

# “I can’t believe **we still do that**”

THE CASE FOR ENDING IMPRISONMENT FOR  
COUNCIL TAX DEBT IN ENGLAND AND WALES.

“A report that starkly illustrates the truth about how the equal rights commitments declared by courts and local authorities actually count for precious little when you are facing **imprisonment for council tax.**”

*Alan Murdie, LL.B, Barrister*

This report is the result of a joint project conducted by PayPlan and the Institute of Money Advisers. It is the result of seven months of research and study. It was written by Alistair Chisholm MIMA (Cert), Head of Advice Sector Policy and Partnerships at PayPlan.

**The author thanks the advisers who helped with the report. And special thanks go to:**

*Alan Murdie, Andrew Martin, David Hawkes, Jane Clack, John Ludlow, Mark Brigham, Meg van Rooyen, Philip Monk, Raynor Risbridger, Robert Wilson, Rona Epstein, Sian Davies, Teresa Bell, Yvonne Fovargue MP, Erika Helps, Alice Pinch, Matt Hartley.*



**PayPlan** is one of the UK's largest providers of free debt advice and free debt management plans. PayPlan offers comprehensive advice, guidance and support for anyone struggling with debt. With over 20 years' experience, PayPlan has successfully helped more than a million people deal with their debt problems.



**IMA members** give free debt advice and work for a wide range of organisations, including Citizens Advice, local authorities, PayPlan, housing associations, independent advice agencies and other organisations.

# CONTENTS

<b>Summary</b>	<b>5.</b>
<b>Preface</b>	<b>6.</b>
<b>Chapter one: Council tax imprisonment - what does the legislation say about council tax imprisonment in England and Wales</b>	<b>8.</b>
What is the power to imprison?	8.
Committal to prison	8.
Council tax debt and litigation	9.
Council tax imprisonment: failings in the justice system	10.
The threat of imprisonment	11.
<b>Chapter two: Council tax imprisonment: Findings - more threats, more hardship and a continued decline in the number of people locked up</b>	<b>12.</b>
<b>Figure 1:</b> Individual imprisoned for non-payment of council tax in England and Wales 2009/10 to 2014/15	12.
<b>Figure 2:</b> Use of committal proceedings by local authorities	13.
<b>Figure 3:</b> People who make payments to prevent or reduce a sentence	14.
<b>Figure 4:</b> Local authorities that successfully sought imprisonment for council tax debt	14.
<b>Figure 5:</b> Number of councils that remitted council tax debt on grounds of hardship	15.
<b>Figure 6:</b> Councils for whom the magistrate remitted unaffordable council tax debt	15.
<b>Chapter three: Council tax and prison – how it does and doesn't work in court</b>	<b>17.</b>
Gaps in the guidance and training for magistrates and court staff	17.
What does wilful refusal or culpable neglect mean?	17.
Sentencing for council tax debt: not fit for purpose	18.
The balance between local autonomy and consistency in the justice system	19.
<b>Chapter four: Local authorities – the case for innovation</b>	<b>20.</b>
<b>Conclusions</b>	<b>22.</b>
<b>Recommendations</b>	<b>23.</b>
<b>Appendices</b>	<b>24.</b>
Appendix 1: Freedom of information request letter	24.

# DEBT HELP IS JUST A CLICK AWAY

At PayPlan, we've made it easier for you to help more people take control of their debt, by making your referral process as simple and safe as possible.

Our online services have been created to be...

- **Quick and easy** – refer your client for free debt help and support
- **Confidential and informative** – the secure online form has space for you to add relevant notes, such as best time to call or preferred method of contact
- **Stay up-to-date** – receive feedback on referral volumes and outcomes

For further details please contact our Partnership Support Team on **01476 518 178**  
Email **partnershipsupport@payplan.com**  
or visit **www.payplan.com/partners**

PayPlan is a trading name of Totemic Limited. Totemic Limited is a limited company registered in England, Company Number: 2789854. Registered Office: Kempton House, Dysart Road, PO Box 9562, Grantham, Lincolnshire NG31 0EA. Totemic Limited is authorised and regulated by the Financial Conduct Authority. Financial Conduct Authority Number: 681263. Totemic, the Totemic logo, Payplan and the Payplan Logo are all trademarks of Totemic Limited.

**PayPlan**<sup>®</sup>  
live again

## SUMMARY

**PEOPLE IN ENGLAND AND WALES MAY BE IMPRISONED FOR NON-PAYMENT OF COUNCIL TAX BILLS IF IT IS FOUND THAT THEY ACTED WILFULLY OR WERE CULPABLE. THIS IS NOT ALLOWED IN SCOTLAND OR NORTHERN IRELAND.**

Court action by local authorities against people with council tax debt has increased dramatically since 2012 in England and Wales. The litigious nature of council tax collection is out of step with the way that other civil debts are dealt with in the courts. There is also clear evidence that there are miscarriages of justice in the imprisonment of people for having council debts.

The consequences for people imprisoned for council tax debt can be very severe. Advisers report that people who are behind with their bills often feel threatened with imprisonment even when there is no realistic prospect of lawful imprisonment in these cases.

Data in this report, collected from 80% of billing authorities in England and Wales shows that court action for committal to prison for council tax debt was taken against more than 4,800 people during 2016/17. On average, they had council tax arrears of £2,213 – below the level for which bankruptcy can be considered.

Although there was a greater use of the formal proceedings for imprisonment by local authorities during 2016/17 than in 2012/13 fewer people were imprisoned in the end. More payment arrangements required by a suspended committal order broke down and this, plus other indicators, suggests that hardship amongst the people threatened with imprisonment has increased.

There are a number of ways that people committed to prison for council tax debt are treated less favourably than those convicted of criminal offences. The legality of council tax imprisonment is itself open to challenges on human rights and other grounds, because it should only be used as a last resort and there are almost always alternatives. Wide differences in approaches are evident when it comes to prison for council tax debt.

Councils need to be sure that they collect council tax successfully. The report shares some examples where local authorities are seeking new and fairer ways of tax collection.



# PREFACE

## THIS REPORT WAS PROMPTED BY TWO EVENTS:

a discussion with money advisers at a conference that turned to the consequences of council tax imprisonment for council tax collections;

and

a widely reported case in which a woman was wrongfully imprisoned for council tax debt.<sup>1</sup>

These raised a number of questions.

How can it be right to imprison people for a civil debt? Which councils seek to imprison people? How does the council tax imprisonment process work and how does it compare to other parts of the legal system? How does the threat of council tax imprisonment affect people with debts? How often do the courts and councils use their powers to write off unaffordable council tax bills? Is the court process fair? What are the alternatives?

Research activity for the report ensured that:

- every member of the Institute of Money Advisers was contacted and asked for information and case studies
- over 4,500 PayPlan case records concerning advice on council tax debt were reviewed
- freedom of information request were sent to all the billing authorities in England and Wales seeking further information. Data was received from 279 of the 348 billing authorities
- key stakeholders were included to gather views and information
- groups of money advisers were asked to discuss the issues and provide feedback across England and Wales
- we collaborated with Rona Epstein of the Coventry Law School, who has been generous with her insights and support with this report.

This report has been produced in collaboration between PayPlan, a free debt advice provider and the Institute of Money Advisers (IMA), the professional membership body for debt advisers.

This report deals with council tax in England and Wales. Different rules and systems are in operation in Northern Ireland and Scotland, and they are not discussed in this report.

<sup>1</sup> WalesOnline, A single mum wrongly spent 40 days behind bars for not paying council tax, 18/1/17.  
<http://www.walesonline.co.uk/news/local-news/single-mum-wrongly-spent-40-12473743>



Institute of  
Money Advisers®

Assuring quality in the money advice profession



## Membership of the IMA

We are the only professional body acting for free-to-client money advisers in England, Wales and Northern Ireland. Join us to:

- enhance your professional skills and knowledge
- progress your career as an accredited adviser
- obtain expert support and consultancy

IMA membership benefits include:

- Discounted member rates on IMA training courses
- A free annual subscription to Quarterly Account, the professional money advice journal
- Networking opportunities, through free regional branch events and discounted rates at our annual conference
- News and sector updates in our weekly membership e-bulletin

Visit [www.i-m-a.org.uk/membership](http://www.i-m-a.org.uk/membership) to apply online today.

“My membership of the IMA is invaluable in providing me with up to date information, training and networking opportunities.”

Angie Smith MIMA (Cert), Senior Debt Adviser, Perennial

# COUNCIL TAX IMPRISONMENT

## WHAT DOES THE LEGISLATION SAY ABOUT COUNCIL TAX IMPRISONMENT IN ENGLAND AND WALES?

### What is the power to imprison?

In England and Wales, the power to imprison people for council tax debt rests on one regulation - Regulation 47 of the Local Government Finance Act 1992.

Under this regulation local councils may choose to apply to a magistrates' court for a warrant committing someone with council tax debt to prison. The sentencing period:

- can be for up to three months
- does not result in a criminal record, and
- does not clear the debt.

Once someone has been imprisoned, the council cannot use further enforcement measures.

Costs are added to the debt when court action is taken. To make an application to the court, the council must have already successfully sought a liability order from the the magistrates' court. This is a court order that states that the person (or persons) named on the order owes council tax and has not paid it.

Before imprisonment can be considered by the magistrates' court, the council must have tried to recover the debt by using enforcement agents (bailiffs) by taking goods to the value of that debt. The court must enquire into the defendant's means to pay the current outstanding the amount.

The court can then decide if the failure to pay "is due to his wilful refusal or culpable neglect". If the court finds that this was the case it may issue a Warrant of Commitment, or fix a term for imprisonment and postpone the issue of the warrant. The court also has the power to reduce or completely write off the debt.

Case law has established that people with council tax debt should not be imprisoned if there is an alternative, and that they cannot be sent to prison

as a punishment or as a deterrent to others. The powers of the magistrates to imprison are for the (rare) cases when the person in arrears can clearly pay the debt, but has failed to do so.<sup>2</sup>

Regulation 47 of the Local Government Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992, SI 613/992. This is the text in the regulation:

### Commitment to prison

**47. - (1)** Where a billing authority has sought to levy an amount by distress under Regulation 45 [this means use a bailiff to seize goods], the debtor is an individual who has attained the age of 18 years, and the person making the distress reports to the authority that he was unable (for whatever reason) to find any or sufficient goods of the debtor on which to levy the amount, the authority may apply to a magistrates' court for the issue of a warrant committing the debtor to prison.

**(2)** On such application being made, the court shall (in the debtor's presence) inquire as to his means and inquire whether the failure to pay which has led to the application is due to his wilful refusal or culpable neglect.

**(3)** If (and only if) the court is of the opinion that his failure is due to his wilful refusal or culpable neglect it may if it thinks fit -

- (a)** issue a warrant of commitment against the debtor, or
- (b)** fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions (if any) as the court thinks just.....

The full text of this regulation can be found at <http://www.legislation.gov.uk/ukxi/1992/613/made>

### Council tax debt and litigation

Advice agencies report that problem council tax debt has grown markedly since 2008.<sup>3</sup>

*"In the last few years the number of council tax problems that our advisers help clients with have gone up dramatically. We get calls all the time to our helpline from people who struggle with council tax debt and the way it is collected. Councils can be hard to make payment agreements with - even though people want to pay, and we have to give out lots of advice, help and support to people frightened and struggling to cope with the demands of bailiffs." – a PayPlan supervisor.*

Discussion about council tax debt collection and enforcement is the subject of new research and campaigns activity in the advice sector.<sup>4</sup> Alan Murdie, a Barrister and an authority on council tax, commented on this in robust terms in an article in the Big Issue:<sup>5</sup>

*"Not only has council tax debt become Britain's biggest personal debt problem – eclipsing credit card default in 2014 – but it is also a cause of homelessness, with the danger not confined only to those in rented accommodation..."<sup>5</sup>*

In 2013, the government issued new regulations for bailiffs and for council tax benefits. At the same time it published guidance that called on local councils to limit their use of court action when pursuing council tax debt. When this guidance was launched, ministers made strong public statements opposing aggressive debt collection practices by local councils.<sup>6</sup> The guidance did not mention imprisonment for council tax arrears at all, but it does say that magistrates' court action for council tax debt should be a last resort.

*"A local authority should take all reasonable steps to exhaust other options available to them prior to obtaining a liability order. Once a liability order has been granted a local authority should explore other enforcement options which are available to them, such as direct deductions from benefit or an attachment of earnings order."<sup>7</sup>*

Unfortunately, since this guidance was published, the use of court action by local authorities has increased dramatically. A government commissioned report found that in 2014/15, the year after the new guidance was published, councils typically increased the number of court orders they sought against people with council tax arrears by 40-60%, over the previous year.<sup>8</sup> The same report articulated many criticisms of the system from local councils and advice agencies.

The litigious nature of council tax collection is out of step with the way that civil debts are dealt with in the civil court system. Local authorities have a choice about whether to use the courts, but council tax regulations encourage them to do so. Court action is permitted very early in the council tax collections process. There is an incentive in the regulations for councils to take people on benefits to court. People who are behind with their payments for utility bills are able to arrange payments directly from benefits to pay their water or energy supplier. But local authorities have to take someone to court to use the same process.

Historically, direct payments for debts from benefits were set at affordable levels and guaranteed as manageable, regular and fixed payments to the creditor, after the cost of a court case. However, the new rules for Universal Credit (UC) claimants allow larger and less affordable repayments. Advice agencies are reporting that this is emerging as a serious problem. It is important that the level of direct payments allowed under UC are affordable.

<sup>2</sup> Rona Epstein, *Imprisonment for Debt*, *Criminal Law and Justice Weekly*, 4th February 2017 <https://www.criminalawandjustice.co.uk/features/Imprisonment-Debt>

<sup>3</sup> PayPlan - What should I do about my council tax arrears? (2012) <https://www.payplan.com/blog/what-should-i-do-about-my-council-tax-arrears/>; Alistair Chisholm & Sue Edwards, *The state of debt collection. The case for fairness in government debt collection practice*. Citizens Advice (December 2015); Robbie de Santos *Council tax debts How to deal with the growing arrears crisis tipping families into problem debt*, Step Change (2015); The Money Advice Trust, *Stop the Knock* (2015); AdviceUK, *Christians Against Poverty*, Citizens Advice, Money Advice Trust, StepChange Debt Charity, The Children's Society and Z2K *TAKING CONTROL. The need for fundamental bailiff reform* (March 2017). See also <https://www.bailiffreform.org/> - the website of the Taking Control Campaign - A joint initiative of advice sector partners

<sup>4</sup> Money Advice Trust publication *Stop the Knock 2017* (forthcoming at time of writing this report). [www.stoptheknock.org](http://www.stoptheknock.org)

<sup>5</sup> Alan Murdie, *The Great British Council Tax Scandal – A Big Issue Investigation*, *The Big Issue*, 5/4/17 <https://www.bigissue.com/news/great-british-council-tax-scandal-big-issue-investigation/>

<sup>6</sup> DCLG News Story *Clampdown on councils using heavy-handed bailiffs* June 2013 <https://www.gov.uk/government/news/clampdown-on-councils-using-heavy-handed-bailiffs>

<sup>7</sup> p7 DCLG *Council Tax Guidance to local councils on good practice in the collection of Council Tax arrears*, 2013 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/210478/Guidance\\_on\\_enforcement\\_of\\_CT\\_arrears.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210478/Guidance_on_enforcement_of_CT_arrears.pdf)

<sup>8</sup> pp71 Eric Ollerenshaw OBE *Three Years On: An Independent Review of Local Council Tax Support Schemes* March 2016. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/514767/Local\\_Council\\_Tax\\_support\\_schemes\\_-\\_review\\_report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/514767/Local_Council_Tax_support_schemes_-_review_report.pdf)



# Council tax imprisonment: failings in the justice system

Council tax debt collection is not only unusual because it is so litigious, but also because in England and Wales people can be locked up for a local tax debt. This is not allowed in Scotland or Northern Ireland, or elsewhere in Europe.<sup>9</sup>

There is strong evidence that there are miscarriages of justice. In early 2017, a High Court review of a case from South Wales found failings in the way the case was dealt with in the magistrates’ court. In this case, it was clear that the problem was that the person in prison just could not afford to pay. The court found that the imprisonment of Melanie Woolcock, who had served 40 days of an 81 day prison sentence in July 2016, had been unlawfully imprisoned. The BBC reported the developments:

“After she failed to keep up instalments, Bridgend Magistrates ordered her imprisonment on 18 July. Bailiffs arrived on her doorstep on 8 August and although by then she had paid £100 towards the debt, she was told it was “too late”. She was arrested by two police officers and had to phone her mother to ask her to look after her son. Miss Woolcock was then driven to Bridgend Police Station and from there to a prison in Gloucestershire, where she spent 40 days. She was released on bail on 16 September after lawyers launched emergency proceedings.

Mr Justice Lewis said: “There was no evidential basis on which the magistrates’ court could conclude that there had been culpable neglect in non-payment.”<sup>10</sup>

Following the case, Hal Ball at the Centre for Criminal Appeals (a charity that had assisted Melanie Woolcock with her case) said that the centre had:

“Identified and reviewed 145 cases since 1980 where a person’s committal to prison for non-payment of dues such as fines, council tax and the community charge has been ruled unlawful in the High Court.”<sup>11</sup>

There is clear evidence that courts are incorrectly imprisoning people who are unable to afford to pay their council tax. In preparing this report, we have heard reports of other cases where it appears people who could not afford to pay have been sent to prison.

The consequences for people imprisoned can be serious and severely detrimental.

Rona Epstein and Lucy Baldwin explored the effect of prison on women and included two women who had been imprisoned for council tax debt.<sup>12</sup>

*“One woman, Clare, who served 50 days in prison for a council tax debt, reported that she had post-traumatic stress disorder (PTSD), and found herself “unable to do even the simplest of things, such as post a letter”. Several women were receiving counselling to help them deal with the effects of their short term in prison.”<sup>13</sup>*

If this woman had lived outside England or Wales, or had a different type of debt problem – perhaps rent or electricity – she would have not have been imprisoned. Imprisonment for debt is a disproportionate and a harsh measure, and that the impact it has on people affected continues long after the prison sentence has ended.

# The threat of imprisonment

People who are subject to court proceedings for committal to prison can find the process very distressing, even if they are not committed to prison. A solicitor employed at Coventry Law Centre who is also a member of the Institute of Money Advisers commented:

*“I have successfully defended three people who the council sought to imprison. It was all women that I represented, all women who couldn’t afford to pay their council tax bills. We arranged to meet the warrant officer outside the court to stop the clients being arrested and held in the police cells overnight. The officer took them down below the court into the custody cells. They were held for a number of hours in the cells, before being brought up before the magistrates. They were manacled and brought up to appear in court behind a big screen. They were made to feel like criminals. It is a very frightening and an unforgettable experience. They were all treated okay when they were in custody. But they had to come up to court in these large manacles and they knew they could be sent to prison for a bill they couldn’t afford. We won each time. I helped another woman who already had a suspended order – but there was no way she could afford the bill and they should not have made the order. I told her that if she had had representation the suspended order almost certainly wouldn’t have been made. She just couldn’t afford it. Being up for committal is a very harrowing ordeal.”*

The detriment caused by the threat of imprisonment spreads beyond those caught up in the committal process. Council tax debt collection is unique in that people who are behind with their bills commonly feel threatened with imprisonment.

Below are some examples of questions asked by PayPlan clients during 2017, demonstrating the level of concern about the threat of imprisonment:

*“Can you email some advice? I have a council tax notice I have to pay (over £750) in full in 7 days. I can’t pay [and the] council won’t help me anymore or take my offer of paying off (almost £500) when I get my next benefit payment. I’m scared the court will send bailiffs out or send me to prison. I can’t find the money from anywhere. I have no excuse to why I never paid them. I broke up with my husband; it was a joint bill I think. I have 6 kids living at home and my husband walked out on me, leaving me with all bills to pay. I live in a rented house and suffer depression. I’m scared so much. What can I do?”*

*“Hi, I’m really hoping that someone can help me. I owe council tax for the city I used to live in. They passed it on to [a bailiff company]. They set up a payment plan with me, I didn’t get a say in how much it would be. They decided that I would pay [over £120] a month. Which was okay until my partner lost her job and we can only just afford to live where we do. I phoned [the bailiff company] in December to ask if my payment could be made smaller but they refused. On Thursday I had the bailiffs knocking at the door. I’m now terrified that they are going to come and arrest me, and I’ll go to prison, I can’t do that. My partner is pregnant. So we have a baby on the way. I’m not saying I won’t pay it but I can’t afford what they said. I’m so bad at talking on the phone, I have panic attacks. I can’t cope. Please help.”*

There is no realistic prospect of lawful imprisonment in these cases, but people believe that imprisonment will be used against them. They have tried to explain their problem to an enforcement agent or a local authority, but the simple solution of an affordable payment arrangement is not made available to them.

Civil courts seek to reduce litigation. There are alternative, less litigious models for debt collection used in this country. In October 2017, a new protocol was introduced which covers how the civil courts should deal with money claims.<sup>14</sup> The protocol does not apply to council tax debt as these are enforced through magistrates’ courts. The protocol requires all parties to engage early, exchange information and seek to resolve the matter without resorting to court proceedings.

There are many checks and balances, and there is a strong emphasis on affordability – the creditor is required to explain their decision to the court if they have rejected an affordable payment based on the Standard Financial Statement.<sup>15</sup>

This is in contrast to how council tax court cases are dealt with. Cases are often taken to court after just a few weeks, and there are far fewer checks and protections for people who owe council tax. There is no clear definition of affordability within the regulations for council tax when prison is being considered.

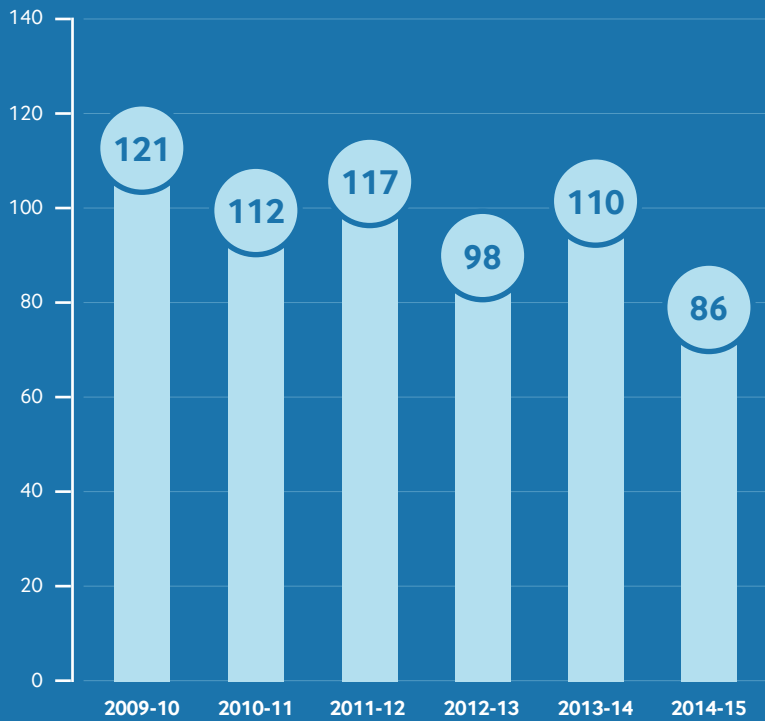
9 pp220 Alan Murdie, Council Tax Handbook 11th Edition. Child Poverty Action Group 2016  
10 BBC News, *Porthcawl woman jailed ‘unlawfully’ over council tax arrears*, 18/1/17. <http://www.bbc.co.uk/news/uk-wales-south-east-wales-38666030>  
11 Centre for Criminal Appeals, *Imprisonment of single mother over council tax debt unlawful – High Court*, 18/1/17. <http://www.criminalappeals.org.uk/blog/2017/1/18/imprisonment-of-single-mother-over-council-tax-debt-unlawful-high-court>  
12 Rona Epstein and Lucy Baldwin *Short but Not Sweet Criminal Law & Justice Weekly* Vol.181 September 23 2017  
13 Ibid

14 Ministry of Justice, the Pre-Action Protocol for Debt Claims, 2017. <http://www.justice.gov.uk/courts/procedure-rules/civil/pdf/protocols/pre-action-protocol-for-debt-claims.pdf>  
15 <https://sfs.moneyadviceservice.org.uk/en/what-is-the-standard-financial-statement>

# COUNCIL TAX IMPRISONMENT:

FINDINGS - MORE **THREATS**, MORE **HARDSHIP** AND A CONTINUED DECLINE IN THE NUMBER OF PEOPLE LOCKED UP

**Figure 1:**  
Individuals imprisoned for non-payment of council tax in England and Wales 2009/10 to 2014/15



Source: Answer to parliamentary written question 449 by Jim Mahon MP <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-09-02/44494>

Figure 1 is data taken from a parliamentary answer. The other report information was gathered from 279 billing authorities that collect council tax across England and Wales. Where more than one authority covers the same geographical area, one billing authority will collect all the council tax due in the location.

Data was sought from all 348 billing authorities in England and Wales to compare information about committal proceedings during 2012/13 (the year before council tax benefit was abolished) and 2016/17.

There was surprisingly little data available in the public domain about council tax imprisonment. There was some information about the number of committal orders (see figure one) and suspended orders for some years, but very little information about which councils are involved in taking this action, or what the outcome was. A sensible discussion about council tax imprisonment needs to be informed by real evidence.

To that end we asked local authorities to answer a freedom of information request with a set of questions (see appendix 1).

Many of the councils contacted were very helpful and made contact by phone as well as in writing. Although one of councils declined to answer the grounds of public interest - this decision is now subject to a review.

For five local authorities the delay in responding to the questions was our fault, due to an email issue. And the remaining 63 councils are still to provide the information requested of them.

We will continue to seek this missing information, and hope to supplement it with national data from the Ministry of Justice. This will be published at [www.payplan.com/icanbelieve](http://www.payplan.com/icanbelieve), as it becomes available.

**Figure 2:**  
Use of committal proceedings by local authorities

	2012/13		2016/17		DIFFERENCE
	NO. OF COUNCILS	NO. OF PEOPLE	NO. OF COUNCILS	NO. OF PEOPLE	
Started committal proceedings	90	4326	99	4817	9 more councils, 491 more people
Suspended committal order made	64	825	81	895	17 more councils, 70 more people
Committed to prison*	30	85	17	62	13 fewer councils and 23 fewer people committed

Source: PayPlan/IMA freedom of information request replies from 279 billing authorities in England and Wales, September 2017

Figure 2 shows that proceedings for committal to prison were started against 4817 people 2016/17, compared to 4326 in 2012/13. An increase of 491 people. More suspended orders were made increasing to 895 from 825. This is an increase of 70 people. The total number of people taken to court and the number of councils taking this step has increased.

Evidence suggest that although there is a greater appetite to use harsh enforcement and the threat of prison by local authorities, there is a diminished appetite to go through with the threat in the courts and/or in town halls and deploy the final stage and to lock people up for debt.<sup>16</sup>

Committal to prison may be suspended by the courts for up to three years on the condition that payment terms are kept to. A suspended order is a difficult burden to live with because the consequences of not keeping up with payments are so severe.

Figure 3 shows that during 2016/17, fewer people kept up payments on those suspended orders than managed to do so in 2012/13, even though more orders had been made. This suggests that the hardship being suffered by those subjected to suspended orders has increased to the point where more are unable to make payments, despite a high risk of imprisonment.

It appears that magistrates' courts have been less successful at assessing which defendants have the ability pay.

It is positive that although more people didn't keep up with the payments that were required by the courts, fewer people were imprisoned because of this arrangement.

In 2016/17 the councils that commenced committal proceedings were seeking to recover £10,055,402 of council tax arrears – amounting to a mean average of £2,213 per person summonsed to a committal hearing. For 2012/13 the total amount was £5,231,452 – amounting to an average arrears level of £1,209 per person who were summonsed to a committal hearing.

In 2015, ministers changed the minimum threshold for bankruptcy to £5000. However, the law allows people with council tax debt to be threatened with imprisonment for less than this.

\* National figures provided for a parliamentary answer (see figure 1 above) showed a total of 98 people were imprisoned for council tax arrears during 2012/13. The data in this table includes responses from 80% (279 of 348) of all billing authorities in England and Wales and they account for 87% of all people who were imprisoned during this period.

<sup>16</sup> Some of the people imprisoned will have been incarcerated as a result of a default on a suspended committal order from a previous year, and some of the people with a newer order may be committed later.

Figure 3:  
People who made payments to prevent or reduce a sentence

	2012/13		2016/17		DIFFERENCE
	NO. OF COUNCILS	NO. OF PEOPLE	NO. OF COUNCILS	NO. OF PEOPLE	
Paid in full to avoid committal	31	413	14	225	188 fewer people paid in full to avoid committal
Paid in full part way through committal	9	22	6	15	6 more paid in full, part way through committal
Suspended committal order made	64	825	81	895	17 more councils, 70 more people
Suspended order payments kept up	50	459 (56%)	60	389 (43%)	10 more council, 70 fewer people
Suspended order payments not maintained – committed	15	71	10	34**	5 fewer councils, 37 fewer people
Committed to prison (includes those committed for failed suspended orders)	30	85	17	62	23 fewer people received a committal order

Source: PayPlan/IMA freedom of information request replies from 279 billing authorities in England and Wales, September 2017

We asked local authorities for information about the number of cases where people cleared their debt to avoid imprisonment, and the number of cases where people subject to a committal order and imprisoned actually cleared their debt and reduced their prison term.

Fewer people were able to make payments last year than in 2012/13, despite the fact that the number of people subject to action had increased. This further suggests that more people are in greater hardship.

Figure 4:  
Local authorities that successfully sought imprisonment for council tax debt 2016/17.

LOCAL AUTHORITY	COMMITTAL PROCEEDINGS COMMENCED	NUMBER OF PEOPLE COMMITTED TO PRISON	NUMBER OF DAYS SERVED
Bradford Metropolitan Council	969	18	*
Vale of Glamorgan Council	18	14	339
Sheffield City Council	**	10	353
Coventry City Council	156	5	70
Blaenau Gwent County Borough Council	9	2	105
London Borough of Havering Council	96	2	2
Bridgend County Borough Council	47	1	40
Cheshire West and Chester Council	14	1	90
Gravesham Borough Council	13	1	180
Merthyr Tydfil County Borough Council	11	1	60
Mid Devon District Council	20	1	73
North Lincolnshire Council	23	1	36
Rother District Council	2	1	7
South Gloucestershire Council	13	1	90
Vale of White Horse District Council	19	1	6
City of Stoke-on-Trent City Council	4	1	8
Borough Council of Wellingborough	19	1	90

Data was received from over 80% of billing authorities. We will publish updates as we get them at [www.payplan.com/icanbelieve](http://www.payplan.com/icanbelieve). Although the data is not complete, it is clear from Figure 4 that a small minority of councils imprison people for council tax debt, and that the number who imprison more than one person, is even smaller.

17 of the 99 councils that responded and started committal action last year secured a prison conviction – and 166 councils did not start the process at all. The decline in the number of convictions against 2012/13 is welcomed.

We have not been able to identify any factor in the billing authorities that still imprison people to explain why these councils might choose to take an unusually harsh approach. For every council that imprisons people, there are similar councils all over the country that do not resort to this action.

Source: PayPlan/IMA freedom of information request replies from 279 billing authorities in England and Wales  
\* The local authority "do not hold this information."  
\*\* The local authority reported that due to a change in procedures and working practices agreed with the Magistrates Court, committal summonses were no longer issued.

Figure 5:\*

Number of councils that remitted council tax debt on the grounds of hardship

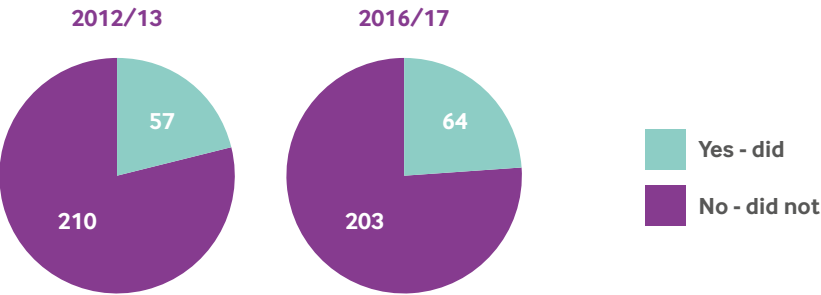
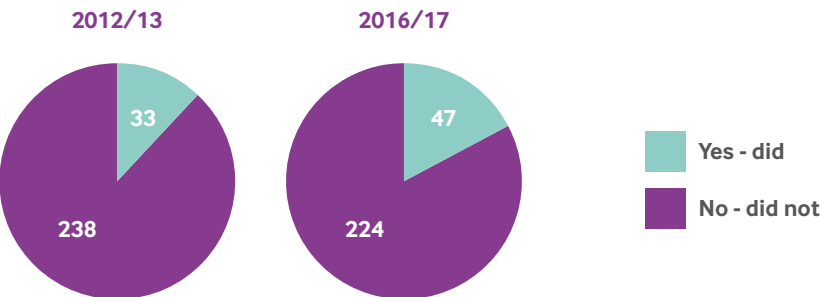


Figure 6:\*

Councils for whom the magistrate remitted unaffordable council tax debt



If imprisonment action for council tax debt is a minority activity amongst the courts and the local authorities of England and Wales, so is the exercise of the powers they have to write off unaffordable debt.

We sought to gather information about the cost of council tax imprisonment to local authorities, and its effect on the collections process or returns. Although many local authorities sought to provide this information, many were not able to do so without resorting to an impractical review of thousands of individual council tax accounts.

Many local authorities don't have a mechanism to separate the costs of imprisonment from other collections and legal activities. We were not able to draw any general conclusions on what the real costs and opportunity costs of using imprisonment were.

We do not have data on how much the process costs the courts. The Ministry of Justice (MOJ) does publish figures on the costs of imprisoning people. The average cost of a place in prison in 2015/16 was £32,510 a year, or £88 a day. We have no data on the cost to the people who have been imprisoned.<sup>17</sup>

To date we have information from over 80% of billing authorities in England and Wales. Despite government guidance on minimising the use of courts, the use of committal proceedings for council tax debt has increased since 2013. It appears proceedings are being used more often against people in hardship. The data suggests that council tax committal proceedings are becoming less effective at extracting payment from people when they get to the court order stage – even when the orders are suspended on terms.

It is positive to see that there has been a decline in the number of people subject to imprisonment, and we can see that imprisonment is only actually secured by a small number of local authorities.

It is clear from our enquiries that no one really knows how much council tax imprisonment costs the government or the people imprisoned. The use of imprisonment seems to be used because it always has been and not because policy makers have evidence of its effectiveness.

\* Not every billing authority provided responses.

17 Ministry of Justice, Costs per place and costs per prisoner by individual prison (2016). [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/563326/costs-per-place-cost-per-prisoner-2015-16.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/563326/costs-per-place-cost-per-prisoner-2015-16.pdf)



# CLEAR AND CONSISTENT

## IVA TECHNICAL TRAINING

Money advisers are at the forefront of free debt advice and at PayPlan we pride ourselves on our quality and consistency for providing best advice.

### We're delighted to offer advisers FREE IVA Technical Training worth 2 CPD points

Ideal for advisers who want advanced IVA knowledge. Presented by PayPlan's Partnership Managers with support from our Insolvency Practitioners, the 2 hour IVA Technical Training will enhance your IVA knowledge about:

- How assets are dealt with
- How homes are looked at
- How is PPI dealt with
- High equity cases
- IVA problems and solutions
- And much more

Book now:  
**We'll arrange for the training if you can  
provide the venue**  
**E: [partnershipsupport@payplan.com](mailto:partnershipsupport@payplan.com)**  
**T: 01476 518178**

### Here's what advisers say about the IVA Technical Training:

"Useful materials  
given out"

"Fantastic handouts,  
really useful information"

"The training provided  
was very helpful, and  
I feel better equipped  
going forward"

**PayPlan**  
live again

PayPlan is a trading name of Totemic Limited. Totemic Limited is a limited company registered in England. Company Number: 2789854. Registered Office: Kempton House, Dysart Road, PO Box 9562, Grantham, Lincolnshire NG31 0EA. Totemic Limited is authorised and regulated by the Financial Conduct Authority. Financial Conduct Authority Number: 681263. Totemic, the Totemic logo, Payplan and the Payplan Logo are all trademarks of Totemic Limited.

## CHAPTER THREE

# COUNCIL TAX AND PRISON

## HOW IT DOES AND DOESN'T WORK IN COURT

### Gaps in the guidance and training for magistrates and court staff

The legal system aims to make sentencing consistent and fair – to give clear instructions to the courts and at the same time to respect the independence and discretion of the judiciary.<sup>18</sup> For most criminal cases there are clear guidelines. The courts are required to look closely at the behaviour of the defendant and the effect of their actions.

Information about how to do this is set out clearly in documents published by the Sentencing Council. The guidelines are designed to be intelligible to the public, to magistrates (who are not required to be legal experts) and court staff who support magistrates and advise them on the law. The courts must apply these guidelines, and they must assess the harm caused by the crimes they are dealing with. The guidelines explain that there are different levels of culpability and set out how the courts should assess culpability and how this should affect sentencing.

For theft cases, the courts are given clear information about how to consider blame and harm associated with the crime. There are 14 descriptors for culpability, four categories for harm, and nine further descriptors for additional harm.<sup>19</sup> For example the culpability descriptors include "Involvement of others through coercion, intimidation or exploitation", and "Limited awareness or understanding of offence". Harm categories cover "High value with significant additional harm to the victim or others" and "Little or no significant additional harm to the victim or others".<sup>20</sup>

### What does wilful refusal or culpable neglect mean?

The materials available to the courts faced with sentencing of people with council tax debt is much less helpful than those provided in criminal cases. Regulation 47 of the Local Government Finance Act asks the court to determine:

**"whether the failure to pay which has led to the application  
is due to his wilful refusal or culpable neglect".**

The court needs to find that wilful refusal or culpable neglect took place at the time of default, but the meanings of these behaviours are not defined in the regulations. Courts, of course, often have to make a judgement about what was in the mind of the defendant, as well as what they did. In the case of imprisonment for council tax debt, this judgement should involve an understanding of the financial situation of the defendant, and of what it is like to live in financial difficulty.

There is case law that fills some of the gaps on how magistrates should make this decision. Thankfully case law clarified that someone should not be imprisoned on a probability, and that the criminal standard of proof – beyond reasonable doubt – must be satisfied when making a finding of wilful refusal or culpable neglect.<sup>21</sup> And in a well-known case, it was established that a defendant should be entitled to legal representation, and that "culpable neglect" is not just negligence – for a prison sentence to be justified, blameworthy behaviour needs to be proven.<sup>22</sup>

However, there is evidence that the crude test provided in the regulations can lead to people in financial difficulty being judged unreasonably by courts. Magistrates and court staff may take an unsophisticated or inadequate approach to culpability and may not consider writing off unaffordable debt.

An IMA member reported on such a case:

*"The client, a woman in her late 50s, was sent to prison because she hadn't paid her council tax debt. The magistrate saw that she had a £20 monthly payment to her clothing catalogue. The magistrate found her culpable because she should have been paying her council tax as a priority payment instead. That was the sole basis of the decision. But the client was paying her catalogue because she was living on a very low income and was struggling to buy basic clothes. The magistrate had no understanding of what it is like to have no money, and they should have written off the debt as was absolutely unaffordable, but instead they sent her to prison. She almost served the full 90 day sentence."*

There is a clear case for improving the way magistrates courts deal with council tax imprisonment. It would no doubt be helpful to court staff in many instances if they were provided with training and information about financial difficulty and debt problems, as well as up to date information on case law and council tax issues.

The nature of household debt problems has very much changed in the last few years, and magistrates and court staff cannot be expected to make informed decisions if they rely on their own general knowledge. Changes to social security, the labour market and the nature of bills and household budgets need to be understood. Dealing with household debt is an increasingly specialist area.

<sup>18</sup> Sentencing Council, *Magistrates' Court Sentencing Guidelines* (April 2017). <https://www.sentencingcouncil.org.uk/wp-content/uploads/MCSG-April-2017-FINAL-2.pdf>

<sup>19</sup> For example, Sentencing Council, *Theft Offences Definitive Guideline*, Feb 2016. [https://www.sentencingcouncil.org.uk/wp-content/uploads/SC-Theft-Offences-Definitive-Guideline-content\\_FINAL-web\\_.pdf](https://www.sentencingcouncil.org.uk/wp-content/uploads/SC-Theft-Offences-Definitive-Guideline-content_FINAL-web_.pdf)

<sup>20</sup> *ibid*

<sup>21</sup> Rossendales Training, Local Authority Revenues Committal Workshop, (no date – appears to be 2017) URL: <http://irrvassociations.org.uk/documents/5/files/Committal%20Workshop%20North%20Wales%20IRRV%20Asso%20171017.pdf>

<sup>22</sup> The Independent, *UK censured by Europe over poll tax* 28/1/95 <http://www.independent.co.uk/news/uk-censured-by-europe-overpoll-tax-1570048.html>

COUR EUROPÉENNE DES DROITS DE L'HOMME EUROPEAN COURT OF HUMAN RIGHTS, CASE OF BENHAM v. THE UNITED KINGDOM <http://www.legal-tools.org/doc/a399b9/pdf/>



## Sentencing for council tax debt: not fit for purpose

There are other ways that people committed to prison for council tax debt are unfairly treated, and can be treated less favourably than those convicted of criminal offences. The rights of the person with council tax debt being subject to committal to prison are also limited.

As Rona Epstein<sup>23</sup> has shown, these include the following.

- In most cases the only legal challenge available to people imprisoned is to apply to the High Court for judicial review. This procedure is not widely known, and most people sent to prison have no idea that they can challenge the magistrate's decision by judicial review.<sup>24</sup>
- The council tax prisoner serves every day of the term imposed on them unless the debt is paid. The usual practice in criminal cases is for people to receive a reduction in the time they serve for good behaviour.
- There is no requirement for the court to obtain a pre-sentence report and the magistrates do not normally request one. Consequently, family problems and caring responsibilities for people threatened with imprisonment for debt are rarely investigated or brought to the attention of the court.
- In sentencing for criminal cases, the court must explain to the offender in open court and in ordinary language why it is imposing a custodial sentence on him or her. No such requirement applies when people with civil council tax debts are committed to prison.

In a study of the effects of imprisonment of women, a former council tax debt prisoner:

*"...stated she felt she didn't have the opportunity to talk about her family in court, despite her being her partner's main carer, as well as being a mother of a dependent child."*<sup>25</sup>

There are serious doubts about the overall legality of imprisonment for council tax debt. It is hard to reconcile imprisonment with human rights legislation, and it has been reported that the Centre for Criminal Appeals is now preparing a judicial review of the system, which sees people committed to prison for not paying their council tax.<sup>26</sup>

Furthermore, as Rona Epstein has argued, the legality of council tax imprisonment is itself fundamentally flawed:

*"Imprisonment for council tax default is unlawful because the law states that imprisonment is a last resort and other methods should be tried first: alternatives to imprisonment must always be chosen. The courts can either order attachment from benefit if the debtor is unemployed or from wages/salary if the debtor has a job, and from any savings account if the debtor has neither job nor benefit but has assets, so there is always an alternative. Owing money is not a crime, and imposing any form of punishment is not permitted by law."*<sup>27</sup>

<sup>23</sup> Rona Epstein, *Imprisonment for Debt, Criminal Law and Justice Weekly*, 4th February 2017 <https://www.criminallawandjustice.co.uk/features/Imprisonment-Debt>

<sup>24</sup> Ibid; Becket Chambers <http://becket-chambers.co.uk/2016/08/24/committal-prison-council-tax-debts-perils-acting-without-proper-legal-advice/>

<sup>25</sup> Lucy Baldwin & Rona Epstein *Short but not Sweet: a study of the impact of short custodial sentences on mothers and their children*, by Lucy Baldwin, De Montfort University and Rona Epstein, Coventry University, <https://www.dora.dmu.ac.uk/xmlui/bitstream/handle/2086/14301/Final%20Research%20Report%20LB%20RE%202017%20>

<sup>26</sup> <http://www.walesonline.co.uk/news/local-news/single-mum-wrongly-spent-40-12473743>

<sup>27</sup> Epstein, *ibid*.

## The balance between local autonomy and consistency in the justice system

Finally there is an issue concerning the variance in local practice in sentencing. As can be seen in figure 1 above, of the 279 councils that responded to our research questions to date, only 99 started proceedings to imprison people for debt, and only 17 of them succeeded in imprisoning any of their local residents. 62 people were imprisoned, but we don't know how many days they served, because not every council recorded that information.

It is one thing to have localisation in the welfare system –the level of council tax support relief for working age people is now set locally in England - but it is quite another matter to have wide differences in approaches when it comes to sentencing people to prison.

Since the council tax regulations allow a significant element of localisation, and because they allow imprisonment for civil debt, there is significant inconsistency across the country when it comes to prison sentencing. Local policies significantly affect the likelihood that a person with debt being imprisoned.



# LOCAL AUTHORITIES

- THE CASE FOR INNOVATION

Earlier in this report we discussed some of the problems caused for people in England and Wales by the growth of council tax debt. Many advice providers have drawn attention to this, and a recent report published by the Debt Counsellors Charitable Trust in 2017 has drawn together much of that information.<sup>28</sup>

There are pressures on local authorities to collect the council tax that is due to them, and this needs to be acknowledged and understood. Local authorities provide essential services to residents and communities, and it is often more vulnerable people who are more dependent on these services.

More than 1,300 locally delivered services are required by statute, and local authorities fund many more important, but non-statutory services.<sup>29</sup> Local taxes - council tax and business rates - are the largest source of income councils have for this work. Councils have experienced significant cuts in their income in recent years<sup>30</sup>, the National Audit Office estimates a 37% drop in funding between 2010 and 2015/16.

Although changes to council tax income offset some of that reduction, – the University of Birmingham has still found a 25% reduction in income during that time.<sup>31</sup> The Local Government Association anticipates an additional £16 billion of reductions to government funding for councils by 2020. By 2019, 168 councils will not receive any revenue support grant from central government. The way that councils and government work together to approach to managing local demand and local need is radically changing, and much more responsibility is falling on local councils and local taxes.<sup>32</sup>

Councils need to be sure that they collect council tax successfully because so many local services

rely on this. Many councils promote advice and support for people in financial difficulty. Free sector debt advisers often report that they both strongly value their collaboration with councils but report high levels of frustration with the process driven and harsh collection approach used by councils. Advisers, including those in areas where the council persist in using imprisonment for council tax debt, report that they otherwise value collaboration with their council in seeking to help people in financial difficulty.

One side-effect of the localisation of council tax relief in 2013 has been that councils have begun to review their debt collection practices. Support for imprisonment of people with council tax debt remains the orthodox policy among ministers. But the tone of a recent comment on the matter suggests that support is not as strong as it used to be:

*"There needs to be a form of enforcement and sanction, but it needs to be used proportionately. As the Hon. Gentleman will see, the number of people getting a custodial sentence is actually reducing".<sup>33</sup>*

Behind the scenes this orthodoxy is beginning to be questioned. There is no compelling evidence in the public domain that we have been able find to show that imprisonment is helpful. Indeed the use of imprisonment is declining. There are also several examples of local authorities testing out new ways of working:

- Hammersmith and Fulham Council is developing a partnership with a commercial debt collector and exploring ethical collection

techniques. Work with debt collectors is not new as enforcement agencies have debt collection departments. However, this partnership is explicitly looking at new ways of working. The council's website reports

*Hammersmith & Fulham Council and 1st Credit are setting out to improve the treatment of those who owe debts to the council. We also want to dramatically reduce the number of cases that end up in court. "Heavy handed debt collection in the public sector is counter-productive: court action, bailiffs and lawyers all cost money, and can create high levels of stress and anxiety in families that find themselves in debt," said Cllr Max Schmid, H&F Cabinet Member for Finance.<sup>34</sup>*

Hammersmith and Fulham Council plans to extend this work into council tax arrears collection. This will provide an opportunity for more evidence based decisions in modern debt collection. N.B On 22 November 2017, after the first draft of this report was printed, the council announced it will stop using bailiffs from April 2018 to collect council tax arrears.

- City of York Council is working with its local citizens advice to look at the feasibility of adopting the Standard Financial Statement. Prior to the signing of a council tax protocol, campaigning by the local citizens advice contributed to the maximum council tax support rising from 70% to 78.5%. The council also offers additional discretionary council tax support for anyone having short term difficulties, including those who otherwise would not qualify for council tax reduction
- Lambeth Council have taken a policy decision to end the use of enforcement agents to collect council tax debts from people in receipt of council tax support

Citizens Advice and the Local Government Association have also updated and re-launched their protocol on good practice in debt collection<sup>35</sup> and this is being adopted by local authorities all over England.<sup>35</sup>

28 The Debt Counsellors Charitable Trust, *Supporting local authorities to achieve best practice in the collection of council tax arrears* (June 2017). Available from: <http://www.credit-connect.co.uk/wp-content/uploads/2017/06/1221-TDC-Report-All-Pages-FINAL-1.pdf>

29 Local Government Association, *LGA Budget SUBMISSION Autumn 2017*, 2017 [https://www.local.gov.uk/sites/default/files/documents/5.20%20budget%20submission\\_05.pdf](https://www.local.gov.uk/sites/default/files/documents/5.20%20budget%20submission_05.pdf)

30 The Local Government Association, *Local taxation: council tax and business rates*, 2017 <https://www.local.gov.uk/topics/finance-and-business-rates/local-taxation-council-tax-and-business-rates>

31 Tasos Kitsos, *Local Authority funding in the UK – More 'graphs of doom' ahead?* CityRED Blog 2/5/17 City <https://blog.bham.ac.uk/cityredi/local-authority-funding-in-the-uk-more-graphs-of-doom-ahead/>

32 Local Government Association, *LGA Budget SUBMISSION Autumn 2017*, 2017 [https://www.local.gov.uk/sites/default/files/documents/5.20%20budget%20submission\\_05.pdf](https://www.local.gov.uk/sites/default/files/documents/5.20%20budget%20submission_05.pdf)

33 Marcus Jones MP: Hansard, HC, 30 October 2017, Vol 6.60. URL: <https://hansard.parliament.uk/Commons/2017-10-30/debates/6F073AE1-4881-459E-B5B3-409CF30860B2/CouncilTaxNon-Payment>

34 A new, ethical approach to debt collection in H&F <https://www.lbhf.gov.uk/articles/news/2017/07/new-ethical-approach-debt-collection-hf>

35 Citizens Advice, *Council Tax Protocol*, 2017. URL: [https://www.citizensadvice.org.uk/about-us/campaigns/current\\_campaigns/council-tax-protocol/](https://www.citizensadvice.org.uk/about-us/campaigns/current_campaigns/council-tax-protocol/)



# CONCLUSIONS

**LOCAL TAXES ARE COLLECTED IN SCOTLAND, NORTHERN IRELAND AND ELSEWHERE IN EUROPE WITHOUT RESIDENTS BEING SUBJECT TO IMPRISONMENT.**

In this report we have argued that imprisonment for council tax debt is disproportionate and harsh. It is out of step with the way that other debts are recovered and can lead to serious miscarriages of justice. Imprisonment for debt can be devastating for individuals who are imprisoned. The process of taking people to court for it should be considered, and that the threat of imprisonment is also extraordinarily harsh.

Despite government guidance on minimising the use of courts, the use of committal proceeding for council tax debt has increased in 2016/17, compared to 2012/2013. We have identified information about council tax imprisonment from over 80% of billing authorities in England and Wales.

Evidence suggests that more people are unable to keep up with payments required by a suspended committal orders, and fewer people are able to pay to stop or reduce their sentence. Imprisonment is now used by a minority of councils.

We call on those who still use committal proceedings to align themselves with the majority and end the practice. We also call on all organisations involved in collecting council tax debt to stop threatening the use of prison – and particularly when there is no lawful prospect of imprisonment for the people being threatened.

The court processes which lead to imprisonment for council tax arrears are in many respects inadequate. People subject to sentencing for debt often have fewer protections than people convicted of criminal offences. There are serious doubts about the legality of council tax committal as it should only be used as a last resort and there is almost always an alternative, and because of human rights legislation.

Reform of local government taxes is without doubt complex and as we can see from the examples in the report there are interesting new approaches to council tax collection being tested by councils. The government could strengthen the hand of modernisation by requiring councils to follow its own 2013 guidance on local government debt collection and by ending of the use of imprisonment. The latter would be a simple step – the deletion of one regulation - Regulation 47 of the Local Government Finance Act 1992.

This reform could be enacted quickly and without a large burden on government or legislative process. It would encourage reform and greater fairness in council tax collection in England and Wales, and bring this aspect of the justice system into line with the rest of the UK.

**It is time that the law was changed in England and Wales so that council tax debt collection focuses on the circumstances, income and assets of the person, and is not used to threaten their liberty.**

## RECOMMENDATIONS:

1. Local authorities should exercise their discretion to end the use of committal proceedings against people with council tax debt in their area and work with government, the Local Government Association and the Welsh Local Government Association to extend this policy across England and Wales.
2. Government should amend Regulation 47 of the Local Government Finance Act 1992 to end imprisonment for council tax debt in England and Wales.
3. Government should require local authorities to follow their guidance on good practice in the collection of council tax debt.
4. Government should review the training and guidance provided to magistrates court and staff dealing with council tax debt cases, and unaffordable debt problems.
5. Government should enable arrears of council tax to be collected at levels that are affordable through the benefits system, without the need for a court order.
6. Local authority committees should review the use of powers to write off unaffordable council tax debt.

# APPENDICES

## Appendix 1: Freedom of information request letter

I am writing to make an open government request for information to support a research project connected with council tax arrears. The research project is a joint initiative between PayPlan (a free-to-client debt advice company) and the Institute of Money Advisers (the professional body for debt advice in England, Wales and Northern Ireland). We are conducting the research for report that will be published at the end of this year.

The report will have three broad objectives:

- a. To give debt advisers accurate and up to date information about imprisonment for council tax debt to help them advise their clients.
- b. To help PayPlan and the IMA develop a constructive dialogue with policy makers about imprisonment for debt.
- c. To develop constructive proposals for the court system and for local authorities on collecting council tax arrears.

We are asking for information over about two specific years – 2012/13 and 2016/17. We have chosen these years because we think that they will give us a broad overview of the recent trends.

1. Against how many people did you commence committal proceedings with regard to unpaid council tax in 2012/13 and 2016/17?
2. What was the outcome of the council tax committal proceedings identified in question 1 for 2012/13 and 2016/17?
  - a. How many people were committed to prison for non-payment of council tax for 2012/13 and 2016/17?
  - b. What was the overall total number of days served in prison by all of the people committed to prison for non-payment of council tax owed to the local authority for 2012/13 and 2016/17?
  - c. How many people were subject to a suspended committal order for 2012/13 and 2016/17?
  - d. How many people subject to a suspended committal order in this year were subsequently committed to prison because they did not comply with the terms of the suspended order for 2012/13 and 2016/17?

- e. In how many cases did the people subject to a committal order clear the debt and avoid imprisonment for 2012/13 and 2016/17?
- f. In how many cases did the people subject to a committal order and imprisoned clear the debt and so reduced their prison term for 2012/13 and 2016/17?
- g. In how many cases did people subject to a suspended committal order maintain the required payments for the duration of the order or to date for 2012/13 and 2016/17?

3. What was the total amount of council tax arrears owed by people subject to council tax committal proceedings in 2012/13 and 2016/17 when the proceedings commenced?
4. What was the total amount of council tax arrears remitted by the local authority in 2012/13 and 2016/17?
5. What was the total amount of council tax arrears remitted by the magistrates court for your local authority in 2012/13 and 2016/17?
6. What was the total cost the local authority of all committal proceedings for non-payment of council tax in 2012/13 and 2017/18? Please explain how you have calculated this.

I would like the above information to be provided to me as paper or electronic copies.

If the questions are unclear or need further discussion please do not hesitate to contact me to discuss them further. If you have additional comments or information that you believe are relevant and may assist me with my research I would be very grateful if you would supply this.

Thank you very much for your assistance. I look forward to hearing from you.

Yours faithfully,

Alistair Chisholm  
Head of Advice Sector Policy and Partnerships





## Training from the Institute of Money Advisers

Money advice learning is central to our mission of assuring quality in the money advice profession. Over twenty years, we have established a strong reputation as a key provider of specialist money advice training.

Book a place on an IMA training session to:

- enhance debt advice skills and knowledge
- learn from leading sector experts
- stay up to date with legal and technical developments affecting money advice

Our open training calendar courses are held in major cities across the UK throughout the year. Alternatively, you can:

- book an IMA trainer to deliver a course in-house at your premises on convenient date, or
- request an on-demand session; if there is demand for a course in your area, let us know and we will arrange a venue and trainer.

“Very Good course, well presented, felt involved and engaged, plenty of practical takeaways, great trainer!”

Agnieszka Rutkowska MIMA (Cert), Melin Homes (delegate on Supervising Money Advice)

Visit [www.i-m-a.org.uk/learning-development/training](http://www.i-m-a.org.uk/learning-development/training) to find out more and book a place today.



Published November 2017.  
2nd Edition.

The copyright is owned jointly by PayPlan and the Institute of Money Advisers

---

#### **PayPlan**

PayPlan is a trading name of Totemic Limited. Totemic Limited is a limited company registered in England, Company Number: 2789854. Registered Office: Kempton House, Dysart Road, PO Box 9562, Grantham, NG31 0EA. Totemic Limited is authorised and regulated by the Financial Conduct Authority. Financial Conduct Authority Number: 681263. Totemic, the Totemic logo, PayPlan and the PayPlan Logo are all trademarks of Totemic Limited.

Totemic Limited refers customers to PayPlan Partnership and PayPlan Bespoke Solutions for Individual Voluntary Arrangements: PayPlan Partnership Limited is a limited company registered in England, Register No: 7199691 Registered offices: Kempton House, Dysart Road, PO Box 9562, Grantham, Lincolnshire, NG31 0EA. Licensed Insolvency Practitioners: JN Harrison FCA MIPA FABRP Licensed by Insolvency Practitioners Association (UK); K W Marland MIPA FABRP Licensed by Insolvency Practitioners Association (UK); A P Smith MAAT MIPA MABRP Licensed by Insolvency Practitioners Association (UK). PayPlan and the PayPlan logo are trademarks of Totemic Limited. PayPlan Bespoke Solutions Limited is a limited company registered in England, Register No: 7079646 Registered offices: Kempton House, Dysart Road, PO Box 9562, Grantham, Lincolnshire, NG31 0EA. Licensed Insolvency Practitioner: NT Payne ACA FCCA MIPA MABRP Licensed by Insolvency Practitioners Association (UK).

#### **The Institute of Money Advisers**

Registered office: 4 Park Court, Park Cross Street, Leeds, LS1 2Q Phone: 0113 242 0048  
Registered Charity No. 1112758. The Institute of Money Advice is a Company Limited by Guarantee. Registered in England and Wales. Registration No. 5386480

