



HCEOA Best Practice - Fees

Introduction

High Court Enforcement Officers have adopted this practice to assist in guiding as to the appropriate enforcement points at which to charge fees in accordance the Taking Control of Goods (Fees) regulations 2014, and supplements our existing Code of Conduct.

It is not definitive legal advice as to the appropriateness of the application of a fee on any particular case, nor is it intended to be, and will be updated from time to time.

The fee scale is set out in the Taking Control of Goods (Fees) Regulations 2014 <http://www.legislation.gov.uk/uksi/2014/1/contents/made>, and the Taking Control of Goods Regulations 2013 and Civil Procedure Rules Part 84 are clearly relevant to its application.

The fee scale is contained in Table 2 of the Schedule and has 4 distinct parts:

1. Compliance Stage
2. Enforcement Stage 1
3. Enforcement Stage 2
4. Sale or Disposal

Compliance Stage (Regulation 6(1)(a))

This stage covers all activities from the receipt of the writ, (not from the start of any transfer up process) through to the Enforcement Stage 1.

If payment is made at this stage in full, no other fees may be charged.

During this stage an instalment arrangement would not normally be entered into: see the Memorandum attached to the Regulations at paragraph 7.3: http://www.legislation.gov.uk/uksi/2014/1/pdfs/uksiem_20140001_en.pdf.

The reason for this is that an HCEO must be able to assess the reasonableness of any offer made and cannot do this without visiting the debtor's premises. He also has a duty to attend the address of the debtor under the command on the writ.

Enforcement Stage 1 ("ES1") (Regulation 6(1)(b))

This stage starts following the initial visit at the address for enforcement under the Writ, and, providing that a Controlled Goods Agreement ("CGA") is entered into and not breached, continues until the end of the CGA.

Whilst the CGA may relate to a range of circumstances, such as time given for an application to court, in the case of a payment arrangement only the Compliance Fee, plus the ES1 fee may be charged, regardless of the length of the agreement.



Clearly, if payment in full is made on the first visit, again only the Compliance Fee and the ES1 fee are payable. Additional Stage Fees will become payable if the case is escalated on the first visit because of a debtor's failure to comply with the enforcement of the writ.

Enforcement Stage 2 ("ES2") (Regulation 6(1)(c))

Where no CGA is entered into or a breach occurs, all activities following would be at ES2, and the fees applied would be Compliance and ES1 & 2.

If the stage is being escalated from ES1 to ES2 within the initial visit, the trigger point for this would be that no CGA has been entered into and there was a clear refusal by the debtor to either pay in full or by instalments supported by a CGA.

Care must be taken to give the debtor a reasonable opportunity to understand what is happening and an opportunity to engage and agree payment, at the earlier stage.

In addition, matters and costs should not be escalated, unless there is an intention to continue action, rather than just come away, such as preparing for the removal of goods, where there are insufficient goods to justify removal.

When escalating to ES2, it is essential to keep an accurate record of why the escalation has taken place, so that clear explanation can be provided, if required.

Sale or Disposal Stage ("SS") (Regulation 6(1)(d))

SS can only be applied under certain circumstances and cannot apply if there are no goods being taken into control which would justify removal for sale.

This may apply, if during the ES1 or ES2 stages the enforcement is escalated to a removal or securing of the premises for a sale on site or a separate visit is planned and takes place, following the appropriate notice; for example, where there has been a breach of a CGA and notice of intention to remove has been given (Notice of Re-entry under Regulation 26, TCG Regulations 2013).

This requires, as a minimum, attending to carry out the planned action and should be supported by evidence.

In all instances, details of the action taken should be kept.

It is not necessarily sufficient to say

- That a number of enforcement visits have been made meeting some sort of arbitrary "threshold" for a SS fee somehow to become applicable
- That an enforcement agent has been at the premise for some time
- A vehicle has been immobilised for the purpose of bringing pressure to bear
- A CGA has been completed and breached, only.

What is clear from the Regulations is that a positive step towards the stage needs to take place, in order to trigger the fee.



Roll back of fees (Regulation 4(5)(a))

If following the attendance at ES1, and any subsequent escalation of action through the Stages, a CGA is then entered into, any additional stage fees applied should be removed, as only the ES1 fee is payable: Regulation 4(5)(a)

Disbursements (Regulation 8(2) & (Regulation 10))

Disbursements for storing goods, locksmith's fees and court fees are all recoverable (Regulation 8(2)) providing they have been reasonably incurred in the course of the enforcement, and in all instances, details of the action taken should be kept and any cost should be supported by invoices.

The description for disbursements is specific and usual items such as the costs for maintaining an instalment agreement, Credit and Debit cards, banking fees such as Cheque clearance and Returned Cheque fees are not chargeable as a disbursement. These are intended to be covered by the fixed fees.

For any other disbursements, an Exceptional Disbursements Order will be needed (Regulation 10), and for this a court application will be required (with the consent of the creditor), which explains the exceptional nature of the action requiring the additional costs.

Best practice, when dealing with disbursements, dictates that, where possible, the debtor should be given notice of the application in order to make any representations; however this is not always possible, and any reasons for failing to do this should be explained to the court.

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