



Business Rates Seminar

Billing Recovery & Enforcement

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Tuesday 9 February 2016

Multipliers

- LGFA 1988 Schedule 7
- Two multipliers – SBR & Non-Domestic
- SBR multiplier changes annually based on Retail Price Index (inflation) in the September prior to the year in question.
- May be adjusted by Secretary of State
- Must be expressed to 3 decimal places only
- RPI September 2015 – 0.8%
- 2016/17 multiplier is 0.484 (0.480 in 15/16) – 48.4p in £
- 2016/17 supplement set at 1.3p
- Non-Domestic multiplier 2016/17 is 0.497 – 49.7p in £
- Will be confirmed by LG Finance Report 2016/17 or 1 March 2016, whichever is the earlier

Which Multiplier to Use

SBR Multiplier

- Occupied charges where RV of hereditament is below £18,000 (£25,500 in London)
- SBR multiplier still used even if occupier doesn't qualify for small business relief

Non-Domestic Multiplier

- Occupied charges with RV £18,000 and above
- Any empty charges

Billing

- The Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 SI 1058
- Liability to pay rates only arises once a demand notice has been issued by the Billing Authority (BA)
- Regulation 5 (1) - Will be served as soon as practicable after multiplier determined but not before BA has set its council tax.
- Encon Insulation (Nottingham) Ltd v Nottingham City Council (QBD) 1999
- BA failed to identify empty property was occupied until 1997/8 and issued back-dated demand to 1 April 1990
- BA found not to have investigated adequately (not visited)
- Demand notices not served “as soon as practicable in the relevant year”
- BA had failed in its statutory duty and rates to 31 March 1997 not payable

Demand Notices

- Regulation 4
- BA required to serve demand notice each year
- Different demand notices must be served for different financial years
- From 15 February 2012 a single notice can be served current or forthcoming year and any earlier year (The Non-Domestic Rating (Collection and Enforcement)(Amendment)(England) Regulations 2012
- Issued at least 14 days before first instalment due
- Must specify the day in each month instalments are to be paid
- No payment need be made unless a demand notice has been served

Instalments

Regulation 7 and Schedule 1

TWO alternative instalment schemes for payment of non domestic rates.

- the Statutory Instalment Scheme i.e. monthly instalments or,
- by agreement with the ratepayer

Statutory Scheme

- 10 monthly instalments - first instalment at least 14 days after issue of demand notice
- 10 monthly instalments where the demand notice is issued on or before 30th April of the relevant year in question.
- Issued between the 1st May but before the 31st December, the number of instalments applicable will be the number of **WHOLE MONTHS LESS ONE**.
- Issued between the 1st January and the 31st March, the whole amount is payable in a **SINGLE** instalment on a day at least 14 days after the issue of the notice.
- From April 2014 businesses can opt to pay over 12 months
- Notice issued after 15 April number of instalments = number whole months left in year
- Where a demand notice is issued after the end of the relevant year in question, there is **NO ENTITLEMENT** to instalments. Any amount due can be demanded in full 14 days after the issue of the notice.

Instalment Amounts

- Divide amount payable by the number of instalments and rounding to the nearest "£1"
- If required, the **FIRST** instalment is adjusted so that the amount demanded equals the amount due
- If the calculation results in amounts ending in "50p", all but **ONE** of the instalments could be rounded UP in this instance.
- Where instalments would be LESS than £50 and whole amount due LESS than £100 the BA may request payment in a single instalment
- If instalment LESS than £50 but whole amount due MORE THAN £100 number of instalments = amount due divided by £50 (whole £50's only).

Payment By Agreement

- Regulation 7
- A BA can agree a different payment arrangement to those covered by statutory scheme e.g. by allowing yearly, half yearly, quarterly payments etc.
- Details of the anticipated payments should be clearly detailed on the demand notice, or adjustment notice (*whichever is applicable*).
- Payment agreements are **NOT** subject to the statutory enforcement procedures (**Regulation 8 & 11, C & E Regulations 1989 S.I 1058**).
- They should also be advised of enforcement action that will be taken by the B.A in the event of non-payment.

Joint & Several Liability

- Exists where there is more than one owner or occupier of a hereditament
- Demand notice may be served severally to each of any of the owners/occupiers concerned; or
- Where owners/occupiers concerned are j/s liable as partners or trustees, jointly to the partnership or trust, a single notice can be given
- If notice is given “severally” the BA must notify that fact to each person

Changes in Liability

- Regulation 9
- If liability ends during the year a further demand notice must be issued showing the actual charges due to the date of vacation
- Payable in full at least 14 days after issue of the notice.
- If demand notice is issued after the end of the year to which it relates, full payment of the amount outstanding (*less any credits or reliefs*) is due in full any time 14 days after the notice is issued.
- No right to withhold any payments due whilst awaiting an amendment to liability as a result of a change of circumstances.
- Any resulting overpayment must either be refunded to the ratepayer, if requested, or if no request made the BA may credit the monies against a subsequent liability.

Adjustment Notices

- Change of circumstance in the relevant year other than as a result of a vacation, the ratepayer will be notified of the amended estimated charge by the issue of an "ADJUSTMENT NOTICE".
- BA can backdate liability for a period of up to **SIX years** from the date of issue of the demand notice as provided for under the **Limitation Act 1980**.
- Where adjustment changes amount payable, and there is still a right to instalments, the remaining instalments should be amended accordingly.
- Where no entitlement to instalments or only one instalment due and there is an **increase** in monies due, the increase from the original sum can be demanded in full any time 14 days after the notice has been issued.
- Where there is a **decrease** the notice need only advise of the amended amount due immediately.
- Where adjustment results in an overpayment, a notice must be issued advising of the credit and it should either be refunded if requested by the ratepayer, or it can be offset against future liability.

Contents of Demand Notices

MUST INCLUDE:

- Address and description of the hereditament to which the notice relates
- the rateable value of each hereditament.
- the non domestic multipliers for the relevant year.
- a statement of the type of charge levied (*whether occupied or unoccupied*).
- a statement of the days, if any, for which the ratepayer is eligible for any reliefs together with a statement of how the bill has been calculated.
- Explanatory Notes
- Amounts due must still be paid even if demand notice invalid due to mistakenly missing any prescribed information

Non-Domestic Rating (Electronic Communications) (England) Order 2012 (SI 25)

- The additional information will be treated as 'supplied' to a ratepayer where the billing authority makes that information available via a website and informs the ratepayers of how the information can be accessed i.e. in the explanatory notes which accompany bills;
- authorities that choose to supply the additional information in this way must inform ratepayers that they can request a hardcopy of this information and;
- must provide ratepayers with a hardcopy if so requested

Service of Demand Notices

General Provisions - Section 233 of the Local Government Act 1972

Service may be effected by:

- Handing the document to the person;
- Leaving it at his proper address (person 's last known address or corporate body its registered or principal office)
- In the case of a corporate body, by giving it to, or serving it on, the secretary or clerk to that body or,
- In the case of a partnership, by giving it to, or serving it on, a partner or a person having control or management of the partnership business
- Section 7 of the Interpretation Act 1978 provides that *"proof of service by post is deemed to be taken as proof of delivery"*. Therefore a bill is taken to be issued when it is posted, not received.
- High Court Practice Directive – 1st class post deemed to be delivered on second working day after posting and 2nd class fourth working day. Specifically relates to High Court documents but generally accepted for all

Service of Demand Notices Electronically

- A demand notice may be served by electronic communication on a ratepayer who has agreed to accept electronic service
- By email
- Published on a website (if ratepayer notified it is there)
- Notices shall be treated as served on the second business day after it was sent by e-mail or notification of its publication was given
- A person may by notice in writing to the billing authority amend the address notifications are sent to or withdraw that notification to receive e-billing.
- The regs do not give a ratepayer the right to have their demand notice served electronically, nor compel local authorities to use this method of service. They enable the BA to use electronic delivery for service, if it wants to, where the taxpayer has agreed and provided an e-mail address for that purpose.

The Further Notice

Regulation 8 sets out the procedure to be followed when a liable person fails to make an instalment payment:

- The BA shall serve a “**FURTHER NOTICE**” (reminder) stating the instalments to be paid on the liable person(s) any time after an instalment falls due
- The notice must state the aggregate amount of unpaid instalments
- Arrears must be paid within 14 days
- If the overdue instalments are paid the instalment scheme continues
- If there is subsequent default a “**REMINDER NOTICE**” is issued under **regulation 11 SI 1989/1058** requesting payment in full of the estimated amount.

The Reminder Notice

Before applying for a L/O the BA must have issued a REMINDER NOTICE (final notice) stating the amount due.

- No such notice is required if a FURTHER NOTICE has been issued in respect of the amount.

So a reminder notice need only be served when:

- There is no right to instalments; or
- A further notice has been issued and this is the second occasion an instalment has not been paid; or
- All instalments have fallen due

Outstanding Liabilities on Death (Reg 24) - responsibility for payment lies with the appointed Executor/Administrator providing a notice has been served on that person.

- BA cannot pursue recovery through Magistrates Court but must sue the estate under the **Administration of Estates Act 1925**

The Liability Order Complaint

Regulation 12

- If further and/or reminder notice has been issued, and all or some of the account remains unpaid, a BA may apply to the magistrates court for a liability order.
- Must be commenced within **6 YEARS** of the date of the first instalment falling due.
- Commenced by laying a complaint at the Magistrates Court identifying the debtor's name and address, the period of liability, and the estimated, or actual amount that is payable but which has not been paid.
- Requests that a summons be issued requiring the debtors appearance at court to give good reason why a liability order should not be granted to the BA.
- Summons must be served at least 14 days before the hearing

The Liability Order Complaint

- **The Magistrates' Courts Fees Order 2005 S.I 3444**
- Came into effect from 1st January 2006 and provided that the Magistrates Court can charge the B.A a fee of £3.00 for each application placed before them requesting a summons be issued.
- Once satisfied that a summons can be issued, it should be properly signed by a Justice of the Peace, although **Rule 3(3) of the Justices Clerks Rules 1970 S.I 231** provides that any summons may also be signed by a magistrates clerk.
- The use of facsimile rubber stamps and digitised signatures is commonplace in most B.A's today and the validity of using them has been well tested in the higher courts, and has been deemed to be valid (**R v Brentford Justices ex parte Catlin (1975)**)

The Summons

The form and content of the summons is not prescribed regulations, but its layout should be agreed with the Magistrates' court clerk.

Any summons should state:

- Ratepayer's name (or all names for J & S liability).
- Address at which summons served.
- Period of liability.
- The address at which the liability has arisen if different from the one at which the summons served.
- The address of the court.
- Time and date of hearing.
- Rate outstanding.
- Costs.
- Signature of the person receiving the complaint

Service of the Summons

Under **Regulation 13** a summons may be served on a person by:

- Delivering it to him in person.
- Leaving it at his usual or last known place of abode, or if a company, at its registered office.
- Sending it by post to his usual or last known place of abode, or if a company, at its registered office.
- Leaving at or sending by post to an address given by the person at which service will be accepted.
- **S7 Interpretation Act 1978** - Proof of posting is proof of delivery
- **R v Liverpool CC ex parte Greaves (1979)** - Summons not received is not a defence.

General

- If summons is returned to the BA the summons is deemed as **NOT** being served and the BA should not proceed with L/O application.
- If an amount equal to the rate plus any costs is paid in full prior to the L/O hearing, the BA must accept payment and stop proceedings.
- If payment excludes costs a L/O can be requested for the costs only.

The Hearing

- PURPOSE – For the BA to satisfy the Justices that the amount is payable by the debtor and has not been paid.
- At least 2 Justices or a District Judge must be present to hear case.
- **Section 223, LGA 1972** enables a B.A to authorise any officer by resolution to prosecute, attend or appear on its behalf in proceedings before a Magistrates' court.
- A copy of this authorisation (relevant minute of the appropriate council meeting) should be available for inspection at all times. If it is not the original minute, the copy should be certified either under **Section 41 of the Local Government Act 1976**, or by a proper officer of the B.A under **Section 229 of the LGA 1972**.
- The BA will be required to give evidence under oath to satisfy the court that it has properly set the charge, followed correct procedure and to confirm that the debtor has not paid.

Proof of Liability

- An entry appears in the local rating list
- Sum has been duly demanded i.e. demand notices have been issued in accordance with regulations
- There has been a Failure To Pay
- Further/Reminder Notices
- The statutory time limits have elapsed
- Balance including costs not paid or that the outstanding balance has been paid but not the costs
- Complaint correctly made
- Summons Issued

Magistrates Responsibility

- Providing the B.A can show that the amount outstanding has been duly demanded and remains unpaid, the burden of proof to justify why a liability order should not be granted rests with the debtor. This is supported by the case; **Des Salles D'Epinoix v Kensington & Chelsea LBC (1969)**.
- The Magistrates do not have the power to **REMIT** the tax at this stage (**Hackney LBC v Izbedski (1988)**), consider an individual's personal financial circumstances for not paying, or instruct the B.A to take a certain type of enforcement action.
- However, they do have the power to refuse to grant costs requested, or adjourn cases for further information. It should be stressed that the decision whether to adjourn **MUST** be taken by the clerk or the court, and **NOT** the B.A who should consider each request on its individual merits.

Valid Defences

Case law or Statutory Provision:

- Procedures Invalid
- Officer not authorised
- No further or reminder notice issued
- Defective computer evidence
- Rate not demanded or incorrectly demanded
- Instalments not calculated correctly
- Less than 14 days notice between the issue and first instalment
- Rate not charged in accordance with the Rating List
- More than 6 years have elapsed since becoming due
- Insolvency action has commenced
- An Administration Order has been made by a County Court
- Person rated is not in occupation
- Description in the list includes parts not occupied by the ratepayer
- Mandatory entitlement to relief

Not Valid Defences

- A completion notice is incorrect
- Inability to Pay
- RV in the list is wrong
- VOA Appeal Outstanding
- **Hackney LBC v Mott and Fairman (1994)** – High Court confirmed magistrates court had no jurisdiction to determine validity of a rating list entry and that dispute of validity not a defence against enforcement

Failure to Attend

- Where a debtor fails to attend a hearing and makes no other valid representations the BA may apply for the L/O to be granted in their absence.

Enforcement Options

- Taking Control of Goods (Enforcement Agent)
- Insolvency
- Committal
- Security for unpaid rates

Taking Control of Goods

Taking Control of Goods Regulations 2014

Fees set out as follows:

- Compliance Stage £75
- Enforcement Stage £225
- Sale or Disposal Stage £110
- Where debt is over £1,500 a fee of 7.5% may be charged at the enforcement stage and again at the sale stage

Committal to Prison

- For a period of up to 3 months
- Initial application requesting a Warrant of Commitment must always be requested in the debtor's presence to enable a means inquiry to be undertaken and whether failure to pay is due to the debtors wilful refusal, or culpable neglect.

Billing Authority must have:

- confirmed the debtor is an individual over 18 years, and,
 - attempted to have taken control of goods, and,
 - confirmed there are no, or insufficient goods on which to take control
- Purpose of committal applications is to coerce payment i.e. it can be used as a tool of collection and it should not be viewed as "punitive" (ie) a punishment. (**"R v Preston jj and another, ex parte McCosh (QBD) 1994.**

Insolvency Action

Regulation 18 & Insolvency Act 1986

- Liability order is an amount due deemed to be a debt for the purposes of bankruptcy (person) or liquidation (company) proceedings
- Minimum Amount £5,000 (person) £750 (company)
- Insolvency Act doesn't stipulate a liability order must be obtained before commencing proceedings but attempting to use insolvency without obtaining a liability order may lead to difficulty in proving the debt beyond doubt.

Security For Unpaid Rates

Regulation 5 Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment and Miscellaneous Provision) Regulations 1991

A billing authority and a liable ratepayer may enter into agreement that:

- any interest of that person in the hereditament is made the subject of a charge to secure payment; and
- in consideration of such a charge, the authority will take no steps, for a period specified in the agreement, to recover any payment in respect of the amount concerned.
- Maximum period of the agreement is 3 years
- Any agreement may also extend to any future amounts and interest can be charged on the sums outstanding.
- Application is made to the County Court to place an equitable charge on the property in which the ratepayer has an interest.
- Provision for the charge is covered under the Land Charges Act 1972 and the Land Registration Act 1925.

Relationship between Remedies

Regulation 19

- Where a warrant of commitment is issued or term of imprisonment fixed under regulation 16, no further steps may be taken in respect of taking control of goods or insolvency.
- Where one of the remedies are in force, no other action is permissible