



High Court Enforcement Officers - Best Practice

1.1 The purpose of these standards is to ensure that High Court Enforcement Officers (“HCEOs”) share, build on and improve existing good practice and thereby raise the level of professionalism across the High Court enforcement industry. The standards also apply across the wider enforcement industry and are intended for use by all Enforcement Agents (“EAs”), public and private, the enforcement agencies that employ them and the major creditors who use their services. In order to improve the public's perception of the profession, HCEOs take a pride in setting standards as exemplars of how enforcement services should be carried out in a responsible and professional manner, balancing the competing interests of creditor and debtor, or claimant and defendant.

1.2 All HCEOs charged with the enforcement of a Writ are responsible for the actions of their staff (be they internal or external), including appropriate oversight of Certificated EAs whether directly employed, self-employed or otherwise contracted, along with the businesses operating under their authority, in respect of all aspects of enforcement, case handling or case management. HCEOs should be prepared in any particular situation to demonstrate the steps they have taken to ensure that those acting on their behalf comply with Best Practice

1.3 References to High Court Enforcement Officers (HCEO) below therefore include all persons and businesses assisting in the enforcement or case management of a writ on behalf of HCEO.

The Professionalism and Conduct of High Court Enforcement Officers

2.1 HCEOs and EAs and others working on their behalf will abide by the Taking Control of Goods: National Standards which were published by the Ministry of Justice in April 2014, or any updated or similar guidance.

2.2 Although, in terms, the National Standards apply to the Taking Control of Goods, the like standards should be adopted by HCEOs in relation to enforcement of other writs, including writs of possession.

2.3 HCEOs should always produce relevant identification, such as a badge or ID card, on request, together with evidence of a valid writ or written authorisation to act on behalf of the creditor. They should, on request, provide clear details of the amount owing and how it is calculated, including any costs or fees applicable.

2.4 HCEOs must always act within the law, including all relevant legislation and must observe all applicable health and safety requirements whilst carrying out enforcement. They must maintain strict confidentiality and comply with all Data Protection legislation.

2.5 HCEOs must, for the purpose of executing any Writ (whether of Control or Execution) delivered to them, gain access to the debtor's goods without using unlawful force.

2.6 HCEOs must comply with the post April 2014 Taking Control of Goods procedure and leave with the debtor, or at the premises, any documents that are required by regulations or statute, and provide any other information requested, so far as it is reasonable and proportionate to do so.



2.7 HCEOs will carry out their duties in a professional, calm and dignified manner. They are required according to the circumstances to dress appropriately and act with discretion, fairness, and appropriately at all times.

2.8 HCEOs must not misrepresent their powers, rights, qualifications, capacities, experience or abilities.

2.9 HCEOs must not discriminate unfairly on any grounds including those of age, disability, ethnicity, gender, race, religion or sexual orientation.

2.10 In circumstances where it is required or appropriate, HCEOs will carry out a full risk assessment of any enforcement instruction, for example, where there have been any previous acts of, or threats of, violence by a debtor and a dynamic risk assessment should always be undertaken when visiting an address.

Statutory or Financial Requirements for High Court Enforcement Officers

3.1 HCEOs must ensure that audited accounts related to enforcement activities are available to the Ministry of Justice on request, where it is appropriate that these are kept.

3.2 An annual audit by independent accountants must be undertaken at least once a year and HCEOs are required to confirm this has been done on an annual basis.

3.3 A separate account for money collected from or on behalf of the debtor and due to the creditor should be maintained and accurate books and accounts should be kept and be available to establish money owed to the creditor.

3.4 HCEOs must keep a complete record of all financial transactions in whatever capacity undertaken.

3.5 HCEOs must comply with all the necessary statutory obligations in their business; for example, relating to the Companies Act, Value Added Tax, Inland Revenue provisions, Data Protection and Health & Safety.

3.6 HCEOs must also maintain suitable and comprehensive insurance cover for both professional indemnity and other risks including Employer's Liability and Public Liability, and goods in transit where appropriate. Insurance requirements must be actively re-visited each year to ensure adequate and appropriate arrangements are in place.

Training and Certification

4.1 HCEOs must ensure that all EAs whether employed or self-employed, other employees engaged in the enforcement process and any other contractors are provided with appropriate training to ensure that they understand and are able to act, at all times, within the bounds of the relevant legislation, and in accordance with National Standards for Enforcement Agents and the Best Practice of this Association.

4.2 HCEOs are trained to recognise and avoid potentially hazardous and aggressive situations and to withdraw when in doubt about their own or others' safety.



Complaints and Discipline

5.1 HCEOs must operate appropriate complaints and disciplinary procedures with which all their staff, whether employed, self-employed or otherwise must be fully conversant.

5.2 Our Complaints Procedure is set out in plain English. We have a Complaints Officer and Association Secretary who can help to ensure that any complaint is handled correctly by the individual HCEO to whom the Writ has been issued for enforcement.

When an HCEO's internal system is exhausted, if necessary, the complaint can be transferred to the High Court Enforcement Officers Association for resolution under our procedure.

5.3 Copies of the High Court Enforcement Officers Association Complaints Procedure are available from our "Regulatory Information - Want to Complain" section of the Association website: www.hceoa.org.uk and upon request from the Association Secretary.

5.4 In dealing with complaints the onus is on HCEOs to demonstrate their compliance with the National Standards and Best Practice or, in the case of departure from or failure to comply with them, the justification for that in the particular circumstances of the case.

Information and Confidentiality

6.1 All notices, correspondence and documentation issued by HCEOs must be clear and unambiguous, and must not misrepresent their powers, authority or possible courses of action.

6.2 On returning any un-executed Writs, HCEOs will report the outcome to the creditor and provide further appropriate information, where this is requested and paid for by the creditor.

6.3 All information obtained during the administration and enforcement of Writs must be treated as Confidential and handled in accordance with the appropriate legislation.

6.4 HCEOs will provide clear and prompt information to debtors and where appropriate, creditors. In addition, they will respond within 14 calendar days to any correspondence from the Complaints Officer arising from a complaint to the Association.

6.5 HCEOs will, so far as it is practical, avoid disclosing the purpose of their visit to anyone other than the named debtor or their authorised representative.

6.6 Where the debtor is not seen, the relevant documents will be left at the address in a sealed envelope addressed to the debtor.

6.7 HCEOs will use the prescribed forms under the Taking Control of Goods procedure, which explain the effect of and enforcement fees applicable in each stage of enforcement, when goods are taken into control and, where no contact is made with the debtor, will normally leave a suitable form providing contact details and setting out the balance due under the Writ.



Notices

7.1 Even when it may not strictly be a requirement under the regulations, HCEOs should normally serve a second or subsequent Notice of Enforcement in the prescribed form at any second or subsequent address at which it is envisaged attendance is to be made.

Times and Hours

8.1 Enforcement against goods under a Writ of Control may take place on any day of the week but other types of Writ (such as Possession or Delivery) will not be enforced on Sundays, on Good Friday or on Christmas Day, unless the Court specifically orders otherwise.

8.2 Generally, HCEOs will operate between the recommended hours of 6.00am and 9.00pm but this can be extended where permitted by the applicable regulations and/or during trading hours, particularly in relation to public houses, restaurants and night clubs.

8.3 HCEOs should always be respectful of the religion and culture of others, be aware of the dates for religious festivals and carefully consider the appropriateness of undertaking enforcement on any day of religious or cultural observance or during any major religious or cultural festival.

Location for Enforcement

9.1 HCEOs can only take control of goods, without a Court order, if they are located on premises that they have power to enter—which are premises at which there are reasonable grounds for believing that the debtor lives, or carries on a trade or business, or when the goods are located on the highway.

Goods

10.1 HCEOs will only take control of goods in accordance with the appropriate regulations, under the Taking Control of Goods procedure as detailed in Schedule 12 of the Tribunals Courts and Enforcement Act 2007 and the Taking Control of Goods Regulations 2013 or any other applicable regulations from time to time in force.

10.2 HCEOs will ensure that goods are handled with reasonable care so that they do not suffer damage whilst in their possession and will have insurance in place for goods in transit so that if damage occurs it is covered by the HCEOs' insurance policy.

10.3 HCEOs will not take control or remove anything clearly identifiable:

- as not being goods of the debtor; or
- exempt goods; or
- an item belonging to, or for the exclusive use of a child.

10.4 A notice that goods have been removed for storage or sale will be given to the debtor or left at the premises in accordance with the regulations.

10.5 High Court Enforcement Officers will take all reasonable steps to satisfy themselves that the value of the goods taken into control, is proportionate to the value of the debt and charges owed.



Vulnerable Situations

11.1 HCEOs recognise that they have a role in ensuring that the vulnerable and socially excluded are protected and that the recovery process includes procedures agreed between HCEOs and creditors about how such situations should be dealt with.

11.2 The appropriate use of discretion is core to how HCEOs will approach any given situation and will use their experience to deal with members of the public with due care and consideration.

11.3 HCEOs will contact the creditor and report the circumstances in situations where there is potential cause for concern. If necessary, HCEOs will advise creditors if further action is inappropriate.

11.4 The exercise of suitable discretion is needed, not only to protect the debtor, but also HCEOs who have been trained to avoid acting in a manner that could lead to accusations of inappropriate behaviour.

11.5 HCEOs must withdraw from premises if the only person present is or appears to be a child under the age of 16, or a vulnerable person. If the child appears to be over 12, but under 16, they may ask when the debtor will return home. HCEOs will withdraw without making enquiries at any address if the only persons present are children who appear to be under the age of 12.

11.6 Wherever possible, HCEOs will have arrangements in place for rapidly accessing translation services when these are needed and provide on request information in large print or in Braille for debtors with impaired sight.

11.7 Although not exhaustive, HCEOs recognise the following groups as being potentially vulnerable and will act accordingly:

- the elderly;
- people with a disability;
- the seriously ill;
- the recently bereaved;
- single parent families;
- pregnant women;
- unemployed people; and,
- those who have obvious difficulty in understanding, speaking or reading English.

Fees

12.1 Fees should be applied in accordance with the appropriate Fees Regulations relating to the enforcement action being undertaken, in a fair and transparent manner.

12.2 A detailed statement of any fees applied along with a full explanation as to their application should be given promptly upon request.



12.3 The following sections relate to the application of the fees as a guide to the minimum appropriate enforcement trigger points at which to charge fees in accordance the Taking Control of Goods (Fees) Regulations 2014.

12.4 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.

12.5 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

12.6 HCEOs should keep appropriate notes and other records (including as to timing of events) to justify the fees charged and, in particular, the escalation from one fee stage to a higher fee stage.

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

13.1 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.

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

13.3 During this stage an instalment arrangement would not normally be entered into unless the judgment creditor has given specific written instructions to the HCEO to accept an arrangement during an extended compliance period: see the Memorandum attached to the Regulations at paragraph 7.3 - http://www.legislation.gov.uk/uksi/2014/1/pdfs/uksiem_20140001_en.pdf

Enforcement Stage 1 (“ES1”) (Regulation 6(1)(b))

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

14.2 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 and the ES1 fee may be charged, regardless of the length of the agreement.

14.3 If payment in full is made on the first visit before escalation to Enforcement Stage 2, only the Compliance Fee and the ES1 fee are payable.

14.4 Additional Stage Fees may become payable if the case is escalated during a first visit because of a debtor’s repeated failure to comply with the enforcement of the writ; evidence of this failure (including the timing of any relevant events and warnings) should be recorded in the case notes and ideally appropriate warnings should be recorded on BodyWorn Video.



14.5 In instances where no response is gained at the premises, a reasonable opportunity should be given to the debtor to make contact and negotiate an arrangement to pay, before escalation to the next stage fee.

Enforcement Stage 2 (“ES2”) (Regulation 6(1)(c))

15.1 Following a visit at ES1, where no CGA is entered into or a breach of a CGA occurs, all activities relating to enforcement of the Writ will be at ES2, up to the commencement of the Sale or Disposal Stage. Details of all enforcement activity undertaken should be accurately recorded. The fees then applied would be Compliance and ES1 & ES2.

15.2 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 is a clear repeated refusal by the debtor** to either pay in full or by an acceptable instalment agreement.

15.3 Care must be taken to give the debtor a comprehensive explanation along with a reasonable opportunity and time to understand what is happening and to consider the impact of their actions and to engage and agree payment, at the earlier stage. This explanation should be recorded on the BodyWorn Video.

15.4 Costs must not be escalated, unless there is a clear intention to continue with further action, rather than just come away, such as preparing for the removal of goods, where there are sufficient goods, which are not exempt, and which have a value that would justify their removal, having regard to the size of the debt and costs.

15.5 When escalating to ES2, it is essential that an accurate record of why the escalation has taken place (including the timing of any relevant events), along with a detailed list of goods that would be taken into control, so that clear explanation can be provided, if required.

Sale or Disposal Stage (“SDS”) (Regulation 6(1)(d))

16.1 An SDS fee can only be applied under certain circumstances and **cannot** apply if there are no goods of a significant value being taken into control which would justify removal for sale.

16.2 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).

16.3 This requires, as a minimum, attending to carry out the planned action and should be supported by evidence of any notice given, a detailed inventory of goods intended to be removed (which should be of a significant value against the amount due to justify removal, and not include any exempt goods) and the steps taken towards removal.

16.4 In all instances, details of the action taken should be recorded on the relevant case record.

16.5 It is not enough to say



- That several enforcement visits have been made meeting some sort of arbitrary “threshold” for a SDS fee somehow to become applicable.
- That an enforcement agent has been at the premises for some time.
- A vehicle has been immobilised, for the purpose of bringing pressure to bear.
- A CGA has been completed and breached, only.
- It is clear from the Regulations that a positive step towards the stage needs to take place, in order to trigger the fee.

16.6 The actual costs for the removal are included within the SDS fee and where necessary an application to court will be required for an Exceptional Disbursements Order for any additional costs to be added.

16.7 The removal costs should not be treated as a part of the Auctioneers costs for dealing with a sale.

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

17.1 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 Compliance fee and ES1 fee is payable: Regulation 4(5)(a).

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

18.1 Disbursements for storing goods, locksmith’s fees and court fees are all recoverable (Regulation 8(2)) provided 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.

18.2 The description for disbursements is specific and 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 costs are intended to be covered by the fixed fees.

18.3 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.

18.4 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.