

Purpose

This consultation paper looks at the current regulations governing the levy of distress, including the schedule of fees, and considers whether they could or should be amended to improve the way distress is levied in England and Wales. It is not the purpose of this paper to express a preference for either in-house or private sector bailiffs. That is a matter of policy for each individual local authority.

Some of the proposed changes could be made by secondary legislation and we propose to introduce these on 1 April 1998. Other proposals would require primary legislation for which there is no provision currently.

Copies of this consultation paper have been sent to the Local Government Association, the Association of London Government, the Chartered Institute of Public Finance and Accountancy, the Institute of Revenues, Rating and Valuation, the Certificated Bailiffs Association, the Association of Civil Enforcement Agents and the National Association of Citizens Advice Bureaux. A copy has also been placed on the Internet at the Local Government Finance Directorate website (<http://www.local.doe.uk>).

The Department may wish to publish responses to this consultation document in due course or deposit them in the Department's library. If this is done, all responses received will be so published or deposited, unless a respondent specifically asks the Department to treat his or her response as confidential. Confidential responses will, nevertheless, be included in any statistical summary of numbers of comments received and views expressed.

Comments on this consultation paper should be forwarded to Mr Tom Maunsell, Council Tax Branch, Zone 5/H2, Eland House, Bressenden Place, London, SW1E 5DU, by Friday 31 October. Two copies of responses should be provided, unless the response is to be treated in confidence.

Introduction

A range of measures are available to local authorities if a council tax payer fails to pay their bill. One recourse, and one which must be attempted before a local authority can move on to applying for the debtor's commitment to prison, is to levy distress. That is, the removal of the debtor's goods so that the proceeds of their sale can be applied to the debt.

The levy of distress is governed by regulations 45 and 46 of the Council Tax (Administration and Enforcement) Regulations (SI 1992/613, as amended). Where an authority levys, or attempts to levy, distress the local authority may add charges to the sum owed by the debtor in accordance with the scale of fees set out in the Regulations (Schedule 5).

Many local authorities contract out the levying of distress to private sector firms of bailiffs. Concern has been expressed about the behaviour of some bailiff firms - this varies from accusations of aggressive or intimidatory behaviour, charging of illegal fees, to making charges that although legal are perceived to be excessive.

At the same time bailiff companies and their representatives argue that the current schedule of fees is set too low to enable them to cover their costs legally and that it therefore encourages the unscrupulous firms to make illegal charges. They have therefore asked for a review of the schedule 5 fees.

We consider that the various amendments to regulations proposed in this consultation paper should apply only to the regulations governing council tax and not to the community charge regulations. Whilst we appreciate that many local authorities are still pursuing community charge debts we take the view that any changes will be introduced at least five years after the abolition of the community charge. We do not propose to further amend community charge regulations unless it is absolutely necessary, for example to take account of significant policy changes which impact upon old community charge debts.

The current legislative position

The current regulations governing distress are minimal. They:

- i) allow an authority to levy distress as soon as a liability order has been made,
- ii) require the person levying distress to carry written authorisation from the local authority,
- iii) require the person levying distress to provide the debtor with a copy of Regulation 45, Schedule 5, a memorandum setting out the amount they owe and a copy of any close or walking possession agreement entered into,
- iv) specify goods which may not be seized,
- v) prescribe the action to take where a debtor pays the prescribed amount after an authority has seized their goods, and
- vi) set out the procedure by which a person aggrieved by the levy, or an attempt to levy, distress can appeal to a magistrate's court.

Regulation of bailiffs

Schedule 4 of the Local Government Finance Act 1992 specifies that “no person shall make a distress unless he is an officer of the authority concerned, or he is a person of a prescribed description and any prescribed conditions are fulfilled”. The only conditions prescribed are those set out in sub-paragraphs (ii) and (iii) above.

There is no requirement that a person should be certificated before they can operate as a bailiff and the bailiff industry is largely self regulating. However, there is a system of certification through the county courts whereby an applicant for a certificate must satisfy the Judge or Registrar that he is a fit and proper person to hold a certificate, and that he has a sufficient knowledge of the law of distress. The Law of Distress Amendment Act 1888 requires that all bailiffs levying distress for rent have a certificate.

A requirement to use certificated bailiffs in the pursuit of council tax debts would help ensure that such debts are pursued by individuals who could be expected to have a reasonable understanding of the laws governing distress, if not necessarily the recovery of local taxes. Moreover, a certificated bailiff may have his certification cancelled by the county court which originally certificated him if the court is satisfied that the bailiff has acted improperly. The use of certificated bailiffs would therefore provide an additional route of recourse for local taxpayers aggrieved by the actions of bailiffs.

We propose that the Regulations should be amended to require that only certificated bailiffs may levy distress in respect of council tax debts.

Provision of information to the debtor

At present, the only information with regard to the levy of distress which must be provided to the debtor must be given where distress is levied. There is no requirement to notify the debtor in advance of the proposed levy, nor when a levy is attempted but is unsuccessful.

Very few debtors attend court when a liability order is made. Although by the time the liability order is made the debtor should have received at least two reminder letters about their arrears and a summons in respect of the liability order, many debtors claim that the first they know of the debt is when the bailiff arrives at their door. At this stage the debtor is unlikely to be aware of his rights or the powers of the bailiff. This can lead to accusations, justified or otherwise, from a frightened debtor, of having been intimidated by a process they did not understand. Furthermore, the information the debtor does receive at this stage does not explain in full the role and powers of the bailiff and is not in language that can be easily understood by the layman.

We propose that the Regulations should be amended so that no less than 14 days prior to the first attempt to levy distress, the local authority must send to the debtor a letter informing them:

- I) that a liability order has been made against him and setting out the amount in respect of which the liability order has been made;*
- ii) that unless the debt is paid before the end of the 14 day period the case will be passed to a bailiff, and further costs may be incurred by the debtor in accordance with the schedule of fees which should be enclosed;*
- iii) where distress will be levied by a private sector company, the name, address and telephone number of the bailiff company; and*
- iv) of the name, telephone number and address of an officer at the authority who should be contacted if the debtor has any other query.*

As soon as an opportunity arises to amend primary legislation, we also propose to make provision for information to be given to debtors about the courses of action available if they are aggrieved by the actions of the bailiff, the first option of which must be to refer the matter to the local authority, with the name and telephone number of an officer at the authority.

Where an unsuccessful attempt at levy is made the debtor may be unaware of the visit and unaware that further costs have been added to their arrears.

As soon as an opportunity arises to amend primary legislation, we therefore propose to make provision that where a visit is made with the intention of levying distress but no such levy is made, the bailiff should leave at the debtor's home notification to the debtor that an unsuccessful attempt to levy distress in respect of council tax debt has been made. The notification would include:

- i) a contact name and telephone number at the local authority if the debtor has any queries;*
- ii) the name of the bailiff who attended;*
- iii) the date and time of the visit;*
- iv) the amount of the debt in respect of which the levy was attempted, including fees added as a result of the unsuccessful attempt;*
- v) where the levy was attempted by a private sector bailiff and not an employee of the local authority, the name, address and telephone number of the bailiff firm; and*
- vi) the courses of action available to the debtor if they are aggrieved by the actions of the bailiff, the first option of which must be to refer the matter to the local authority, with the name and telephone number of an officer at the authority.*

We also propose to make provision for information to be given where a levy has been made. This would require the person carrying out the levy to leave a further copy of the warning letter, to which will be added the name of the bailiff who levied the distress, a revised memorandum setting out the amount owed by the debtor and a copy of any close or walking possession agreement entered into.

Redress for the debtor

The council tax regulations make specific provision for a person aggrieved by the levy of, or attempt to levy, a distress, to appeal to a magistrates' court. The appellant makes a complaint to a justice of the peace and requests the issue of a summons requiring the authority which levied, or attempted to levy, the distress to appear before the court to answer to the matter by which the person is aggrieved. It is the local authority, and not the person who levied the distress on their behalf, who must answer such a complaint in the magistrates' court. In addition where a person is aggrieved by the actions of a bailiff who is certificated they may make a complaint against a particular bailiff (not the bailiff company) in the county court.

However, few debtors are aware of these provisions. Therefore, in order to give the debtor better access to the courses of redress already open to him we propose that the letters to be left when distress is levied, or an unsuccessful attempt is made should give the name of the bailiff concerned, contact numbers and addresses for both the local authority and the bailiff company and should set out explicitly that if a person is aggrieved by the action of a bailiff in the first instance they should refer the matter to the local authority. If they remain dissatisfied they may appeal in the magistrates' court against either the action of the local authority or the bailiff and an explanation should be given as to how to make an appeal.

Review of fees

Fees payable in respect of the levy of distress are designed to cover the costs incurred by the local authority in making the levy. Whilst many contracts between local authorities and bailiffs may assign the fees to the bailiff company the fees are not, and were not intended to be, the fees of the bailiff.

Bailiff companies and their associations have made representations to the Department that the current fee levels are set too low to enable them to make their work viable and that the fees should therefore be increased. No representations have been received from local authorities about the level of fees. In the Department's view the remuneration of bailiff companies for carrying out work on behalf of a local authority should be a matter for the contract between the bailiff and the local authority. It is not the job of Government to increase statutory fees in order to benefit private sector companies.

However, as part of the wider review of improving the system of levying distress we have undertaken a review of the fee levels.

As a result we propose the following:

- i) the current fees for attending to levy distress where no levy is made will be increased to £20 for a first or only such visit (up from £15.00) and to £15 for a second visit (up from £12.50);*
- ii) the charge for levying distress will be the lesser of the actual fees incurred or £20 (up from £15). The sliding scale of additional fees currently payable on debts above £100 will be abolished;*
- iii) the introduction of a fee maximum of £30 for attendance with a van (where following the levy, no goods are removed);*
- iv) the introduction of a fee maximum of £50 for the removal of goods for the purpose of sale;*
- v) the abolition of fees for both walking possession and close possession;*
- vi) where a debtor asks for the value of an item to be assessed before sale, the*

debtor should be advised of the cost of the assessment before it takes place;

vii) for expenses and commission on a sale of property, these fees shall be restricted to 10% (down from 15%) of the sum realised where a sale is held on the auctioneer's premises and 7.5% where it is held on the debtor's premises. Both rates will encompass any advertising costs (at present these costs may be charged separately and without restriction);

viii) the introduction of a fee maximum of 5% of the amount of the liability order for advertising costs where a sale does not take place because the debt has been paid and the goods have been returned to the debtor;

In the longer term we want to consider whether there is scope for improving the current structure of the fee scale. In particular we are interested in the option of replacing all fees up to the point that an actual levy for distress is undertaken with a single case fee. The level of this fee would be specified in regulations. In addition we are considering whether to introduce a limit on the amount of costs that can be charged to a debtor in relation to the size of his debt, for example to prohibit costs exceeding 100% of the total debt.

None of these changes could be introduced without primary legislation, for which there is currently no provision, and we would anticipate further consultation if we intended to proceed with the proposals.

We would be grateful for the views of consultees on the option of introducing a single case fee, and at what level that fee should be set, and on the scope for limiting a debtor's costs to 100% (or other percentage) of the debt. We would also be interested in any other views consultees have on reforming the scale of fees.

Relationship between local authority and contracted bailiff

Amending the Regulations and the fee structure governing the levy of distress can only play a part in improving the means of levying distress and the public perception of bailiffs. Complaints about bailiffs who operate outside the Regulations are unlikely to be resolved by amending or tightening up the Regulations.

Anecdotal evidence would suggest that some local authorities take the attitude that once a debt has been passed to the bailiff it is no longer a concern of theirs, and local tax payers with queries about their arrears are referred to the bailiff company. Conversely some bailiff companies can be heard to complain, both in private and publicly, that some local authorities will not allow them to get on with their job but insist on constraining them with policies such as anti-poverty strategies or the requirement to accept a payment arrangement if it is offered rather than insist on proceeding with a levy.

Where an authority does contract out the work to a private sector bailiff company it is important that both sides should remember that the bailiff is working on behalf of the authority. Local authorities cannot abdicate responsibility for the actions of their contractor. Nor should bailiff companies expect to be granted carte blanche. It is quite reasonable to expect an authority to specify in its contract with the bailiff how it wishes debtors to be pursued. Ultimately, it is the responsibility of the local authority to ensure that the levy is carried out in a lawful manner and that the fees charged are in accordance with the regulations.

Council Tax Branch

LGFP

15 September 1997