Final Distribution:

Corporate Director - Finance & Risk Management
Operational Manager - Community Wellbeing
Partnership Delivery Manager
Revenue and Benefits Client Manager
Traffic and Transport Manager
Valuer to the Council
Service Delivery Manager, Property and Transport
Revenues and Benefits Manager
Revenues Manager
Parking Operations Manager

Lynda Baker – Audit Services Manager
Michael Haywood - Auditor

March 2010
EXECUTIVE SUMMARY

1 INTRODUCTION

1.1 Background

Milton Keynes Council uses bailiff firms and debt collection agencies (the report will refer to these two generically as recovery agents) to recover a variety of overdue debts for the Council.

Bailiff firms employ bailiffs who hold Court Certificates and this enables them to enforce debts on behalf of the Council. Bailiffs are enabled to seize debtors’ goods (levy distress) to secure repayment of parking offences, Council Tax, Business Rates and Commercial Rent. In addition to the recovery of debts bailiffs require debtors to pay them their additional fees directly, the rates for which are detailed within various statutory instruments. Debt collection companies are less specialist and do not have the power to seize a debtors property.

The law covering bailiff activity is currently under review and enabling legislation is expected to be in place in approximately 2011/2012.

Total debt recovered by recovery agents in 2008/09 amounted to approximately £2.5M for which additional charges amounted to £550K (paid in the main by the debtors). The vast majority of the work was undertaken on behalf of Revenues and Benefits (R&B) where £2.3M was collected for which they charged £453K in fees direct to the debtors.

This audit reviewed the use of recovery agents corporately around the whole council however given the volumes involved primary focus was on the activities of bailiff firms within R&B as well the Parking service.

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<thead>
<tr>
<th></th>
<th>Council</th>
<th>Revenue &amp; Benefits</th>
<th>Parking</th>
<th>R &amp; B (Benefits Overpayments)</th>
<th>Housing</th>
<th>SGP Directorate</th>
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<tbody>
<tr>
<td>Total value of debt passed to recovery agents</td>
<td>£8.13M</td>
<td>£6.2M</td>
<td>£135K</td>
<td>£1.3M</td>
<td>£370K</td>
<td>£125K</td>
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<td>Value recovered (% of debt passed over)</td>
<td>£2.44M  (30%)</td>
<td>2.3M (37%)</td>
<td>£45K (33%)</td>
<td>£65K (5%)</td>
<td>13K (3.5%)</td>
<td>18K (14%)</td>
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<tr>
<td>Fees (Paid By Debtor (D) Paid by Council (C))</td>
<td>£0.55M (est)</td>
<td>£0.453M (D)</td>
<td>£79K (D)</td>
<td>25%–33% (C)</td>
<td>25%–33% (C)</td>
<td>15%–33% (C)</td>
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1.2 **Objectives and Scope**

The objectives of the audit were to ensure that:

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<tr>
<th></th>
<th>Revenues &amp; Benefits</th>
<th>Parking Operations</th>
<th>Council</th>
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<tbody>
<tr>
<td>a) Performance of the Bailiffs is effectively monitored <em>(Performance Monitoring)</em></td>
<td>3</td>
<td>2</td>
<td>3</td>
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<tr>
<td>b) All money collected by Bailiffs is passed onto the council on a timely basis. <em>(Income)</em></td>
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<td>2</td>
<td>3</td>
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<tr>
<td>c) Bailiffs operate within Council policy and current legislation. <em>(Policy and Legislation)</em></td>
<td>2</td>
<td>1</td>
<td>2</td>
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Key: 1 = Poor, 3 = Good

2 **AUDIT OPINION**

**Satisfactory** – Whilst there were some good controls in existence particularly within Revenues and Benefits, this corporate review revealed inconsistencies in their application along with a fragmented approach to the usage and management of bailiffs around the Council.
3 CONCLUSIONS

3.1 The Council does not have a clear, co-ordinated and consistent approach to the use of recovery agents. Individual sections decide on the extent to which outstanding debt is chased and the means by which this is undertaken.

3.2 In respect of the two main service areas that utilise recovery agents, R&B and Parking, R&B does not have a formal contract with the agent but is active in monitoring their performance, whereas Parking does have a contract with an agent but is not active in performance monitoring.

3.3 Overall there is good control over the collection of money within the R&B service with sound processes for monitoring of bailiff’s performance and accounting for monies due to the Council. The monitoring of bailiffs’ charges was weaker and there was evidence that some charges taken were either made in error or appeared unreasonable. However, management have acknowledged the audit observations and have strongly reiterated with the bailiffs firms concerned what the correct charges should be.

3.4 The control within Parking was less robust with inadequate monitoring of charges taken, recovery rates and monies remitted to the council. That said the principal officers have demonstrated a keenness to rectify deficiencies identified within this audit.

3.5 The audit review also found some inconsistency in the charges being made by bailiffs within R & B and Parking. Four different amounts were charged by the different bailiff companies for essentially the same service of “attending a debtor with the intention remove goods”. This is inherently iniquitous with debtors being faced with essentially a “post code” lottery depending on which part of the borough they live in. This is a reputational risk and should be resolved promptly.
4 WAY FORWARD

4.1 All recommendations are in the Management Action Plan (Page 12).

4.2 The Council should consider at a corporate level how to best undertake recovery action on overdue debts. This should include whether the Council should continue with this service-based approach and whether or not these should be subject to contracts with recovery agents or whether there is any advantage to aggregating council-wide demand to make use of corporate contracts.

4.3 The charges taken by bailiffs should be reviewed to ensure that bailiffs are adhering to the contract and/or SLA and the public is protected as far as possible by the Council.

4.4 There should be more effective signposting of bailiff fees for each service on the Council website to ensure that the public are made aware of the implications of not meeting their debts.

4.5 Bailiff performance should be monitored in order that ineffective debt collection is recognised promptly and bailiffs challenged to improve.
5 DETAILED FINDINGS

Performance Monitoring

5.1 The use of bailiffs is inconsistent across the Council and this is detailed below:

5.2 The largest user of bailiff companies is the R&B service where two bailiff firms are used. In 2008/09 they recovered approximately £2.3M in unpaid taxes from a total overdue debt of £6.2M for which the debtors also incurred £453K in bailiffs’ fees. These fees are retained by bailiff firms however; the Council is subsequently invoiced for these fees and pays the appropriate VAT element. This is standard operating practice with local authorities nationwide. The section monitor recovery rate percentages well and in the last year, 2008/09, the companies achieved very similar rates, being 36% and 38%. In an attempt to further improve recovery and monitor performance, a third company is soon to be used to attempt to recover monies from the unsuccessful cases that the two main bailiff firms have returned back to the Council. There are no contracts or SLAs.

5.3 The second largest user of bailiffs is Parking where a further two different bailiff firms are used. In 2008/09 approximately £45K was collected from a total overdue debt of £135K from which the bailiffs took their additional charges from the debtors of £79K plus VAT. Recovery rates for 2008/2009 are approximately 39% and 27% with an equal allocation of debt allocated to each bailiff. There are contracts but no SLAs.

5.4 Bailiffs are employed on a very limited basis by Property Services, only having been appointed on three occasions in the past six months. Fees were not monitored and there is no contract or SLA.

5.5 Bailiff firms are also employed within R&B to collect Housing Benefit overpayments. The firms are used simply as debt collectors i.e. they do not use their powers to levy distress. For 2008/09 the success rate percentage was approximately 5% on a debt of £1.3M. Commission of between 25% and 33% was paid by the Council on amounts recovered. There are no contracts and/or SLAs.

5.6 Within Housing a debt collection agency was used to recover unpaid housing rent from former tenants. The Council pays commission of between 25% and 33% of collected rent. There are currently rent arrears of £1M with £364K sent to the debt collector in 2008/09 who recovered 3.7%. Recovery agents are not used to collect unpaid rent in respect of existing tenancies. There is no contract or SLA.
5.7 In addition, within Finance & Performance miscellaneous small overdue debts were placed with a debt collection agency to recover them. During the 2 years 2007 - 2009 approximately £125K of debt was sent to the agent and approximately £18K was recovered. Commission is paid by the Council at a rate of between 15% and 33% on all monies recovered. There is no contract and/or SLA.

5.8 The use of bailiffs is inconsistent across the Council. It is worth stressing that there are merits with the existing approach as it allows these individual services a great deal of flexibility and control over the recovery of their outstanding debts, it enables a close working relationship with the agent and also for effective monitoring of service quality and performance.

However, the downside to this approach can be inconsistency throughout the Council in terms of quality, performance and level of fees charged. The last point here is almost hidden from the Council given that the majority of fees are borne directly by the debtor, although this clearly does affect the level/timing of income remitted to the Council by the agent given that they take their fee first. There is also a legitimate expectation, if not an explicit requirement, that costs should be reasonable & kept to a minimum for the debtor.

The Council should consider at a corporate level how to best undertake recovery action on overdue debts. This should include whether the Council should continue with this service-based approach and whether or not these should be subject to contracts with recovery agents or whether there is any advantage to aggregating council-wide demand to make use of corporate contracts.

5.9 Within Parking, the collection rate percentages, monies due into the bank account and fee implementation were not monitored. The audit identified that one contracted bailiff firm achieved in 2008/09 a recovery rate percentage which was approximately 12% better than the other bailiff firm.

Risk

Without monitoring performance it is not possible to ensure all reasonable efforts are being made to recover overdue debts.

It is recommended that for each bailiff firm a record is kept of details of debt allocated and recovered in order that debt recovery percentages may be monitored.
Policy and Legislation

5.10 Staff were knowledgeable over the relevant legislation affecting the conduct of bailiffs in their particular service area. Although there was some inconsistency around the transparency of charges to debtors i.e. in relation to what bailiffs take themselves in the recovery process. R&B signpost bailiff fees within a Council Tax Collection and Enforcement policy document which is on the Council’s website. Additionally debtors are advised when a liability order has been granted against them and this explains that failure to make a payment of the outstanding council tax or business rate will lead to the appointment of bailiffs. The letter also details the scale of the charges.

5.11 Parking and Property Services do not publish details of fees. Whilst Parking send motorists a warrant of execution in respect of the unpaid penalty charge which advises that bailiffs are appointed, bailiff fees and charges are not detailed. Similarly Property Services did not advise debtors of bailiffs’ charges.

Risk
The Council could be accused of not doing all that it could to advise debtors and the general public of the implications of not paying their debts.

It is recommended that details of bailiffs’ charges are published within relevant policy documents which should be placed onto the council’s website.

It is recommended that Parking and Property Services adopts the R&B approach of advising debtors of the consequences of bailiffs being appointed along with providing details of their charges.

5.12 There was inconsistency with regard to bailiff fees paid by debtors for the act of ‘attending with a vehicle with the intention of removing goods.’ The relevant statutory instruments state that ‘reasonable costs and charges incurred may be taken from debtors.’ Within R&B the fees were £110 and £115 and in Parking they were £150 and £355. This wide difference in the same fee for essentially the same activity makes it difficult to make the argument that the higher figure of £355 is a reasonable cost when it is compared to the lower fees taken.
Risk

This could be considered unethical and poses a reputational risk to the Council.

It is recommended that a Council wide review of bailiff fees be undertaken to ensure that where discretion is allowed under the relevant statutory instruments that they are fair, reasonable and consistent across areas of similar/same activity.

5.13 There is one bailiff fee that relates to the collection of debtors’ goods by the debtor from a bailiff. The bailiffs were taking this charge even when they allowed the goods to remain in the debtor’s possession (walking possession) The law is unclear on this aspect and it is noted that there is differing counsel opinion on the validity of the application of this charge in these circumstances. Whilst there is a document held which was allegedly given by counsel this was provided by a third party and its veracity cannot be proved.

Risk

There is a risk that the Council could face legal challenge on the implementation of this charge.

It is recommended that consideration be given to seeking legal opinion on the validity of this charge's application.

5.14 The ability to identify excessive fees or fees taken in error was also being compromised by the ineffective overview of charges taken.

Risk

The Council could be exposed to reputational risk and/or legal challenge.

It is recommended that when bailiffs submit their schedules of money recovered a prime facie check is undertaken to identify any fees which appear out of the ordinary. In addition, a more detailed sample check should be undertaken to check the veracity of fees to the published tariff detailed on the Council’s website (5.10 above). The sample size should be determined by reference to the appropriate Client Manager.
Indemnity Insurance/Performance Bonds

5.15 There were no up to date certificates of indemnity insurance although the impact of the absence of these was mitigated to a large extent within R & B by the insistence that bailiff firms remit money to the Council on a weekly basis.

Risk
Monies could be misappropriated or lost through fraud and/or bailiff firms becoming insolvent.

It is recommended that all appropriate insurances are reviewed on an annual basis.

Contracts

5.16 The basis for the appointment of bailiffs is not clear and it is difficult to establish if best value for money for the Council has been achieved in terms of recovery rates or charges taken from the general public. In addition there may well be economies of geography if a bailiff company was allowed to recover all types of debts from an area rather be restricted to a particular class of debt.

5.17 The majority of bailiff work is undertaken without the benefit of contracts or SLAs. The fees that they earned in 2008/09 working for the Council were approximately £532K from R&B (no contracts held) and Parking (contracts held). These fees are collected direct from the debtors and the cost to the council is nil. In addition relatively small sums of commission are paid by the Council relating to the collection of Housing Benefit overpayments (bailiffs), unpaid rent and miscellaneous small debts (debt collection agencies). These fees are deducted from the amount collected by the various firms before it is remitted on to the Council. It is estimated that these fees amount to approximately £20K although detailed analysis has not been undertaken.

5.18 Whilst it is acknowledged that the current approach of not having a formal contract within R & B does allow a great deal of flexibility to the management of bailiffs the present arrangement of part contracted services corporate wide has led to a fragmented approach to bailiffs with the result that charges for the same activity are inconsistently applied across the Council. This has meant that a charge made by one bailiff may appear unreasonable when compared to the charges from other bailiffs working for the Council. This has the potential for reputational risk and legal action.

5.19 Notwithstanding that the cost of bailiff services working on behalf of R & B is nil to the Council, the actual value to the firms of the work that they undertake is nevertheless considerable and as such Council tendering rules should apply. This is indicated in the Council/Mouchel partnership SLA.
5.20 It is the Council’s Legal Services tentative opinion that the contractual relationship is between the Council and the bailiff firms and the role of the PPP partner is that of a facilitator to that arrangement. It is further considered that the section 151 officer should ascertain what kind of arrangement he requires for procuring bailiffs’ services (contract or non contract).

Risk
There is no transparency for the process of appointment of bailiffs and this in itself could also increase reputational risk to the council.

It is recommended that there is a corporate review of bailiffs as part of the council wide debt recovery review recommended in 5.8 above with a view to developing a formal tendering proposition for Bailiffs’ contracts to be implemented.

Income
5.21 There was effective monitoring within R&B to ensure that money was received by the Council and that the debtors’ accounts were updated accordingly.

5.22 Recovered Council Tax was paid in by the bailiffs within a week of being collected whilst within Parking it appeared that debt was being delayed for periods up to a month.

Risk
Income is delayed impacting on cash flow and lost interest.

It is recommended that bailiff firms working for Parking be instructed to pay monies into the council’s bank account within one week of their collection.
5.23 Parking remittances are posted on an ad-hoc basis to the Council as a cheque from the Bailiff; however there is no notification from them of the value to expect.

**Risk**

There is inadequate control to ensure we receive all monies recovered by the bailiff.

It is recommended that bailiffs working for Parking be instructed to email the Council details of monies collected and remit the funds to the Council’s bank account by BACS.
**MANAGEMENT ACTION PLAN**

The recommendations are categorised on the following basis:

- **Essential** - Implementation is required with immediate effect to address a weakness that fundamentally undermines the control/objective of that system.
- **Important** - Implementation is required within a short period of time to address weaknesses that seriously undermine the control/objective of that system.
- **Standard** - Management need to take recommended action within a reasonable period to address weaknesses that may undermine controls/objectives.

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<th>Ref</th>
<th>Findings</th>
<th>Risk/ Implication</th>
<th>Recommendation</th>
<th>Management Comments</th>
<th>Manager Responsible &amp; Target Date</th>
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<tbody>
<tr>
<td>1</td>
<td>Performance Monitoring</td>
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<td></td>
<td>I. Bailiffs were operating across the council without contracts and/or SLAs in some service areas and there was inconsistency of treatment of debtors with no coherent procurement strategy.</td>
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<td>II. The recovery of debt and the total value of work undertaken by bailiffs was found to be in excess of council procurement thresholds.</td>
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<td>III. There is currently no opportunity for bailiffs working within one service area of the council to undertake work for another service area.</td>
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<td>I. The lack of SLAs/contracts makes it difficult to understand what level of recovery and service is required from bailiffs and how to hold them accountable for delivering it.</td>
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<td>II. Whilst accepting that the cost to the council is negligible, without a procurement process it is difficult to quantify if best value for money is being obtained over recovery and charges.</td>
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<td>III. The opportunity to drive down costs to taxpayers and the general public could be increased.</td>
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<td><strong>Essential</strong> I. Implement a tendering process with contract(s) to be awarded to those bailiff companies that offer best value for money whilst also keeping costs down to a reasonable level for debtors.</td>
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<td>II. As part of the review in i &amp; ii above request bailiff firms to tender for both main activities.</td>
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<td>Agreed.</td>
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Assistant Director, Procurement, Partnership, Portfolio

31/5/2010
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<tr>
<th>Ref</th>
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<td>2</td>
<td><strong>Policy and Legislation</strong>&lt;br&gt; Fees for bailiffs attending a debtor with the intention of levying distress (attendance fee) were found to vary across the council for different types of debt, principally: Attendance fees for the recovery of Council Tax and NNDR from bailiff firms used were found to be set at £110 and £115 and for Parking the fees for the same activity were set at £150 and £355.</td>
<td>The Council Tax (Administrations and Enforcements) Regulations 1992 as amended by the council Tax and Non Domestic Rating (Amendment) (England) Regulations and the Enforcement of Road Traffic Debts (Certified Bailiffs) Regulations 1993 as amended by SI 2003 No 1857 (L31) state that reasonable costs and fees incurred should be taken by bailiffs when attending with a vehicle to levy distress. The fees charged by some of the bailiffs appear excessive and varying in amount both within services and across the Council which may leave debtors with the impression that there is not a consistent approach and may well leave the council exposed to reputational risk.</td>
<td><strong>Essential</strong>&lt;br&gt; Review and negotiate with bailiffs a standard attendance fee to ensure there is consistency across the council for this activity.</td>
<td>Agreed this will be dealt within the retender process.&lt;br&gt; Noted. The bailiff's contract for Parking is to be retendered in July 2010 and only one bailiff will be appointed.</td>
<td>Revenues &amp; Benefits Clients Manager &amp; Traffic and Transport Manager 31/05/2010</td>
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<tr>
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<td>3</td>
<td><strong>Policy and Legislation</strong>&lt;br&gt;For Parking and Property Services details of Bailiffs charges were not made available to the general public whereas the charges taken by bailiffs working for R&amp;B were signposted within a policy document on the council’s website.</td>
<td>Debtors would not be aware of the increased cost implications of them not paying their debts on time with the result that the council may become accused of failing to provide assistance by signposting. This may lead to reputational risk.</td>
<td><strong>Important</strong>&lt;br&gt;I. Ensure details of bailiffs charges are incorporated into relevant policy documents onto the council’s website.&lt;br&gt;II. Parking and Property services adopts the R &amp; B approach of advising debtors of the consequences of bailiffs being appointed along with providing details of their charges.</td>
<td>I. A summary of bailiffs charges will be posted on the parking section of the council’s website.&lt;br&gt;II. Property Services now advise customers with overdue rental payments the potential bailiffs’ charges that they may have to pay.</td>
<td>Traffic and Transport Manager &amp; Valuer to the Council. 31/05/2010</td>
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<td>4</td>
<td><strong>Performance Monitoring</strong>&lt;br&gt;I. There was no monitoring of bailiff performance by the Parking service.&lt;br&gt;&lt;br&gt;II. There was no monitoring of charges taken from debtors within Parking and Property Services and some monitoring within Revenues and Benefits.</td>
<td>I. Ineffective/poor debt collection will go unchallenged and less money will be recovered.&lt;br&gt;&lt;br&gt;II. Excessive charges taken by bailiffs will go unnoticed and unchallenged and in the event of subsequent challenge by debtors and/or media coverage could leave the council exposed to reputational risk.</td>
<td><strong>Standard</strong>&lt;br&gt;I. Maintain a record of how much debt has been passed to each bailiff and compare it to the debt collected.&lt;br&gt;&lt;br&gt;II. Instigate a process to sample check bailiffs charges to ensure that they are consistent, within policy and legislation and reasonable.</td>
<td>Agreed.</td>
<td>Traffic and Transport Manager Revenues and Benefits Client Manager Valuer to the Council 31/05/2010</td>
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<td>5</td>
<td><strong>Income</strong>&lt;br&gt;For Parking there was no control that ensures that monies are received by the council or banked by the sub contractor R R Donnelly.</td>
<td>The service does not have a record of what cheques the Bailiffs are going to remit and has no diary note to ensure that cheques have been banked. Cheques could therefore be lost in the post and money lost.</td>
<td><strong>Standard</strong>&lt;br&gt;Instruct bailiffs collecting debt on behalf of Parking to send an email advice containing the schedule of debtors and debt collected and remit the monies by BACS. The email can then be used as a control document to ensure that the money has been received and the debtors’ records updated.</td>
<td>A revised system has been implemented with the bailiffs now sending an email advice of how much money is to be remitted.</td>
<td>Traffic and Transport Manager 31/05/2010</td>
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<td><strong>Income</strong>&lt;br&gt;Money was received by Parking Operation approximately one month after it had been collected.</td>
<td>The council does not have the benefit of the money earlier.</td>
<td><strong>Standard</strong>&lt;br&gt;Requires the bailiffs to remit collected money to the council within one week of collection.</td>
<td>Noted. This will be incorporated into the new tendering arrangements for the new contract.</td>
<td>Traffic and Transport Manager 31/07/2010</td>
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<td>Policy and Legislation</td>
<td>In Revenues and Benefit bailiffs were taking a &quot;Header H&quot; fee (£24.50) following levying distress and undertaking a walking possession. This was to allow for the collection of goods by the debtor even though the goods had not been physically removed from the debtor's property. The law is unclear on this aspect and it is noted that there is differing counsel opinion on the validity of the application of this charge in these circumstances. Whilst there is a document held which was allegedly given by counsel this was provided by a third party and its veracity cannot be proved.</td>
<td>There may be legal challenge on the validity of this charge which may involve the council in reputational risk</td>
<td><strong>Standard</strong>&lt;br&gt;Mouchel/Council to consider seeking their own counsel opinion on the circumstances when the Header H charge may be applied.</td>
<td>Will consider and obtain a copy of the original documentation.&lt;br&gt;Bailiffs do indemnify the Council for their activities.</td>
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<td>8</td>
<td>Policy and Legislation</td>
<td>Current details of various commercial insurances were not held.</td>
<td>Loss of money through fraud and/or insolvency of bailiff firms.</td>
<td><strong>Standard</strong>&lt;br&gt;Details of all appropriate insurance are obtained and a suitable diary note made to ensure that it is updated annually.</td>
<td>Agreed.</td>
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NB  Any cost implications arising from implementation of the recommendations by Mouchel must be agreed in advance with the appropriate Client Officer and the Partnership Delivery Manager.