily of any changes of circumstances affecting warrants held by the contractor which come to its notice.
- 2.3.7 Details of newly received warrants are to be entered on the contractor's computer system within one working day after collection from the Council

### **2.4 CASES CONSIDERED UNSUITABLE FOR BAILIFF ACTION**

- 2.4.1 The Council will not refer cases it considers unsuitable for bailiff action. However, the contractor's staff may find themselves dealing with such cases because of lack of earlier information or changes in debtors' circumstances. Unless the Council has given explicit instructions to the contrary, further enforcement action should be stopped if this happens and the case dealt with as shown in 2.4.2.
- 2.4.2 The contractor should take the action described below when cases are found to be in any of these categories:
- 1 A council tax debtor is working and the employer's name and address is known:
    12. Accept full payment or instalments if offered. Otherwise, return the warrant to the Council with sufficient details for an attachment of earnings order to be made.
    13. If the debtor defaults on an arrangement the warrant is to be returned to the Council as above.

- 2 The debtor is on Income Support/income based Job Seekers Allowance or claims to be:
- Ask to see proof of receipt of benefit.
  - If proof seen, return warrant for deductions from benefit.
  - If no proof seen, suspend action, report circumstances to the council and await further instructions.

The same applies if the debtor cannot pay and a person who is potentially joint and severally liable for the debt is found to be on Income Support or income based Job Seekers Allowance.

- 3 The debtor has serious domestic or family problems, for example, ill health, disability, recently bereaved, or some other trauma of a similar standing:

14. Temporarily suspend action. Report the circumstances to the Council and await further instructions.

- 4 The debtor does not make an acceptable offer of payment and their income is low in relation to their essential commitments:

15. Return the warrant to the Council with a report of the circumstances, including details of the debtor's income and expenditure.

- 5 The debtor does not make an acceptable offer of payment and they have major debts:

16. Temporarily suspend action. Report the circumstances to the Council, including details of the debtor's income and expenditure and await further instructions.

- 6 The debtor is a pensioner whose only income is state retirement pension:

17. Suspend action. Report the circumstances to the Council and await further instructions.

1. Where there is any communication difficulty, for example the debtor is deaf or is mentally impaired:

18. Temporarily suspend action. Report the circumstances to the Council and await further instructions.

2.4.3 In cases (3) to (7) the Council will consider the situation and will either withdraw the instructions to the contractor or authorise them to proceed, possibly subject to specific guidance.

## 2.5 CONTACTING AND TRACING DEBTORS

- 2.5.1 The contractor must reply to correspondence from debtors within five working days of receiving it. If a full response cannot be given within that time, a holding reply must be sent saying when a full reply is expected to be provided.
- 2.5.2 If the contractor is unable to contact any debtor during or as a result of the first visit, further visits must be made on days and at times which appear to offer the best chance of contacting the debtor. At least three visits must be made. Sufficient time must be allowed between each visit for the debtor to respond to paperwork left.
- 2.5.3 If the contractor is unable to contact the debtor on any visit, a notice must be left at the premises, or sent to the debtor within one working day. The notice must:
19. state the purpose and date of the visit
  20. specify the amount payable
  21. tell the debtor to contact the contractor by a specified date and means.
- The notice should be in a sealed envelope, marked 'Private and confidential' and addressed only to the debtor.
- 2.5.4 The contractor must ensure that letters, notices and other documentation sent to or left with the debtor are not ambiguous or misleading.
- 2.5.5 Bailiffs are to explain that they are from the contractor, acting for Derby City Council as soon as they make contact with the debtor or a person representing the debtor.
- 2.5.6 When visiting a debtor, if it appears that there is a language difficulty an interpreter should be used and, if necessary, sent for.
- 2.5.7 The contractor should have suitable facilities to allow people who are deaf to contact them or be contacted, for example Minicom or Typtalk
- 2.5.8 When visiting a debtor, bailiffs should not ask for refreshments or use the debtor's telephone or any other facilities, except in an emergency.
- 2.5.9 Bailiffs are not to have discussions with a third party and should not make enquires of anyone who is, or appears to be, under eighteen.
- 2.5.10 Bailiffs are not to say or imply that they are anything to do with the police or any other enforcement agency
- 2.5.11 Bailiffs are to establish the employment and/or benefit status of each debtor before proceeding with recovery action.

Debtors who appear to be entitled to welfare benefits should be advised to claim them if not already doing so.

- 2.5.12 The contractor has authority to seek information about debtors which may help the contractor or the Council to collect the debts due, including making

enquiries about where the debtor works.

This authority should be exercised sensitively. In particular, there should be no disclosure to third parties of the reasons for the enquiries.

In cases of doubt, the contractor should ask the Council's supervising officer to authorise specific enquiries they wish to make.

2.5.13 In cases where the debtor is believed to have left the address given, bailiffs should always contact the Council for a possible new or alternative address before making wider enquiries.

2.5.14 If the debtor has left the address given and the contractor traces their whereabouts, they should pass this information on to the Council as soon as possible. In these cases, if the debtor moved before any notifications of levy were sent, action should be suspended for 28 days to allow the Council time to send a warning letter.

2.5.15 The Council has no specific requirements as to the extent of enquiries to be made, but the costs likely to be incurred should be considered in relation to the size of the debt.

2.5.16 Warrants should be returned to the Council as soon as it is decided that the debtor cannot be traced.

## **2.6 OFFERS OF PAYMENT**

2.6.1 The Council's policy is to keep costs to debtors to the unavoidable minimum, in order to avoid hardship and delay in settlement of other debts. Because of this, the Council would always prefer to accept payment on terms which are reasonable for both parties than to levy distress because payment cannot be made in the near future. Bailiffs have wide discretion to agree payment by instalments or in full on a specified future date. In particular, there is no specific time limit within which debts must be cleared.

2.6.2 The only constraints are:

1 It must be made clear to the debtor that the instalment arrangement is in addition to paying any current or future charges direct to the Council.

2 The arrangement is the best available, taking account of the debtor's

circumstances

In order to judge this, the bailiff must first ask the debtor to fill in a questionnaire about personal finances if they have not already done so.

Agreed instalments will not normally be less than the current Income Support deduction rate, which is currently £3.00 per week.

3 Debtors must not be pressed to make unrealistic offers and should be asked to consider carefully any offer they voluntarily make which seems unrealistic in their circumstances.

4 The Council reserves the right, in exceptional cases, to specify what an instalment arrangement is to be.

2.6.3 The contractor has discretion to secure an arrangement by levy, normally without removal, with walking possession agreement when appropriate. However, this must take into account the extra costs this would impose on the debtor.

2.6.4 Where instalment arrangements are agreed, overpayments of individual instalments can be regarded as being on account of future instalments, if necessary. For clarification, payment is considered up to date provided the total amount paid at least equals the total amount payable to date, regardless of the amounts of individual payments.

2.6.5 If an arrangement to pay is not kept, the debtor is to be given one final chance to pay by arrangement before other action is taken.

## **2.7 EXECUTION OF DISTRESS WARRANTS**

2.7.1 The contractor must bring to the Council's attention any cases which appear to be unsuitable for recovery by distress - See 2.4 for details.

2.7.2 A bailiff levying distress for the contractor must show the distress warrant to anyone who reasonably so requires.

2.7.3 The contractor may levy distress on any goods of the debtor not protected by law from distress or expressly prohibited by the Council, wherever they are found in England or Wales.

2.7.4 The contractor has authority to make enquiries of the DVLC to obtain evidence of ownership of motor vehicles on which it is proposed to levy distress.

2.7.5 The contractor must make all reasonable attempts to ensure that the debtor is present when distress is levied. If this is not practicable, distress should normally only be levied in the presence of a person who has some connection with the debtor and appears to be aged at least eighteen. However, the contractor may levy distress or remove goods already in his legal possession if nobody is present and lawful access to the goods can be obtained without forced entry, provided reasonable steps to contact the debtor have been taken. If breaking-in to regain physical possession of goods in walking possession is the only option then contractor must contact a designated officer of the City Council before proceeding.

2.7.6 The contractor is not to purport to levy on goods to which no physical access is available.

2.7.7 In cases where access is denied by the debtor in person, or by someone else with the debtor's knowledge and approval, the warrant is to be returned to the Council immediately, endorsed to that effect.

- 2.7.8 Warrants for council tax are to be returned if the value of the goods available is less than the value of any one of the warrants against that debtor held by the contractor, including bailiffs' fees.
- 2.7.9 In addition to goods protected by law from distress, the contractor is not to levy upon any foodstuffs, children's pushchairs, prams, children's toys or equipment required to meet the needs of a disabled person, for example wheelchairs. This does not apply in the case of non-domestic rates where the debtor manufactures or sells such items.
- 2.7.10 When distress is levied, a complete and precise inventory of the goods covered by the notice of distress is to be made. It is not to include a "catch all" item purporting to cover goods not specifically listed. There must be no doubt as to which goods are in the bailiff's legal possession.
- 2.7.11 Copies of the notice of distress are to be left in accordance with legal requirements.

## **2.8 REMOVAL, STORAGE AND SALE OF GOODS**

- 2.8.1 When goods have to be removed the contractor must ensure that sufficient and appropriately skilled personnel are available.
- 2.8.2 The contractor must ensure that goods are transported in vehicles suitable for the purpose and are packed and secured in such a way as to prevent damage to them.
- 2.8.3 The contractor must ensure that goods are stored in such a place and manner as to prevent theft, damage or deterioration.
- 2.8.4 The contractor must extend the period between seizure and sale of goods beyond the statutory minimum in any case in which it is probable that the prospect of payment by the debtor will be increased by so doing.
- 2.8.5 The contractor must ensure that the time, place and manner of the sale of goods are such as to secure the best price available.
- 2.8.6 Any sub contractors engaged to perform any of the above actions must be directly supervised by the contractor.
- 2.8.7 When goods are removed the contractor must leave a list of the goods removed with the debtor or the debtor's representative, if present. Otherwise, the list must be left in a prominent place at the premises from which the goods have been removed. The list is to be complete and sufficiently detailed to avoid doubt as to which goods have been removed.

## **2.9 FEES AND CHARGES**

- 2.9.1 The contractor may charge on behalf of the Council to any debtor any fees or charges which are expressly permitted under the Council Tax (Administration

and Enforcement) Regulations or the Non-Domestic Rating (Collection and Enforcement)(Local Lists) Regulations, and no others.

2.9.2 Where the amount permitted by law to be charged is reasonable costs, fees or expenses, the Council reserves the right to determine what is reasonable, either generally or in particular cases. The Council will consult the contractor before making such a determination.

## **2.10 RETURN OF WARRANTS**

2.10.1 The contractor must take all reasonable steps to deal with every instruction. Where the contractor is unable to contact the debtor, these steps will include attempting to contact them on at least three days, unless the Council explicitly instructs otherwise.

2.10.2 The contractor may return a warrant unexecuted to the Council if unable to contact the debtor after taking reasonable steps to do so.

2.10.3 The contractor is to return a warrant unexecuted to the Council if denied access to goods – See 2.7.7.

2.10.4 The contractor must ensure that any warrants which have to be returned to the Council for any reason are sent within one week.

2.10.5 The contractor must return any warrant to the Council four months after receiving it if:

22. no payment arrangements have been agreed with the debtor
23. the warrant has not been executed
24. no action is in progress towards agreeing payment arrangements or executing the warrant.

2.10.6 The contractor must send a full report with every returned warrant - See 2.12.

## **2.11 DISPUTES AND QUERIES**

2.11.1 The contractor is entitled to assume initially that the paperwork provided by the Council is correct and that material changes will have been promptly notified to the contractors.

2.11.2 Bailiffs are not required to contact the Council or advise the debtor to do so unless the debtor denies liability for the debt or disputes the amount due. In such cases the Council will make every attempt to respond to telephone enquiries whilst the bailiff is still on site if the dispute cannot be resolved from the contractor's records.

2.11.3 The Council and the contractor must ensure that members of their staffs are available to deal with queries from debtors or each other throughout office hours - See 1.3.3.

The contractor must consult the Council before replying to a debtor on a

dispute or query involving a matter of principle.

2.11.4 Threats or violence to the contractor's employees or agents are, in the first instance, a matter for the contractor to deal with.

However, the Council must be immediately informed of:

25. any cases of actual violence
26. any cases where the contractor believes that violence may occur in future
27. any cases where threats are made against the Council or any of its employees

## **2.12 REPORTS**

2.12.1 The Council may at any time require the contractor to report, verbally or in writing, on any case.

2.12.2 On returning any distress warrant for which full payment has not been obtained the contractor must report to the Council in writing. The report must give the reason for the return and any other information obtained by the contractor which may help the Council to decide what action to take, for example Attachment of Earnings or Deductions from Income Support.

2.12.3 The contractor must supply on request by the Council statistical information relating to numbers of distress warrants, action taken to date, amounts collected and balances outstanding.

2.12.4 The contractor must provide a report at quarterly intervals which gives the current status of all outstanding cases, broken down into financial years.

2.12.5 The contractor must provide lists at monthly intervals of outstanding council tax cases and non-domestic rates cases, in alphabetical order in each case.

## **PART 3 - REQUIREMENTS FOR PARKING SERVICES**

Recovery of parking debts under Road Traffic Act 1991 (As Amended)

### **3.1 ISSUE OF WARRANTS**

- 3.1.1 The Council will issue warrants as appropriate but cannot guarantee volume or frequency of issue.
- 3.1.2 The Council will issue Warrants in electronic format. The contractor is required to ensure, to the Council's satisfaction, that their computer systems can accurately input and process the data provided. The contractor is responsible for the production of warrants in paper format to comply with the Lord Chancellor's enforcement and execution requirements.
- 3.1.3 The contractor is required to confirm receipt of warrants. The confirmation shall include the number of warrants in the batch so that the Council can reconcile its records.
- 3.1.4 The contractor's computer system should enable it to identify debtors that have been dealt with previously and, if warrants for such debtors have previously been unenforceable for reasons of moved without trace, bankruptcy/liquidation or death, any new warrants should be returned under cover of an appropriate report.

### **3.2 TIMESCALE**

- 3.2.1 The contractor is required to carry out enforcement with the minimum of delay. Whilst warrants are valid for one year, the Council requires a 9 week turnaround period.
- 3.2.2 The desired enforcement timetable is shown below:

<b>DAY or PERIOD</b>	<b>ACTION</b>
Day one	Warrant issued to bailiff
Day three	Initial letter to debtor
Day five to twelve*	Ascertain/verify phone number and attempt collection by phone
No later than Day thirteen *	First bailiff visit
Day twenty three (or earlier) *	Second bailiff visit
Day twenty five (or 2 days after 2nd visit)*	Third bailiff visit – this is the point where the possession of a vehicle commences.
Day twenty six – sixty two (or earlier) *	Execution or non-execution + data processing
Day sixty three or earlier *	Return warrant (+ report) to the Council

\*In exceptional circumstances the Council may extend the nine week period if such action will enable the contractor to collect the debt. This may be, for example, a 'time to pay' arrangement for several PCN's. The contractor is required to contact the Council for such extensions.

### 3.3 RETURN OF WARRANTS

3.3.1 The contractor should return Warrants to the Council on payment or on non-execution and in accordance with the timetable set out in section 3.2.2 above, unless the Council has agreed to an extension. Each non-executed warrant should be accompanied by a detailed report indicating activities and the reason for non-execution.

3.3.2 The table below indicates acceptable non-execution reasons. No other reasons will be accepted. The Remarks column indicates supporting information/ evidence required.

RETURN REASON	REMARKS
Requested by the Council	Usually this will be a consequence of case investigation, late statutory declaration or other evidence that enforcement should cease.
Keeper deceased	The contractor should obtain & forward a copy of the death certificate.
Keeper in liquidation/bankrupt or no/insufficient goods or funds	The contractor should submit documentary evidence, for example, Liquidators' statement, evidence of extreme hardship.
Warrant over one year old.	It is no longer lawful to attempt to execute the warrant.
Keeper in prison	The contractor should submit documentary evidence of the incarceration. If the release date can be ascertained to be within the 'lifespan' of the warrant, the Council will consider re-issuing it at the appropriate time.
Keeper moved without trace	The contractor should submit written evidence of the current occupier's ID, for example copy of utility bill, or state how the information was received.
No contact	The contractor will indicate how many visits were made, what times & what contact made with neighbours to ascertain whether or not the keeper is still resident at the address.

### 3.4 CONTACTING AND TRACING DEBTORS

3.4.1 The contractor should not ask for information or attempt execution if the only occupier present is, or appears to be, under eighteen. In such situations, if the relevant adult is not present the contractor should leave an attendance notice in a sealed envelope addressed to the debtor.

3.4.2 The contractor may only enter property if given verbal permission to do so. They should act with caution and sensitivity if their mere presence is likely to cause anxiety; for example lone females, or anyone who appears to be elderly, frail, infirm or confused.

3.4.3 Bailiffs are to explain that they are from the contractor, acting for Derby City Council as soon as they make contact with the debtor or person representing

the debtor.

- 3.4.4 The contractor has authority to seek information about debtors which may help the contractor or the Council to collect the debts due.

This authority should be exercised sensitively. In particular there should be no disclosure to third parties of the reason for the enquiries.

- 3.4.5 The contractor's pre-printed notices and other stationery must not be altered in any way other than to advise the keeper of date(s) of future visits and/or the balance due.

- 3.4.6 If there is a dispute over liability that cannot be resolved from the contractor's records, the Council will make every attempt to respond to telephone enquiries whilst the bailiff is still on site.

If the dispute cannot be resolved immediately, the bailiff should withdraw and the contractor should provide the Council with details of the dispute and further action should be deferred until the problem has been resolved or the warrant recalled.

- 3.4.7 The contractor may charge fees strictly in accordance with the schedule set out in The Enforcement of Road Traffic Debts (Certificated Bailiffs) Regulations 1993 (as amended 1998) and/or other current regulations issued by the Lord Chancellor and as prescribed by RTA91. All warrants held by the bailiff in respect of the debtor are to be dealt with as one execution to minimise inconvenience, distress and cost to the debtor.

Removal of vehicles will be reasonable costs related to the location of a vehicle.

- 3.4.8 Removal of goods is dealt with in 3.8 below but such action should be considered a last resort. At least one attempt to communicate with the debtor in writing must be made before any visit is undertaken. The contractor should strive to seek settlement by payment rather than force an individual or business to lose goods which might result in heavier financial losses; particularly in respect of businesses which might be put at risk if assets are removed.

- 3.4.9 Closed cases can only be reopened with the Council's express consent and no monies must be accepted in these matters until the Council has checked its records and has approved such action.

There may, in exceptional circumstances, be occasions where payments are received. In such cases the contractor should subsequently contact the Council. If this payment has to be refunded then that will remain the responsibility of the contractor not the Council.

- 3.4.10 The Council will notify bailiffs by phone and fax cases in respect of which warrants are to be recalled or enforcement is to be held. The contractor must strictly adhere to such instructions and, in respect of 'held' cases, obtain the Council's consent before enforcement is re-commenced.

### **3.5 EXTREME HARDSHIP**

- 3.5.1 This places a responsibility upon the Council and its contractors to deal with debt in a sensitive way to minimise further hardship.
- 3.5.2 This does not mean that proper and lawful methods of enforcement do not apply to those on reduced income, but if there is evidence of extreme hardship, bailiffs are required to obtain and provide such evidence and refer the case to the Council for instructions.
- 3.5.3 Appropriate evidence shall include a bailiff report on the debtor's means, assets and financial lifestyle together with documentary evidence from Social Services, Housing Services and/or Benefits Agencies.

### **3.6 CHANGE OF ADDRESS**

- 3.6.1 The debt follows the keeper, irrespective of his/her address. This is based on the keeper's duty to ensure that DVLA are supplied with up to date information so that statutory notices may be sent to the current address. Failure to do so means that notices can only be sent to the last known address and it is not unreasonable to expect keepers to have proper arrangements to receive mail if they move, for example, Redirection by Royal Mail.
- 3.6.2 While it is recognised that the Regulations issued by the Lord Chancellor under RTA 91 authorise distraint anywhere in England & Wales, the bailiffs are required, should they discover a new address, to obtain and present to the Council evidence of the date the keeper moved, for example, landlord or solicitors' statement. If this clearly proves to be before the issue date of the NtO, the Council reserves the right to withdraw the warrant, revert the PCN to NtO and generate a new notice.

### **3.7 VULNERABLE GROUPS/ SPECIAL CIRCUMSTANCES**

- 3.7.1 Overall it is the Council's requirement for the contactor to collect unpaid penalty charges in respect of which warrants have been issued. This recognises the fact that such debtors have failed to pay. They may have failed to dispute the penalties despite the legislative framework so to do, or have ignored the rejection of the dispute by the Council and/or independent adjudicator.
- 3.7.2 It is therefore appropriate in normal circumstances for bailiffs to enforce or execute warrants and that, subject to legislative and Council controls, it is recognised that persistent non-payment may necessitate robust action such as removal of goods.
- 3.7.3 However there are debtors in the category of vulnerable groups and/or debtors may be in special circumstances. The question of extreme hardship

has been addressed in 3.5 above and, in addition, levy or distraint may not be appropriate in the situations set out in the following paragraphs.

3.7.4 In all such matters the contractor is required to obtain appropriate details/evidence, present suitable reports to the Council and seek instructions from the Council.

3.7.5 The following list is illustrative and not exclusive:

- A debtor who is, or appears to be elderly, frail, in ill health or confused.
- A debtor who is registered disabled and/or demonstrates physical disability or mental impairment.
- A debtor in hospital and/or suffering long term sickness or ill health including mental ill health.
- Recent bereavement.
- Single parent families.
- Pregnancy.
- Inability to understand English, or where English is a second language and full comprehension is difficult and there is no person available to interpret.
- Other genuine mitigating circumstances; for example severe marital difficulties, domestic violence and/or racial harassment and abuse.

### **3.8 REMOVAL OF GOODS**

3.8.1 It is recognised that the issue of a warrant authorises bailiffs to seize and remove the debtor's goods to satisfy the debt which, lawfully, includes bailiffs' fees and charges.

3.8.2 However, the Council requires the contractor to obtain approval of such action prior to it occurring.

3.8.3 As a general rule, the removal of goods or the process to start removal will be the removal of the motor car belonging to the debtor, subject to the next clause.

3.8.4 Accordingly the contractor shall notify the Council of the proposed removal to allow officers to check their records to ensure that such action is acceptable. The contractor, in particular, should draw the Council's attention to situations where the debtor is disabled, for example, presence of disabled badge, disabled class road fund licence and/or wheelchair visible in vehicle, where extreme hardship may result or the debtor is in a vulnerable group or special circumstance category. The Council will approve the action, request a temporary hold or recall the warrant depending on the circumstances.

3.8.5 It is also recognised that it is lawful for bailiffs to execute warrants outside of

normal office hours. If such action is intended, the Council must receive prior notice of request at least 24 working hours beforehand.

- 3.8.6 If a walking possession agreement is entered into, the bailiff should ensure that the debtor has a full understanding of the consequences of non-payment. The debtor must sign the agreement himself/herself.
- 3.8.7 Removal can only be made under direction of and attendance by a certificated bailiff. The bailiff must prepare and deliver to the debtor a Notice of Removal which must contain a full inventory of the goods removed, the PCN number(s) involved and a clear breakdown of the sums due. It should also state further costs which may occur for storage and/or disposal of goods. It must also include clear instructions regarding payment and redemption of the goods.
- 3.8.8 The bailiff must take all reasonable precautions to ensure that the goods belong to the debtor.
- 3.8.9 Goods must be removed in a safe and proper manner using appropriate equipment and/or suitably qualified and competent removal contractors. Goods should be clearly labelled and safely stored with the appropriate and adequate insurance for such goods.
- 3.8.10 Goods may only be sold after a minimum of six working days from removal. They are to be sold for maximum proceeds at public auction. The auctioneer should be independent of the bailiff organisation and is permitted to charge for his/her services in accordance with the Regulations referred to in section 3.4.7 above. The contractor must refund to the debtor all proceeds above the total debt, which includes authorised fees, charges and costs, and account to the debtor in respect of allocation of proceeds. It may also be required to account the Council.
- 3.8.11 If the Council is notified that an out of time Statutory Declaration application is being considered by the Traffic Enforcement Centre following the removal of goods, it will advise the contractor accordingly. Goods must not be sold or disposed of until the declaration is dealt with and the Council will accept no liability for the costs of the deferment or the consequences of the Statutory Declaration.

### **3.9 GOODS ON WHICH DISTRAINT SHOULD NOT BE MADE**

The following goods should not be removed or levied against.

- 3.9.1 Goods of little or no value, or goods which do not belong to the debtor.
- 3.9.2 Food items or cooking appliances/utensils where such action would leave an individual or family without the means to prepare a hot meal.
- 3.9.3 Heating appliances where this would leave the premises without adequate heating, especially in households where children, or people who are elderly, infirm, disabled or sick.

- 3.9.4 Other items to satisfy basic domestic needs; for example, fridges, beds and bedding. Items for residential safety; for example smoke alarms and fire extinguishers.
- 3.9.5 Items, such as toys or prams, pertaining to children.
- 3.9.6 Items needed to combat disability or used to care for the sick.
- 3.9.7 Clothing reasonably required by the debtor or members of his/her household.
- 3.9.8 Implements, tools of trade or other equipment essential to the debtor's trade or profession. This will relate to such persons who have tools for employment and travel with such tools, for example plumbers, electricians, and similar trades. It would not relate to those claiming they kept a "laptop" in their car as this would be regarded as frivolous.
- 3.9.9 Items purchased using social fund payments provided by the Benefits Agency and/or Section 1 of the Child Care Act 1969 or the Children Act 1989.

### **3.10 REPORTING**

- 3.10.1 The contractor will provide weekly reports/ statements on paid and non-executed warrants.
- 3.10.2 In addition and as required by the Council, the contractor will provide such management reports as may be reasonably required including paid warrants and/ or non executed warrants in total or for specified periods, status of all warrants currently with the bailiff organisations, and performance statistics in total or for specified periods.