

COMMITTEE: STANDARDS & GENERAL PURPOSES

Date:

Wards: All

Subject: Local Government and Social Ombudsman Report – Enforcement Agents

Lead officer: Caroline Holland, Director of Corporate Services

Lead member: Councillor Mark Allison

Contact officer: David Keppler Head of Revenues and Benefits

Recommendations:

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1. Standards & General Purposes Committee to consider the contents of this report regarding the Local Government and Social Care Ombudsman (LGSCO) decision and report.
 2. Standards & General Purposes Committee to advise if it requires an update report on the improvement action plan.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report advises Standards & General Purposes Committee of the recent LGSCO report and decision against the council regarding the enforcement service. It outlines the detail of the service, the complaint and the improvement action plan.

2 DETAILS

- 2.1. In 2005 the council implemented an in house bailiff team with the objectives of improving services to customers, being a cost neutral service, allowing more control over recovery practices, restricting escalating fees that were being passed onto residents and reducing costs on the use of private contractors.
- 2.2. The in house bailiff team initially started with the collection of council tax and business rates debts and then expanded to include the collection of parking warrants.
- 2.3. At the time the legislation governing bailiff activities was the Distress for Rent Act 1988.
- 2.4. In July 2013, a shared service was entered into with the London Borough of Sutton (LB Sutton) for the recovery of council tax, business rates and parking warrants. Merton remained the lead authority.
- 2.5. In April 2014 the Taking Control of Goods Act was introduced, with the intention of simplifying the fee structure and making clear the practices and charging of fees by bailiffs (from this act known as Enforcement Agents). The Act clarified arrangements for when and how enforcement could take place, vulnerability of customers, recourse or remedies to decisions and training.

- 2.6. The new legislation created three separate stages, 1. Compliance Stage (where debtors could resolve cases before an Enforcement Agent became involved) 2. Enforcement Stage (where an Enforcement Agent will become involved and look to collect the debt) 3. Sale and Disposal Stage (where the Enforcement Agent looks to remove goods for sale at public auction)
- 2.7. All Enforcement Agents already in employment were trained on the new legislation and also received a higher level of training than required within the legislation.
- 2.8. In addition, Enforcement Agents have to obtain a certificate from a County Court every two years and have to satisfy the judge that they are 'fit and proper' to be awarded the certificate. Members of the public can challenge an Enforcement Agents suitability to be certificated through the courts.
- 2.9. Over the past few years the team have grown due to increase in workload, specifically the increase in the Merton's parking warrants due to the implementation of the ANPR project.
- 2.10. There are currently thirteen Enforcement Agents supported by five admin officers and a manager.
- 2.11. The tables below show the debt and fees collected for the past four years for both Merton and Sutton (2016/17, 2017/18, 2018/19 and 2019/20).

Merton	Debt collected £m	Fees collected £m
Council Tax	£7.138	£2.015
Business Rates	£2.923	£0.294
Parking PCN's	£2.476	£2.446
Total	£12.537	£4.755

Sutton	Debt collected £m	Fees collected £m
Council Tax	£4.629	£1.338
Business Rates	£0.834	£0.075
Parking PCN's	£0.487	£0.626
Total	£5.950	£2.039

- 2.12. The tables below show the number of cases dealt with and the number of cases paid in full for the past four years for both Merton and Sutton. (2016/17, 2017/18, 2018/19 and 2019/20)

Merton	Cases dealt with	Cases paid in full	% paid in full
Council tax	20,155	10,529	50.2
Business rates	1,227	665	54.9

Parking	53,189	14,160	26.6
Total	74,471	25,354	34.1

Sutton	Cases dealt with	Cases paid in full	% paid in full
Council tax	10,891	5,522	50.7
Business rates	414	195	47.1
Parking	11,047	2,810	25.4
Total	22,352	8,527	38.1

- 2.13. Due to the nature of the work the service receives a number of complaints each year, some escalate beyond the initial stage of local resolution and some to the LGSCO. The table below shows the number of complaints over the past full four financial years.

Year	Stage 1	Stage 2	Ombudsman	Total
2016/17	20 + 9 split with another service	4 + 1 split with another service	2	36
2017/18	25 & 10 split	6 + 2 split	0	43
2018/19	33 + 37 split	17 + 2 split	8	97
2019/20	24 + 9 split	7 + 1 split	2	43

- 2.14. For the four year period 2016/17 to 2019/20 there were 219 complaints, in the same period the service dealt with 96,823 cases which equates to 0.23% of cases had a complaint. Each year the complaints are reviewed for trends and actions taken to try to address them. We have recently amended the information on the website in relation to fees charged when a Penalty Charge Notice (PCN) debt is reduced following a number of complaints.
- 2.15. In September 2018 a complaint from a LB Sutton resident regarding the handling of a number of debts for both Merton and LB Sutton was escalated to the LGSCO. This complaint had previously been through both stage one and two of Merton's complaints procedure. The council provided responses and copy documentation to the LGSCO.
- 2.16. The Ombudsman's initial draft findings identified a number of issues with the way the case was dealt with and notified the council that they were likely to report against Merton due to a "catalogue of failings".

- 2.17. The failings included, not issuing or serving the correct documentation, Enforcement Agents not being contactable or responding promptly to contact, not issuing documents in envelopes to protect privacy, failing to outline storage costs when a vehicle was removed, not considering the vehicle as a 'tool of the trade' and not signposting to where to challenge such a decision, not undertaking a valuation of the vehicle upon seizure, no 'time to pay' policy and the collection of fees for multiple debts.
- 2.18. The council acknowledges that there were errors in the way the case was dealt with but also disputed parts of the report including the notices issued, at the time of the recovery there was no way for the Enforcement Agent to 'prove' a notice had been issued. This has been resolved by issuing mobile hardware and the point regarding multiple fees is defended by the council and an industry expert.
- 2.19. After several communications between Merton and the LGSCO, both parties agreed on the report and findings. This report was due to be published prior to the covid19 crisis but delayed due to the suspension of all cases by the LGSCO from 23 March 2020 until 29 June 2020.
- 2.20. The LGSCO will now publish the report on 23 July 2020. As lead authority, Merton is responsible for publishing and make the report available to the public, issue a press release and present to Standards & General Purposes Committee. The actual LGSCO report cannot be published until the day of the Committee meeting because it is embargoed. The proposed report is attached in full as Appendix 1.
- 2.21. An initial report and improvement plan was taken to CMT on 22 October 2019
- 2.22. The service improvement plan has been implemented to incorporate areas identified within the findings and conclusions – Appendix 2. The following has been implemented:
- Refresher training has been delivered to all Enforcement Agents, office staff and complaints staff by an industry expert
 - New processes and procedures implemented with relation to third party claims, moving to Sale and Disposal stage, issuing Notice of Sale documents and vehicle valuations.
 - Vulnerability training delivered to all Enforcement Agents.
 - Review and re-issue of all policies and procedures
 - Daily monitoring of work, documentation and camera footage to ensure policies and procedures are being adhered to.
 - Review of all complaints by the Enforcement Manager and Head of Service
 - Health Check and report undertaken by industry expert
 - Wi-fi printers installed in all Enforcement Agent vans
 - Scanning Apps installed for all Enforcement Agents

- Body Worn Camera policy reviewed and all Enforcement Agents are instructed to use these at all times now (previously it was if they felt threatened) - a review is underway on Body Worn camera's with the Parking Services section with the intention of agreeing a council policy and re-procurement for new cameras
- 2.23. In mid-March 2020, all enforcement visits were suspended due to the covid19 crisis. The Government issued legislation to cease all enforcement visits but to allow texts and letters to be issued. The Enforcement Agents have stopped all action and were all re-deployed on shielding and other duties.
- 2.24. In June 2020 the Enforcement Manager and support team were all furloughed. Over the next two months it is hoped that the following will have been implemented:
- 2.25. In July 2020 the two external Enforcement Agents used started to re-issue letters and text messages to existing customers.
- 2.26. The Government have announced that enforcement visits, that follow social distancing arrangements, can re-commence from 24 August 2020.
- 2.27. Any decision to re-commence enforcement visits will be made by CMT/members after that date and will take into account the needs of residents still requiring shielding duties
- 2.28. All procedures and documentation will be reviewed and issued prior to any recommencement of enforcement visits following Government guidance and industry best practice
- 2.29. Additional training for Enforcement Agents will be delivered to cover the new procedures, Government guidance and best practice before recommencement of enforcement visits.
- 2.30. The shared service board has asked for a review of the service to ensure it is fit for purpose. There has been a reduction in work over the past year and this is likely to continue over the short to medium term. The review will need to look at working levels, running costs of the service, staffing levels and likely performance and income levels.

3 ALTERNATIVE OPTIONS

- 3.1. An option would be to stop providing an in-house enforcement service and to use external contractors for all debts. The formal contract with LB Sutton for the shared service would need to be terminated and TUPE would apply if external contractors were procured. There is likely to be redundancy costs for staff not transferred if alternative employment was not found.
- 3.2. Using an external contractor is likely to attract costs, in cases where an Enforcement company has undertaken work and the council decides that they do not want enforcement action progressed it will be charged for fees already incurred. We also found that external contractors would often collect the fees and then pass the case back with the debt outstanding. (This was part of the reason the in-house service was introduced)

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. LB Sutton have been consulted with regarding the LGSCO complaint and report.

5 TIMETABLE

- 5.1. The improvement action plan is attached as Appendix 2 which has timescales detailed.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The LGSCO has recommended the council offsets £500 against the outstanding parking debt for distress and time and trouble. The council decided to increase this to £574 to leave a zero balance outstanding on the debt. This will be funded from the Enforcement service budget.
- 6.2. As detailed in 2.11 above, the in-house Enforcement service collects a large amount of unpaid debt for both Merton and Sutton council. Collectively in the last full four financial years (2016/17 to 2019/20) over £18.4 million in debt has been collected.
- 6.3. The service currently employees nineteen, many of which live locally to Merton and LB Sutton. Currently the team have two staff who started as Modern Apprentices and are now employed full time and another who has just commenced his Modern Apprenticeship.
- 6.4. Data from the cameras will now be stored for two months. In the event of a complaint, the data will be stored until it has exhausted the complaints process. Camera functionality and data storage will be reviewed to see if anything needs to be amended.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. Enforcement Agents are legislated by the Taking Control of Goods Act 2013.
- 7.2. Debtors have recourse to decisions made by Enforcement Agents through the courts.
- 7.3. Enforcement Agents are issued their certificate every two years by a Judge in the County Court.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. Whilst the council has to undertake all reasonable steps to collect unpaid debt owed it has to ensure that it is done in a fair and transparent manner and that all staff collecting debts are aware of the impact of debt on vulnerable clients.
- 8.2. The Taking Control of Goods Act details how Enforcement Agents should deal with vulnerable clients. All Enforcement Agents have received training on dealing with vulnerable clients and have all attended Dementia Awareness training.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None for the purpose of this report

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. Undertaking enforcement work can be challenging and at times the Enforcement Agents can face aggression and possible violence against them. In the past our Enforcement Agents have been assaulted and Police have been called to attend incidents.
- 10.2. All Enforcement Agents should wear Body Worn Camera's and Stab vests which have been supplied. The recent change of policy regarding Body Worn Camera's should now see the Enforcement Agents recording all visits and engagements with debtors
- 10.3. All Enforcement Agents carry an Ipad with case details, there is a Panic button on the system which if triggered sends text messages to office staff. All Enforcement Agents use council supplied vans which have GPS tracking, this enables the office staff to identify if an Enforcement Agent has not moved position for a given period of time which would result in a phone call to the Enforcement Agent to ensure everything is alright.
- 10.4. The van tracking enables the office staff to contact Enforcement Agents in close proximity to any potential incident so that support can be requested.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1 – LGSCO Report Recommendations and Findings.
- Appendix 2 – Improvement Action Plan

12 BACKGROUND PAPERS

- 12.1.

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