

We recently received an enquiry where the Enforcement Agent (EA) firm added the sale/disposal fee where it appeared no work in preparation for a sale had occurred. The EA's had been instructed by the local authority to collect council tax arrears, and a controlled goods agreement (CGA) had been set up between the EA and the client. However, the client had failed to maintain the payment arrangement. No goods had been removed and no further visits were made by the EA.

Subsequently, the client was told by the EA firm that a sale/disposal fee of £110 had been added because an enforcement agent had "visited with the 'intent' of removing goods" quoting Regulation 5(c) of The Taking Control of Goods (Fees) Regulations 2014, which states:

"the sale or disposal stage, which comprises all activities relating to enforcement from the first attendance at the property for the purpose of transporting goods to the place of sale, or from commencing preparation for sale if the sale is to be held on the premises, until the completion of the sale or disposal..."

The EA firm went on to tell the adviser that *"all regulations are subject to an element of interpretation and while initially we would only have applied the fee where an actual removal had taken place, there is a belief widely held within the industry that this fee is applicable where there has been a broken arrangement and an attendance is made with the purpose of removing goods for sale."*

Advice

We would argue that the sale/disposal fee should not have been applied as goods have not actually been removed. If you look at [Regulation 4\(3\) of the Taking Control of Goods \(Fees\) Regulations 2014](#), the key part of the Regulation states *"...where the amount outstanding is paid after commencement, but before the completion, of that stage."*

The rules are open to different interpretations, and any complaint / challenge is likely to be met with a rebuttal. However, we would argue that the sale stage has not yet commenced and so the EA's simply should not be adding on the sale/disposal fee.

In relation to Regulation 5(1) that the EA firm refer to, we would also argue that this fee is for transportation of goods that have been taken into control to the place of sale. If the removal of the goods from the property has not taken place then the fee should not be charged because there has been no transportation of any goods.

In addition, it also didn't appear that the EA had completed the notice called 'Notice that goods have been removed for storage or sale', which is required when removing goods for sale. It is also important to note that this notice is also the first notice to itemise a sale fee.

[Part 3](#) of the Taking Control of Goods Regulations 2013 is called 'Sale of controlled goods' - so they can only sell controlled goods. This supports the notice issue above. Also, the EA can control goods differently (i.e. storage on site, or removal) but doesn't seem to have done so. Ultimately, no work in preparation for a sale has occurred.

Next steps

In this sort of situation, a formal complaint could be made to the EA firm to remove the fee on the basis that no goods have been removed, and no 'notice of sale' has been completed to justify adding on the sale/disposal fee. Any of the client's vulnerabilities with reference to the "Taking Control of Goods: National Standards" should be highlighted. There is no guarantee that the EA firm will take off the sale/disposal fee. The complaint could then be escalated to the Civil Enforcement Association (CIVEA).

You should also send a formal complaint to the local authority:

- (If applicable) There is also a whole section titled 'vulnerable situations' from paragraph 70 onwards in the National Standards that may apply to your client. The ['Guidance to local councils on good practice in the collection of Council Tax arrears'](#) document focuses on debt adviser working with councils on the issue of council tax and bailiffs, and it touches on the council always having the right to take the debt back and always being willing to negotiate with advice agencies so you may find this useful as well it is relatively short so well worth reading.
- Also, Paragraph 7 - 9 of the [Taking Control of Goods: National Standards](#) states:
"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.
- Highlight that the sale/disposal fee should not have been added and quote the regulations and argument as above.
- Anything you feel is relevant in your client's case.

If your client does not receive a satisfactory response to the complaints letter from the council, it can be escalated to the [Local Government Ombudsman](#) (LGO).

You should also request the council tax bill to be reduced to nil as the council has discretion to do so under s.13A Local Government Finance Act 1992 (LGFA). You can find a very useful article in Adviser 170 "Discretionary reductions in Council Tax cases" with a template letter for your reference.

If the EA firm disagree and do not remove the fee, the alternatives are:

- Pay the outstanding amount and then take county court action, but there are possible cost implications for the client in doing this. If the client wants to offer payment, Section 24 of the National Standard states: *"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". Also, the [CIVEA Code of Conduct and Good Practice Guide](#) states, "Debtors must not be pressed to make unrealistic offers and should be asked to consider carefully any offer they voluntarily make".

- Seek 'detailed assessment' of the fees that have been added on N244 with the possibility of fee exemption, but again, there are cost implications if the client 'loses'.

If you have any clients' in similar circumstances, you should log this as a social policy issue through the usual channels. If you have any client's in a situation such as this, please contact us for further advice.