



Response to Request for Information

Reference FOI 0115157
Date 23 February 2015

Council Tax

Request:

“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?”

If we have exercised our power to use the schedule 12 procedure by issuing the case to an enforcement agent, the payment would be allocated to clear the debt if it was sufficient to clear the amount outstanding. We would notify the enforcement agent of the amount paid and they would invoice the Council for the fee element as an effective way of passing the fees over to them. If the payment was less than the amount outstanding, the payment would be allocated in accordance with appropriate legislation.

“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?”

See answer to question 1 above, we notify the enforcement agents of all monies paid.

“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?”

It is the council and not the enforcement agent which has the power to use the Schedule 12 procedure. This is made clear for Council Tax arrears in the Local Government Act 1992 paragraph 14(4) which states “Where a liability order has been made against a person under regulations under Schedule 4, **the billing authority concerned may use the procedure in Schedule 12** to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) to recover the amount in respect of which the order was made, to the extent that it remains unpaid.”

The same wording is contained in Paragraph 62A of the Local Government Act 1988 to cover Non Domestic Rates arrears.

We exercise this power by issuing the case to an enforcement agent to carry out the practicalities. When a case has been passed to an enforcement agent we are a billing authority exercising an enforcement power such that Paragraph 50 of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 and the regulations created under it apply to any payment. Regulation 13 of the Taking Control of Goods

(Fees) regulations 2014 does not state that a billing authority is exempt from having to comply to it, so we must allocate relevant payments as it directs.

“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?”
Not applicable.

“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?”
Not applicable.

“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 accounts has been paid?”
Whether or not a debt has been paid in full is a question of fact which includes appropriate fees. No receipt issued can override the operation of legislation defining the amount outstanding and the implications if the amount outstanding is not paid in full.

“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?”
As with all legislation the authority’s senior staff follow the consultation and implementation of legislation relevant to their areas of control. In this instance guidance was given by the Institute of Revenues and Rating Valuation (IRRV), CIPFA, enforcement agents and seminars arranged at which the MoJ were represented. The MoJ spoke of what they were trying to achieve through the legislation and made it very clear that the intention was for compliance fees to be paid first out of any payments whether made directly to the enforcement agent or the Council. Meetings were held with other stakeholders and information shared with other councils.

If we are unable to decide on the meaning of legislation, we would seek our own legal advice. However, ultimately only the courts can make binding decisions over the meaning of legislation.