

We have dealt with enquiries where the client has paid the original debt (such as council tax) to the local authority directly instead of paying the enforcement agent (EA). So, although the debt had been cleared, the EA were pursuing the client for outstanding fees. This article explores whether the client would still be liable for those fees.

Paying the council directly

Paying the 'original debt' does not stop fees recovery. [Regulation 17\(1\) of The Taking Control of Goods \(Fees\) Regulation 2014](#) (Fees Regs), does state the fees are not recoverable when an "*enforcement power ceases to be exercisable*". However, Regulation 17(2) states this provision does not apply if the power ceases because the "amount outstanding" was paid or the debt was repaid through sale proceeds.

"Amount outstanding" is defined in legislation (Reg 2 of the Fees Regs - which takes you via s.50(3) and s.62 of [schedule 12 of the Tribunals, Courts and Enforcement Act 2007](#)) and includes both the debt and enforcement fees. The purpose of Reg 17(2) is arguably there to protect enforcement agents (EA's) from doing work, and then not being able to recover fees where just the original debt is repaid. Furthermore, [paragraph 11 of the Taking Control of Goods: National Standards](#) states:

"Creditors agreeing the suspension of a warrant or making direct payment arrangements with debtors must give appropriate notification to and should pay appropriate fees due to the enforcement agent for the work they have undertaken."

So, the local authority should have distributed the client's payments as per the Fees Regs. The £75 compliance fee should be paid first and then any remaining fees and council tax debt are paid pro-rata (see [Reg 13](#) of the Fees Regs).

The EA here may be owed money from the council, and although that is for the EA to take up with the council, the EA might have a legitimate argument. In any case, as mentioned, there are unpaid fees the EA can pursue because of Reg 17(2).

When are fees not recoverable?

Reg.17(1) of the Fees Regs reads:

"The enforcement agent may not recover fees or disbursements from the debtor in relation to any stage of enforcement undertaken at a time when the relevant enforcement power has ceased to be exercisable."

For Reg 17(1) (fees that are not recoverable) to apply you would need the warrant to cease for reasons other than payment of the amount outstanding. Aside than abandoning the goods, the legislation does not make it clear when the power 'ceases.' In his book, 'Taking Control of Goods', John Kruse (a leading bailiff expert) suggests powers cease when:

- A writ or warrant is set aside
- A writ or warrant is withdrawn by a creditor

So for the avoidance of doubt, it is worth asking the council to ensure they have instructed the warrant to be withdrawn. Having been withdrawn, Regulation 17(1) arguably applies and the fees would not be recoverable from your client. This seems to emphasise that neither the EA or council would then have a right to sue for any unpaid balance of any fees.

Paragraph 31 of the National Standards also states:

“Enforcement agents must not seek to enforce the recovery of fees where an enforcement power has ceased to be exercisable.”

Paragraphs from the National Standards are not legally binding but are useful industry guidance that should be cited in any complaint. Mr. Justice Arnold also emphasised on this point in the case of [Ali and Aslam v Channel 5 Broadcasting Ltd \[2018\] EWHC 298 \(Ch\)](#).

Fees after withdrawal of warrants are also briefly covered on 417 - 419 of the CPAG Debt Advice Handbook 12th Edition.

Summary

In summary:

- There are unpaid fees the EA can pursue because of Reg 17(2) and so the client would be liable for the EA fees outstanding.
- Check with the council if they have withdrawn the account from the EA.
- Where an account has not been recalled by the council, the client would still be liable for the fees.
- Our understanding is that the EA can continue recovery under the same warrant to recover goods / controlled goods agreement to pay the outstanding EA fees. We are not aware of any procedure that an EA firm would need to follow (e.g. to first get a money judgment) for the outstanding fees because those fees were payable under the warrant when they received instructions from the council.