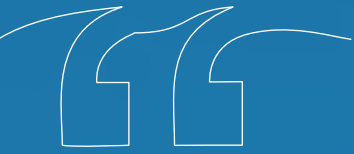


KEEPING COURT FOR THE LAST RESORT

A proposal to limit litigation in council
tax debt collection

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Council tax debts levels are growing faster than council tax bills. There is £3.2 billion pounds of accumulated debts owed to local authorities in England, and £87 million in Wales. Last year a record £994 million was added to that debt owed by households in England, and £38 million was added in Wales.¹

This is part of a growing problem in the UK of people struggling to pay for their essential household bills. The National Audit Office report published in September 2018 drew attention to this problem, adding its voice to a large body of research and publications on the issue from the free advice sector.²



GOVERNMENT GUIDANCE IGNORED

Regulations allow local authorities to call in a whole year's council payment after two missed payments, and to take court action against people who are behind with just three instalments. This is allowed in the magistrates' court process that is used to enforce council tax, while other creditors who use the county court system are subject to stricter and more considered requirements that mean that litigation cannot be instigated so quickly. Just because regulations permit quick court action by local authorities does not mean that it is always appropriate and proportionate for local authorities to make use of this power. The UK government made this clear in 2013 when they published guidance on the collection of council tax. The guidance clearly states:

A Local Authority should take all reasonable steps to exhaust other options available to them prior to obtaining a Liability Order.³

This guidance has been widely ignored in practice. The use of courts against council tax debtors has escalated enormously since the government guidance was published. The costs of court action can be added to the debt rather than be borne by the local authority, and minimal oversight from national government means there is little to encourage local authorities to exercise restraint when deciding if they should take court action.

The process of taking court action for council tax arrears is now highly automated, and large numbers of people can be dealt with together in bulk listings. The government commissioned Ollerenshaw Report, an independent review of Local Council Tax Support [LCTS] published in 2016, drew attention to just how dramatic the increase in court action has been.⁴ Ollerenshaw found that "Typically, there was an increase of 40-50% in 2013-14 when compared with 2012-13, the last year of CTB [Council Tax Benefit]". This is a huge jump – and is an indication of a very serious problem. Litigation not only adds further costs to people already in debt, it also adds stress and distress for the people in financial difficulty, and is a step towards escalated enforcement action.

¹Statistics for Wales, Council Tax Collection Rates in Wales: 2017-18 (June 2018); Ministry of Housing, Communities and Local Government Collection rates and receipts of council tax and non-domestic rates in England 2017-18 - revised (Sept 2018); House of Commons Library Council Tax: FAQs (Briefing Paper Number 06583) 10 January 2018

²National Audit Office, Tackling Problem Debt, Sept 2018.

³Department of Communities and Local Government Council Tax Guidance to local councils on good practice in the collection of Council Tax arrears (2013)

⁴Eric Ollerenshaw OBE, Three Years On: An Independent Review of Local Council Tax Support Schemes (March 2016)



LARGE GROWTH IN COURT ACTION

The Liability Order for council tax debt is now the most commonly awarded court order in England and Wales.⁵ In 2016/17 the Ministry of Justice revealed that it had been “over-recovering” the (small) fees that they charge local authorities for Liability Order applications⁶, and in an appendix to the Impact Assessment for this change it was revealed that an extraordinary 3,160,000 liability orders had been made in the magistrates’ court that year⁷. Millions of people are being dragged through the courts for debt problems every year.

Citizens Advice Wales published research identifying cases where the cost of court action exceeded the debt - “Some local authorities are pursuing court action for debts as low as £50 or £60. In one extreme case, a Liability Order had been pursued for a debt of £3.95.”⁸ While there is evidence that some local authorities are re-considering their expensive and harsh collection strategies, the general trend is in the wrong direction.⁹ Money advisers still regularly report cases of disproportionate court action and of local authorities becoming less sympathetic once they have secured a court order.

There is a strong case for reform of many aspects of council tax debt collection. The Money Advice Service is soon to produce a report on good practice in the sector and a set of excellent reports and campaigning work from the advice sector—Citizens Advice, the Money Advice Trust, StepChange Debt Charity, the Taking Control campaign, the Institute of Money Advisers and PayPlan have all worked in this area.¹⁰

Local and national decision makers tend to look at in-year collection rates to assess council tax collection performance.¹¹ This takes the focus away from how much of the total accumulated debt is paid off over the longer-term, and instead focuses on how much of the current year’s bills have been collected in that year. This can encourage harsh treatment of debtors because of an emphasis on when the money is all paid off, rather than helping people to pay with affordable instalments. The example below, reproduced from the IMA and PayPlan report on council tax imprisonment, is typical of many cases that are reported to money advisers week in and week out.

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.¹²

In this case the local authority appointed bailiff firm is sticking to the in-year performance indicator, and refusing money because it is offered over a longer period of time. This sort of behaviour can leave people who want to pay unable to solve their problems, and leaves debt uncollected.

⁵<https://www.bigissue.com/latest/great-british-council-tax-scandal-big-issue-investigation/>.

⁶Secondary Legislation Scrutiny Committee, Instruments drawn to the special attention of the House of Commons, Civil Proceedings and Magistrates’ Courts Fees (Amendment) Order 2018 (SI 2018/812), UK Parliament, 04/7/18 [URL: <https://publications.parliament.uk/pa/ld201719/ldselect/ldselect/173/17303.htm>]

⁷Ministry of Justice, Impact Assessment (IA) Reduce court fees where the Ministry of Justice are currently over-recovering, IA No: MoJ010/2018, 3/7/2018, [URL: https://www.legislation.gov.uk/ukia/2018/106/pdfs/ukia_20180106_en.pdf].

⁸<https://www.bbc.com/news/uk-wales-37420648>

⁹<https://www.lbhf.gov.uk/articles/news/2017/07/new-ethical-approach-debt-collection-hf>; <https://www.lbhf.gov.uk/articles/news/2017/07/new-ethical-approach-debt-collection-hf>

¹⁰<https://www.lbhf.gov.uk/articles/news/2017/07/new-ethical-approach-debt-collection-hf>; <https://www.bailiiffreform.org/>; <https://www.stepchange.org/policy-and-research/creditor-and-debt-collector-conduct.aspx>; <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/debt-and-money-policy-research/the-state-of-debt-collection/>; <https://www.payplan.com/partners/i-cant-believe/>

¹¹<https://www.gov.uk/government/collections/council-tax-statistics>

¹²<https://www.payplan.com/partners/i-cant-believe/>

INCONSISTENT REGULATIONS

The council tax regulations encourage the use of court action against people on benefits and low incomes. There are some easy steps that could be taken to reform the existing system, and make council tax debt collection less litigious.

Arrears due to private electricity, gas and water companies and for credit union debts may be paid directly from means-tested benefits without the need for court action. However, for council tax arrears to be paid directly from benefits the local authority is required to first take the debtor to court and obtain a Liability Order.

The Ollerenshaw review addressed this anomaly and recommended that

Government should enable LCTS recipients to pay off arrears through a voluntary attachment to benefits agreed with the council, without the requirement to obtain a Liability Order. Safeguards should be put in place to ensure that individuals have had the time, information and capacity to consider the option and make an informed decision.

VOLUNTARY AGREEMENTS

The government responded to this recommendation in January 2018 and stated that enforcement of council tax debt would be subject to further review.¹³

They stressed that local residents should generally take financial responsibility to manage their own payments, and argued that the Liability Order in the magistrates court provide clear arbitration to make sure that the debt is correctly assessed.


Since this response was published, however, the government published a review of the costs of an application for a Liability Order and reduced the fee from £3.00 to 50 pence.¹⁴ It is clear from this change that the Liability Order process does not provide for a great deal of work or scrutiny or due process for people in financial difficulty. Local government has a well developed ombudsman system to ensure that complaints and disputes may be looked at independently, outside the court system.

Allowing the local authority and the debtor to agree a voluntary deduction, before the option of litigation is started is consistent with the trend towards reducing litigation and allowing alternative dispute resolution. The concern to protect the interests of residents can be dealt with if the government keeps the power to use the courts to require an attachment of benefits in the event that agreement is not reached, but allows for the voluntary attachment to be made at the point when enforcement is being considered.

Payment through the benefits system would mean that local authorities could have some confidence about the regularity of payments and so would not suffer unduly from the lack of a court order, and the people in debt would have the protection of the ability to withhold their agreement and proceeding with the court action if they thought this best. The possibility of a voluntary agreement adds an opportunity within a very process driven system that could encourage authorities to pursue a solution to council tax debt outside the court process.

¹³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/676786/LCTS_Government_Response.pdf

¹⁴Ministry of Justice, Impact Assessment (IA) Reduce court fees where the Ministry of Justice are currently over-recovering. IA No: MoJ010/2018, 3/7/12018, [URL: https://www.legislation.gov.uk/ukia/2018/106/pdfs/ukia_20180106_en.pdf].



It is important that debt payments through the benefits system are affordable. In the words of the Work and Pensions Select Committee “Excessively high deductions can pile debt upon debt, pushing claimants into a spiral of hardship and stress. In turn, this acts as a barrier to finding employment and progressing in work—and can mean debts take longer to repay.”¹⁵ Citizens Advice and StepChange debt charity have also highlighted this issue.¹⁶ The government has indicated that it is aware of this problem and the Chancellor of the Exchequer acknowledged these concerns in the 2018 budget when he announced the government’s intention to reduce the maximum amount that can be deducted from debt repayments. Discussions are proceeding on this issue, and this is reflected in our recommendations, below.¹⁷

CONCLUSION

In conclusion, we can see from government data that if the government wishes to control the explosion of council tax litigation and help local authorities adopt a more practical approach to solving council tax debt, they need to follow up their 2013 recommendation with more action. In the longer-term there is more work to do on regulation of bailiffs and reforming local government debt collection processes. However there is an opportunity now to make a simple change to the rules to reduce litigation and encourage manageable council tax debt payments through the benefit system. The government could continue with the changes discussed in the budget, and ensure that debt payments in the benefits system are reformed so that they are affordable for people on low incomes struggling to deal with unmanageable debts.

RECOMMENDATIONS FOR GOVERNMENT

- **allow recipients of means tested benefits to pay off council tax arrears through a voluntary attachment to benefits agreed with the council, without the requirement to obtain a Liability Order**
- **review the way that debts are collected through the benefits system to ensure that payment levels are affordable and sustainable and that action taken to collect them is proportionate and effective**

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