

Fairness in government debt management: a call for evidence

Consultation response

September 2020

About the Centre for Social Justice

Established in 2004, the Centre for Social Justice is an independent think-tank that studies the root causes of Britain's social problems and addresses them by recommending practical, workable policy interventions. The CSJ's vision is to give people in the UK who are experiencing the worst multiple disadvantages and injustice every possible opportunity to reach their full potential.

The majority of the CSJ's work is organised around five 'pathways to poverty', first identified in our ground-breaking 2007 report *Breakthrough Britain*. These are: educational failure; family breakdown; economic dependency and worklessness; addiction to drugs and alcohol; and severe personal debt.

Since its inception, the CSJ has changed the landscape of our political discourse by putting social justice at the heart of British politics. This has led to a transformation in government thinking and policy. For instance, in March 2013, the CSJ report *It Happens Here* shone a light on the horrific reality of human trafficking and modern slavery in the UK. As a direct result of this report, the Government passed the Modern Slavery Act 2015, one of the first pieces of legislation in the world to address slavery and trafficking in the 21st century.

Our research is informed by experts including prominent academics, practitioners and policy-makers. We also draw upon our CSJ Alliance, a unique group of charities, social enterprises and other grass-roots organisations that have a proven track-record of reversing social breakdown across the UK.

The social challenges facing Britain remain serious. In 2020 and beyond, we will continue to advance the cause of social justice so that more people can continue to fulfil their potential.

About this consultation response

This response is drawn from evidence presented in the Centre for Social Justice's recent publication, *Collecting Dust* (2020). We would like to thank once again those who submitted evidence and contributed to *Collecting Dust*, including: Christians Against Poverty; Citizens Advice; EDF Energy; Intrum; Money Advice Trust; Local Government Association; Credit Services Association; StepChange; Just Finance; The Money Charity; Southwark Council; Crisis; Money and Pensions Service; Policy in Practice; PayPlan; officials and Spads across Whitehall and local government; and those who attended a roundtable hosted by the CSJ in March 2020. Thanks also to Rt Hon Damian Hinds MP, Baroness Morgan of Cotes, Lord Pickles, Baroness Eaton, Lord Best, and Yvonne Fovargue MP and many other cross-party parliamentarians for their support.

We also give thanks to the inspiring CSJ Alliance charities we spoke to and visited in Oldham, Corby, Leicester, Melton Mowbray, Cardiff, Coleraine, Harlow and Bradford for hosting us for focus groups and depth interviews between September 2019 and February 2020.

Executive summary

The Centre for Social Justice (CSJ) strongly welcomes this Call for Evidence and the Government's ongoing commitments to reform debt management. As a key pathway to poverty, it is vital that people are given a sustainable route out of debt, while fairness for the taxpayer is maintained. This is particularly the case as we navigate the economic devastation of the Covid-19 pandemic.

Our research leads us to conclude that the Government should adopt a more sophisticated and sensitive approach to debt management across the public sector, as seen widely in the commercial sector, in order to realise *higher* rates of recovery and offer more supportive routes out for individuals and families in debt.

The CSJ, along with 55 cross-party parliamentarians,¹ recommend the Government introduce a Debt Management Bill and amend the relevant secondary legislation to:

1. **Enshrine a set of binding Fairness Principles in law**, which all government debt collection must comply with and drawing from improvements made in the regulated sector. This would put the Cabinet Office's Functional Standard onto a statutory footing and establish a centralised debt aggregator in order to reach a 'single customer view' of debt.
2. **Transform local government debt collection**, by amending and updating the Council Tax (Administration and Enforcement) Regulations 1992, including putting an end to residents becoming liable for their entire annual bill upon one missed payment, and revising performance tables so that they incentivise a more a flexible and sophisticated approach to debt repayment.
3. **Transform debt collection in the welfare system**, so that historical welfare debts born of issues in the tax credit system are addressed and benefit deductions are made using affordability assessments. The *maximum* level at which third-party debts and benefit overpayments can be recovered should be capped at 10 per cent of the standard allowance.
4. **Transform debt collection in the justice system**, removing the sanction of imprisonment for council tax debt in England by repealing Regulation 47 of the Council Tax Regulations 1992, and introducing an independent regulator of enforcement agents.

For the full set of recommendations and answers to individual consultation questions, please see below.

¹ Morgan, N., 'Councils must stop sending aggressive bailiffs to collect debt', *Telegraph*, 10 June 2020

1 Introduction

Problem debt ruins lives. We see it in the overwhelming stress felt by parents, which filters down to their children and hinders learning.² The damage done to relationships, mental health and employment.³ The way it can be both cause and consequence of alcohol and other substance abuse. The evidence leaves no doubt: problem debt is a key pathway to poverty, and one which costs the economy some £8.3bn annually in lost jobs, reduced productivity, and homelessness.⁴

As such, the CSJ strongly welcomes this Call for Evidence and the Government's ongoing commitments to reform debt management. It is vital that people are given a sustainable route out of debt while fairness for the taxpayer is maintained.

The COVID-19 crisis has profound implications for household debt. Three-quarters of people who seek debt advice do so due to an income shock, typically caused by illness or redundancy.⁵ While billions of pounds were paid off credit cards and personal loans during lockdown's restrictions on expenditure (£7.4bn by June 2020), people's budgets were not balanced equally, with four million people estimated to have fallen behind on rent, council tax or a phone bill in the same period.⁶

But we should not forget that an estimated nine million people were already 'over-indebted' prior to March 2020.⁷ As demonstrated in the CSJ's *Collecting Dust* report, problem debt in Britain had undergone seismic transformation before the virus came to the UK's shores.⁸ As we respond to the unique challenges of COVID-19, we welcome that the Government is using this opportunity to address the problem debts which have lurked beneath the surface.

In this consultation response, we show how debts owed to the government and public bodies constitute the primary source of 'problem debt' today, and advance the case for a Debt Management Bill to level up public sector debt collection – realising savings for the taxpayer and providing a route out of debt for those in its grip.

2 A growing problem: debts owed to government

In recent years we have seen a remarkable rise in the number of people presenting to charities and support services with problematic debts owed to government authorities (rather than consumer debts for, say, credit cards or personal loans). This quickly became apparent in recent focus group sessions we ran with the clients and staff of grassroots charities across the UK. As one debt advisor recently told us:

We've had quite a major shift in the client base and the types of debts they had. Council tax arrears are virtually on every client we have ... Previously they would have been things like doorstep lenders and payday loans.

Debt advisor, CSJ Alliance charity

To gain a better understanding of the changing prominence of different types of problem debt, we conducted a new analysis of Citizens Advice data. The findings are stark. Our

² CSJ, *Collecting Dust*, 2020

³ Citizens Advice, *A Debt Effect?*, 2016

⁴ StepChange, *Cutting the Cost of Problem Debt*, 2014

⁵ See chapter X for analysis of the scale of recent job losses.

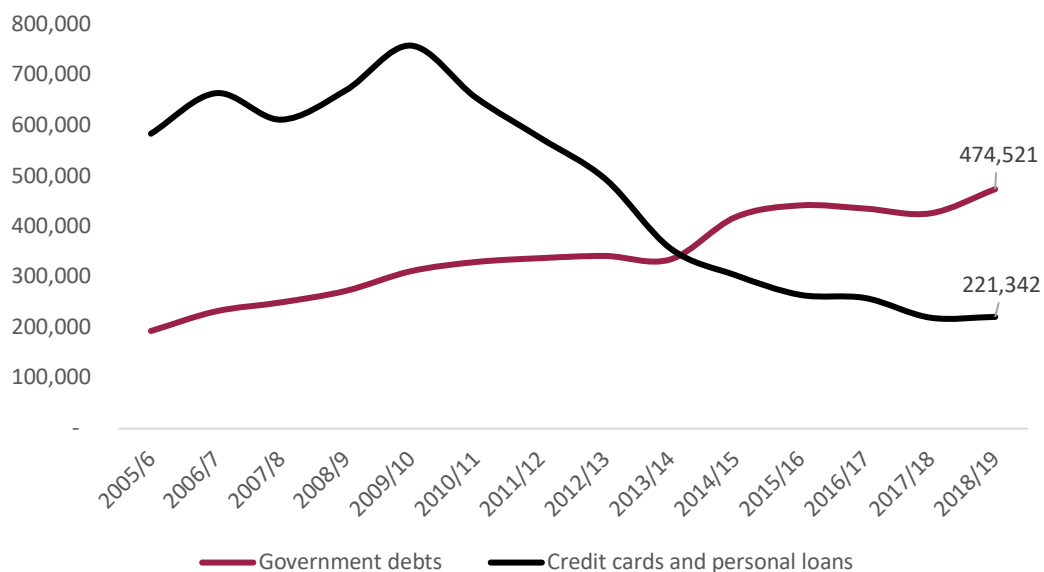
⁶ Citizens Advice, *Near the Cliff Edge*, 2020

⁷ Money and Pensions Service (MaPS), *Over-Indebtedness*, 2020

⁸ CSJ, *Collecting Dust*, 2020

analysis reveals that in 2018–19 there were a total of 474,500 government debt issues reported,⁹ compared to 221,300 issues relating to credit cards and loans.

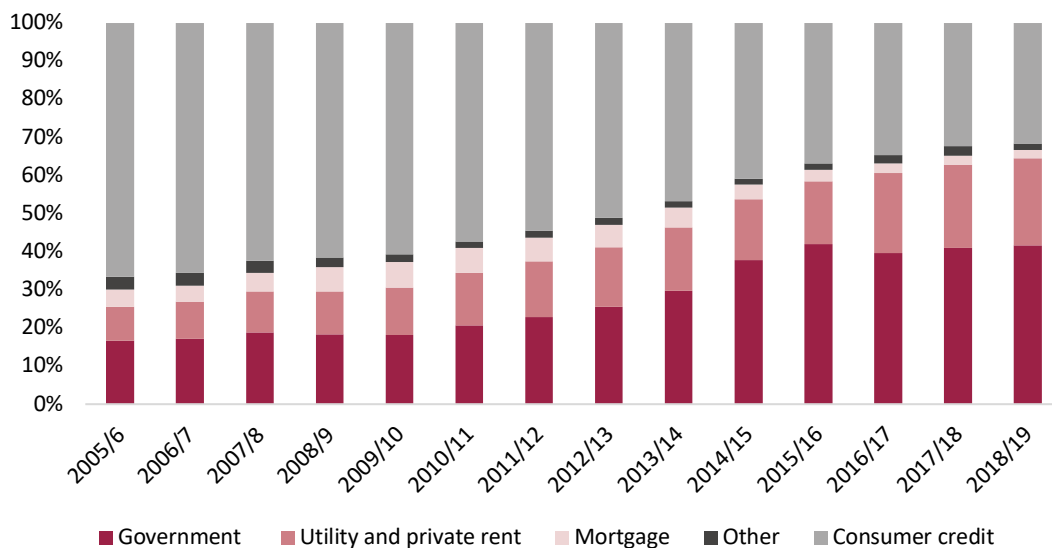
Figure 1. Debt issues reported to Citizens Advice



Source: CSJ analysis of Citizens Advice data

Indeed, around 42 per cent of debt problems reported to Citizens Advice in 2018–19 related to debts owed to the government or other public bodies. This has doubled from 21 per cent in 2010–11. By comparison, issues relating to consumer credit debts fell from 57 per cent to 32 per cent over the same period.

Figure 2. Proportion of debt issues reported (%)



| Debt issue reported | 2010-11 | 2018-19 |
|---------------------|---------|---------|
| Government | 21 | 42 |

⁹ Including council rent and tax arrears, benefit and tax credit overpayments, Social Fund loans, magistrates' courts fines, parking charges and child maintenance arrears.

| | | |
|--------------------------|----|----|
| Utility and private rent | 14 | 23 |
| Mortgage | 6 | 2 |
| Other | 2 | 2 |
| Consumer credit | 57 | 32 |

Source: CSJ analysis of Citizens Advice data

At a more granular level, the national debt charity StepChange found that council tax arrears were the single most common debt for the 635,000 new clients who contacted them in 2019.¹⁰ Callers to National Debtline with benefit and tax credit overpayment issues (another key type of government debt) rose from three per cent of callers in 2010 to 16 per cent in 2018.¹¹

With ‘life shocks’ such as a relationship breakdown, ill health or job loss a major cause of debt, these trends have been accelerated by the COVID-19 crisis. Survey data indicates that an estimated 820,000 households missed a council tax payment in the early stages of lockdown.¹² People in the ‘shielded’ group were four times as likely to fall into arrears compared to those not at increased risk from the virus.¹³

Though the Government has clearly made significant progress in clamping down on exploitative high-cost lending in recent years (see Figure 2), and better-off households have paid off record amounts of consumer credit in recent months,¹⁴ the rising prominence of problematic government debts is of particular concern because the consequences for those unable to pay are much more severe. In debt advice language these are therefore categorised as ‘priority debt’.

CSJ analysis of (pre-lockdown) departmental accounts found the total outstanding personal debt owed to government authorities (including council tax arrears, rent arrears, and welfare debt) to be £13.5bn.¹⁵ More recent estimates place this total at £16.2bn.¹⁶

3 Government debt collection lags behind advances in the private sector

Despite the increasing numbers of people presenting with problematic government debts, the public sector has failed to keep pace with the range of advances made in private sector debt collection. Advances in private sector debt collection over the last decade show that proportionate, flexible, and individually tailored repayment plans can both provide a sustainable ‘route out’ for those in debt while improving rates of recovery (albeit over a longer period). Yet, as we shall see, many public bodies continue to pursue debt using outmoded methods which not only represent poor value for money but can actually *worsen* the initial debt issue.

Evidence submitted to the CSJ from debt organisations and charities suggests that collection practices in the private sector (including financial services, utility companies and debt collection agencies) look very different today than they did ten years ago. As one respondent put it, ‘debt collection practices in the commercial sector have changed dramatically ... [f]rom engagement with the money advice sector, to how they communicate with customers, attitudes towards people in vulnerable circumstances, and

¹⁰ StepChange, *Statistics Yearbook*, 2020

¹¹ Money Advice Trust (MAT), *Stop the Knock*, 2019

¹² StepChange

¹³ Ibid

¹⁴ Guardian, ‘Consumers repay record 7.4bn of debt amid Covid-19 lockdown’, June 2020

¹⁵ CSJ, *Collecting Dust*, 2020

¹⁶ House of Commons Library, 2020

affordability assessments for repayment plans,' debt collection methods have become more sophisticated, with reform galvanised by the establishment of the Financial Conduct Authority (FCA) and its Treating Customers Fairly guidelines.¹⁷

For example, the private sector has since largely moved away from 'in-year' collection targets – indeed, 'debt collection targets based on cash collected have disappeared.'¹⁸ According to the Credit Services Association, it is now recognised widely that cash targets are flawed in that they do not take into account the financial situation of individual debtors. For example, if someone is struggling to pay their bills, adding further fees and charges does not increase their capacity to do so. Arriving at a more sophisticated understanding of a client's financial situation allows debt collectors to establish realistic repayment programmes which, ultimately, secure better returns (though over a longer period) and a reduction in defaults.

It's not rocket science. Make an arrangement having taken into account their financial circumstances and guess what – it sticks. And unless something else bad happens to the customer, they keep paying.

Debt collection agency, in evidence to the CSJ

Indeed, consumer credit companies *save* an estimated £82 million annually by setting affordable repayment plans which require fewer interventions and offering wider support to debtors.¹⁹

Multiple governments have redoubled efforts to collect debt, directing close attention to both their methods and outcomes. While a number of organisations and official investigations have examined the government's approach, the findings are rarely complimentary. In 2017 the Treasury Committee judged government debt collection to be 'uncompromising' compared to private sector practice.²⁰ The NAO later concluded in 2018 that 'Government lags behind'.²¹

Recent CSJ research confirms that this, sadly, remains the case. Extremely positive initiatives led by the Cabinet Office, such as the DMI, Indesser partnership and the more recent DRS, have led to some departments (notably including HMRC) improving practices through partnerships with private companies regulated by the FCA. But despite the welcome publication of the Government's Functional Standard for debt, there is no legal *imperative* for departments, councils or public bodies to follow suit. As a result, different departments and bodies continue to adopt very different practices of varying efficiency and support for debtors.

Central government departments have seemed to differ in the way they collect debt over recent years, ranging from imposing time-limits on repayment plans to taking advantage of rules that allow for a significant share of benefits being deducted for the repayment of debt that the customer cannot afford to have taken off them. This may reflect slightly differing functions or corporate attitudes to the task in hand, but for the consumer in debt, differences in approach from government authorities compared to each other or other creditor types can result in very different experiences for the customer which is less than desirable.

Credit Services Association, submitted in evidence to the CSJ

¹⁷ Citizens Advice, in evidence to the CSJ

¹⁸ Arum, 'Using private sector methods to address the public sector's problem debt crisis', 2018

¹⁹ Baker Tilly, *Social Impact Evaluation*, 2014

²⁰ House of Commons Treasury Committee, *Household finances: income, saving and debt*, 2018

²¹ NAO, *Tackling Problem Debt*, 2018

Two key examples of outmoded practice are of particular pertinence because they are related to the two major sources of personal debt owed to government: council debts, such as for tax or parking fines, and welfare debts, including benefit debts and historical tax credit overpayments. We explore these below.

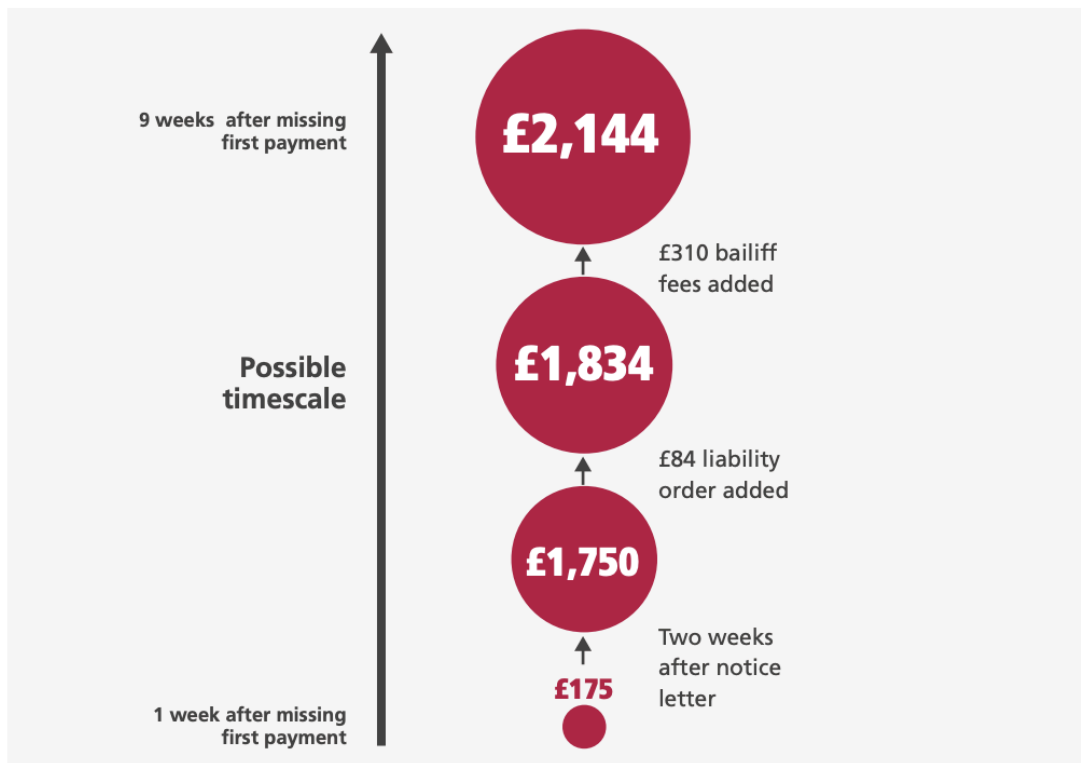
3.1 Council debt collection

... I'm pushing forward work to make the Council Tax collection system fairer and more efficient – so people are treated with compassion while services get the funds they need.

Rt Hon Rishi Sunak MP, Chancellor of the Exchequer

Council tax debts are the most common issues seen by debt advisors, with outstanding council tax arrears standing at £3.2bn before lockdown.²² Contrary to learning in the private sector, 'in-year' debt recovery targets and league tables incentivise inefficient practices. Correspondingly, councils widely use measures in the Council Tax (Administration and Enforcement) Regulations 1992, which entitle them to rapidly escalate one missed council tax payment into an annual bill.²³ Within nine weeks, households struggling to meet the average Band D payment of £175 can therefore become liable for a £1,750 payment, before being subject to a range of additional and punitive charges which serve to exacerbate the initial debt issue.²⁴

Figure 3. Escalation of council tax arrears



On top of the bill being expanded to the whole year, once court action is initiated a range of fees are charged to the client which escalate the situation further. Council tax debt collection typically adds two types of fee: liability orders and bailiff fees. 'Liability orders' are court orders issued when a household does not pay their annual bill or fails to contact

²² Ministry of Housing, Communities and Local Government (MHCLG), Collection rates and receipts of council tax, 2019

²³ The Council Tax (Administration and Enforcement) Regulations 1992

²⁴ PayPlan, *Keeping Court for the Last Resort*, 2019

the council to arrangement a payment. Often automated, the order represents the first step a council will take to enforce the collection, adding an average charge of £84 to the debtor on top the annual bill – although this charge can be as much as £120.²⁵

This is despite central government guidance published in 2013 which clearly states that a ‘Local Authority should take all reasonable steps to exhaust other options available to them prior to obtaining a Liability Order’.²⁶ This guidance remains widely ignored. Freedom of Information Request data showed that, in 2018–19, councils issued an estimated 2.3 million liability orders to escalate the recovery of council tax debts.²⁷ Some councils have become so dependent on this process that many cases exist where the cost of the liability order is more than the initial debt, ‘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.’²⁸ One study estimated that court summons and liability orders contributed a further £265m to people’s existing council tax arrears every year.²⁹

Arrears to local authorities are growing. These debts are often pursued overzealously, and with routine recourse to bailiffs. In addition to local government, the Committee has heard reports that central government can take an uncompromising approach to debt collection. The public sector should be leading by example in their treatment of the most financially vulnerable; but the current approach risks driving them into further difficulty.

House of Commons Treasury Committee, 2017

Councils’ growing reliance on the enforcement of debt has made them the largest user of bailiffs in the country today (referring on 2.6m debts in 2018–19).³⁰ Yet this remains an ineffective and costly approach. Citizens Advice calculate that, for every £1 of debt referred, 27p is returned.³¹ When enforcement action is initiated, further charges are added to the existing debt in the form of bailiff fees: in 2016–17 alone these added an estimated £300 million to people’s council tax arrears.³²

Evidence submitted to the CSJ suggests that this approach is not cost-effective as the harm it caused debtors generates real (though hard to quantify) spill-over costs and the activity itself makes the recovery of the of the debt more difficult. For example, the National Audit Office found that additional charges (such as for Liability Orders or bailiff fees) made it 15 to 29 per cent ‘more likely to make debts harder to manage’, increasing levels of depression and anxiety in the process.³³

In 14 years of working in debt advice I have never seen a bailiff company accept a payment plan from a debt advisor. I have seen them ask for £1,400 a month from a client getting less than £600 a month in benefits. When phoning them to ask them to acknowledge the ridiculousness of this request, all I got was, well the debt needs clearing in 12 months so it has to be that amount!

Most bailiff companies, I believe, have self-employed bailiffs so there is an incentive for them to do visits to earn money. There has been much campaigning in recent years to ask for change as the use of bailiffs tends to not help those struggling with

²⁵ Citizens Advice, *The Costs of Collection*, 2019

²⁶ DCLG, *Council Tax Guidance to local councils on good practice in the collection of Council Tax arrears*, 2013

²⁷ Citizens Advice, *The Wrong Side of the Tax*, 2020

²⁸ ‘Councils ‘too quick to use tax bailiffs’, charity says’, BBC News, 2016

²⁹ Citizens Advice, *The Costs of Collection*, 2019

³⁰ Money Advice Trust (MAT), *Stop the Knock*, 2019

³¹ Citizens Advice, *Council tax debt collection isn’t efficient or effective*, 2019.

³² Taking Control Coalition, *Taking Control*, 2017

³³ NAO, *Tackling Problem Debt*, 2018

debt. The threat of losing your car, which stops you getting to work, or losing your goods as a punishment seems archaic in today's market. We need better systems of councils working with people to deal with debts, maybe working with local debt advisors instead of bailiff companies.

Money and debt advisor, CSJ Alliance charity

Notable exceptions exist. In Hammersmith and Fulham and a handful of other councils, it has been demonstrated that adopting more sensitive and sophisticated debt collection techniques can increase rates of recovery.³⁴ A growing body of evidence from the experience of these councils shows that establishing an *affordable* repayment plan (per examples in commercial debt collection and debt advice practice) can 'generate a predictable long-term revenue stream for the council'.³⁵

Sadly, these examples are rare and are not underpinned by legislation or culture: individuals in councils attempting reform are often met by strong institutional resistance to change.³⁶ 'In-year' collection targets, as mentioned above, are still used systematically and inflexibly to assess council tax collection performance, contrasting with their near complete disappearance in the private sector. Any council attempting multi-year repayment plans are pushing against the grain of a system which instead 'focuses on how much of the current year's bills have been collected in that year'.³⁷ This should change (see below, Recommendation 3).

3.2 Debt collection in the welfare system

In parallel, debt collection in the welfare system could be brought up to speed. Despite the welcome temporary suspension of Universal Credit (UC) debt repayments announced in response to Coronavirus, large benefit deductions for historical 'welfare debts' have since reactivated. The principal cause of large deductions (currently at 30 per cent of a UC standard allowance) is the £6.2bn worth of overpayment debt, much of it born of systemic design flaws in the legacy benefits system. This is in the process of being transferred to the Department for Work and Pensions from HM Revenue and Customs.

Tax credits have always been a problem because the way it's calculated is based on previous year's earning. And that's not changed. It's a common way that people get into debt through being overpaid because the predicted level of income has changed. It's a nightmare to deal with 'cause it can go back quite a considerable amount of time... It was built in that people would get overpaid as a consequence of the way it was paid.

Debt advisor, CSJ Alliance charity

As has been noted recently by the former Work and Pensions Secretary Sir Iain Duncan Smith, this is old debt that should never have been arranged for transfer – 61 per cent of it is more than three years old, and as much as 16 per cent is older than 2011.³⁸ Yet significant deductions will continue to be made to new claimants' awards without these being subject to affordability assessments or attempts to understand the personal circumstances of the debtor (in stark contrast to standard practice in the private sector). Indeed, almost a fifth of all UC claimants prior to the Coronavirus surge in applicants were currently having 30 per cent or more of their standard allowance deducted (equating to 470,000

³⁴ CSJ, *Collecting Dust*, 2020

³⁵ Intrum, *Leading the way in Local Authority Ethical Collections*, 2019

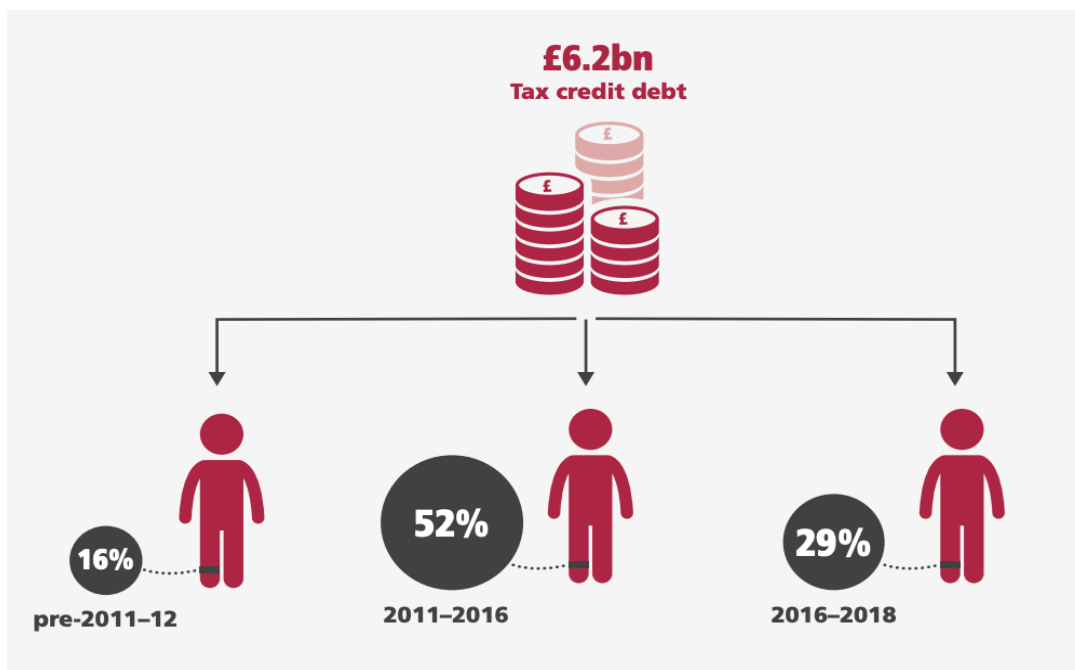
³⁶ CSJ roundtable participant and council leader

³⁷ PayPlan, *Keeping Court for the Last Resort*, 2019

³⁸ APPG on Universal Credit, *What needs to change in Universal Credit?*, 2019

households).³⁹ Some 12 per cent of claimants are still receiving deductions of between 30 and 40 per cent because the reduction in the rate of deductions was not backdated.⁴⁰ And an estimated 1.2m households soon to move onto Universal Credit will have deductions greater than 20 per cent.⁴¹

Figure 4. Tax credit overpayment debt



The regulations today permit a blanket 30 per cent maximum approach to deductions without any recourse to household affordability.⁴² Guidance does state that ‘if a claimant is experiencing financial hardship they can ask for a financial hardship decision to reduce the amount of welfare debt they are currently repaying’.⁴³ However, this is a discretionary process which is applied only at the request of a claimant.

For those experiencing the most severe forms of problem debt, a debt relief order (DRO) – a legal mechanism which removes any liability to pay for qualifying debts – may be judged by a debt advisor as the only feasible path forward other than potentially decades of repayments. While this normally includes priority debts such as benefit overpayments, when historical overpayments are revealed afterwards they can be suddenly owed even after the DRO application has been accepted.

As noted by Christians Against Poverty, this is inconsistent with protections covering consumer credit debts which become statute barred after six years and are non-enforceable if action to collect them is not taken.⁴⁴ In other private contexts, such as for utility companies covered by Ofgem, suppliers are unable to ‘backbill’ for money they may owe if the debtor has not been notified of this in 12 months after the bill was due.⁴⁵ But with benefit overpayments, the government operates on a separate code.

³⁹ IfG, *Universal Credit*, 2020.

⁴⁰ Ibid

⁴¹ Policy in Practice (PiP), *Universal Credit and Financial Resilience*, 2019

⁴² DWP, Guidance: Universal Credit: debt and deductions that can be taken from payments, visited 2020

⁴³ DWP, Benefit Overpayment Recovery Guide, v.2.40, 2019

⁴⁴ CAP, *Unlocking a New Start*, 2019

⁴⁵ Ofgem, ‘Energy backbilling: A guide to your rights’, visited 2020

The Government has shown that it is increasingly alive to the problems large deductions are causing claimants, having reduced the maximum deduction from 40 to 30 per cent in 2019. The length of time permitted for advance repayments was extended from 12 months to 16 months, further reducing the monthly impact of paying back in the initial advance taken by 60 per cent of claimants. In the 2020 Budget, the Government went even further announcing that the maximum deduction would fall to 25 per cent in 2021, with advance repayments spread over 24 months to improve affordability. More recently, as mentioned earlier, welfare debt deductions have been suspended in order to cushion the financial impact of the Coronavirus.

While guidance states that ‘if a claimant is experiencing financial hardship they can ask for a financial hardship decision to reduce the amount of welfare debt they are currently repaying’, this is a discretionary process which is applied only at the request of a claimant.⁴⁶ Focus group and written evidence gathered by the CSJ during the course of this research suggests that many third-party debt organisations and charities have difficulty securing debt relief due to financial hardship, for reasons including having to have the claimant in question on the phone during the negotiation and procedural hold-ups which frustrate the process.

We need to be able to sit in front of a DWP worker face to face and them have the power to make decisions and sort stuff out and listen to debt advisors. Online and telephone systems do not work. If we look at our working week, the most time wasted is us calling DWP for clients and being on hold or being cut off as their phone systems cannot cope within demand.

Debt advisor, CSJ Alliance charity, Leicestershire

Yet this should not even need to be the case as affordability assessments could be made by government on a systematic basis. The Government has twice accepted that the regulations permitting maximum deductions have needed to be reduced. It should now make the quantum leap by replacing a 30 per cent maximum approach with individual and household affordability assessments to calculate deductions. As an added protection, a maximum cap of 10 per cent should be applied to deductions to the standard allowance. This would both remove the onus on claimants (and debt organisations) to secure debt relief and bring government debt collection up to speed with regulated practice (see Recommendation four below).

4 The Government has made significant progress – but this remains piecemeal

Despite the clear and ongoing disparity between the advances made in public and private sector debt collection practices, it is important to recognise the progress that has been made in a number of areas (this is set out in more detail in *Collecting Dust*).

The Cabinet Office’s Fairness Group has moved the issue of government debt collection up the political agenda and established a set of (non-binding) Fairness Principles based largely on the FCA’s Treating Customers Fairly guidelines. The Ministry for Housing, Communities and Local Government (MHCLG) is reviewing the (non-statutory) guidance for local government debt collection nationally, in order to spread good practice where it exists.

As noted, the rate at which benefit deductions can be applied has been reduced by the Department for Work and Pensions (DWP) and welfare debt deductions were paused for a three month period, revealing a tacit recognition of the strain put on the finances of

⁴⁶ DWP, Benefit Overpayment Recovery Guide, v.2.40, 2019

households already living on low incomes via large welfare debt deductions. This builds on the Government twice accepting that benefit deductions have needed to be reduced (first from 40 to 30 per cent, and to 25 per cent from 2021). Deductions have, however, since resumed.

In short, progress has been made, but reform has been piecemeal and lacks legislative force. The Government should take the opportunity of this welcome Cabinet Office review to enact meaningful and coordinated cross-Government change.

5 The path forward: a Debt Management Bill

Establishing a smarter approach using practices seen widely in the private sector would vastly improve cross-government debt management – producing savings for the taxpayer and a clearer route out for those gripped by problem debt. Given the primacy of problem debts owed to public bodies and still unfolding economic crisis, this will be vital to our national bounce back from COVID-19.

The CSJ propose a Debt Management Bill – to build back better.⁴⁷ The Bill would put the Cabinet Office’s excellent Fairness Agenda on a statutory footing and embed an updated approach to debt collection, while amendments to existing legislation would complete a package of reform. The Bill would be comprised of the following elements.

Recommendation 1: Embed fairness across all of government debt collection

Bring the Cabinet Offices’ Fairness Principles (currently in the Digital Economy Act 2017’s Code of Practice) onto a statutory footing, requiring all government departments to demonstrate they are carrying out debt collection in line with the principles, and mirroring the approach taken in the regulated context and private sector.

Use the findings of this consultation to update debt management practices to the highest possible standard, and set this out in legislation, including novel methods of communication and engagement while ensuring that the regulation is ‘future-proofed’ to allow for advances in managing the debt of vulnerable customers.

Establish a centralised debt aggregator in the Cabinet Office’s Debt Management Function in order to reach a ‘single customer’ view of debtors with complex cases and with more than two government debts.

- When a department or public body learns that a debtor owes multiple government debts, they should be referred to the Cabinet Office debt aggregator, whose Debt Management Function (DMF) should then collect the appropriate information from the debtor using the Standard Financial Statement (SFS). The Cabinet Office DMF should then broker an agreement between all departments involved to establish a sustainable repayment plan given the debtor’s circumstances, while maximising their potential income (including through benefit take-up and a referral to wider support where appropriate). Independent debt advice may still be needed to factor in private sector debts (see below).
- The new Fairness Principles and vulnerability policies required of each department and government body should incentivise individual debt teams to ‘refer up’ complex cases and multiple debts to the centralised debt aggregator as these become known.

Adopt the Standard Financial Statement across all government departments and bodies as an objective means of assessing the affordability of debt repayments. The

⁴⁷ The Bill was proposed to the Chancellor in a letter published on 11 June by 55 cross-party MPs and peers.

inclusion of government debts will mean that the Standard Financial Statement will need to be updated by the Money and Pensions Service accordingly, in order to reach an agreement on the proportion of available disposable income going to government bodies vs. private creditors.

Require each department and body to publish an updated and formal vulnerability policy in line with the principles, but appropriate to each respective context, in order to better improve identification, communications and engagement with vulnerable customers.

Monitor and publish total personal debt owed to the government, mirroring the way the Bank of England publishes quarterly levels of consumer credit debt.

Recommendation 2: Transform local government debt collection

Amend and update the Council Tax (Administration and Enforcement) Regulations 1992, including putting an end to residents becoming liable for their entire annual bill upon one missed payment, and removing the sanction of imprisonment. Councils should increase the number of attempts to contact a customer before pursuing a liability order.

Revise the local authority council tax arrears league tables so that they incentivise repayments over a longer period when this is suitable for low-income households instead of encouraging a blanket 'in-year' approach to collections. The league tables should also seek to highlight and reward councils who effectively engage with vulnerable residents, in line with the wider Fairness Principles.

Place the Good Practice Guidance for council tax collection on a statutory footing and introduce statutory reporting of debt collection methods and outcomes, across all debt types, to incentivise good practice and quicken the pace of improvement:

- Require that all councils regularly review their signposting and referrals processes to maximise all opportunities to help people access free debt advice. This should be implemented for all debt types, not just for council tax. For councils who currently signpost only to face-to-face agencies, we recommend providing residents with a choice of channel by additionally signposting to telephone/online advice agencies.
- Require all local authorities to introduce a formal vulnerability policy for all debt types, either as a standalone document or in the form of specific and detailed provisions conforming to the central government Fairness Principles. The policy should include identifying vulnerable residents and amending collections processes accordingly. Policies should be published and reviewed regularly and should be supported by staff training.
- A pilot should be run exempting recipients of Council Tax Support from bailiff action in 20 local authorities. These households have already been identified as requiring additional support through locally-determined criteria. This recommendation would explore the benefits of following the lead of the small number of councils who have already adopted this approach and are delivering improvements for both residents and the taxpayer. If successful it should be made national policy.

Recommendation 3: Transform debt collection in the justice system and complete the bailiff reform started in 2014

Establish a cross-Whitehall and local government commitment to use bailiffs only as a last resort and introduce an independent bailiff regulator. As it stands, there is no independent bailiff regulator and while complaints against bailiffs can be submitted to the Local Government and Social Care Ombudsman, there is little the authority can do to impose penalties for threatening or abusive behaviour when they occur. Supervision from the FCA has resulted in good practice collection techniques being adopted throughout the regulated debt collection sector. This should serve as an example of how public sector bailiff practices (when used as a last resort) can be similarly improved through regulation.

Equip the regulator with the power to set fees at levels which meet the Ministry of Justice's profit margin targets and ensure that enforcement agents work according to the principles established in point one (above) so that people are not charged excessive or disproportionate fees for small amounts of debt.

Bring the enforcement of magistrates' court debts into line with the enforcement of County Court Judgments (as typically seen for private-sector debts), including measures to allow the court to suspend warrants and so people can apply to pay through affordable instalments. In practice, this means that the magistrates' court should have an equivalent procedure to the County Court N245 procedure that allows people to apply to suspend warrants and offer affordable payments to their creditors. This measure should also be extended to the enforcement of parking fines.

End the sanction of imprisonment for council tax arrears in England by repealing Regulation 47 of the Council Tax Regulations 1992. Council tax debt is the only form of civil debt for which people can be sent to prison in England (uniquely across Europe). As noted by Chris Daw QC, this is in stark contrast to other debts such as arrears on energy or telecom bills and a draconian measure which does not increase vulnerable people's capacity to pay. Failure to pay council tax arrears (where this is affordable to the debtor) should come before the magistrates' court as per other civil debts so that more appropriate enforcement measures can be employed. Persistent failure to comply with enforcement should result in a community order.

Recommendation 4: Transform debt collection in the welfare system

Reverse the transfer of £6.2bn of tax credit debt to the Department for Work and Pensions (DWP) from HM Revenue & Customs (HMRC). It is unfair that historical debts born of design issues in the legacy benefits system should be recovered via Universal Credit, particularly not through large deductions to its standard allowance. Tax credit overpayment debt older than three years (that is, 61 per cent) should be written off, as per earlier plans adopted by HMRC for 'older inactive debt'

- The remaining portion of the tax credit debt should be retained by HMRC, and its recovery should be modelled on the student debt system where individuals only begin to pay it back in installments when their earning reach a specific threshold. In view of the unfolding economic crisis, the Government should review how high it wishes to set this threshold, given the trade-off between reduced work-incentives and the recovery of old debt. Writing off old tax credit debt could, after all, have a profoundly positive impact on the rollout of Universal Credit and prevent hundreds of thousands of families having 25+ per cent of their standard

allowance deducted due to debts resulting from issues with the legacy benefits system

- For ongoing benefit overpayments, claimants must be informed of any outstanding overpayment within a year and given an explanation as to why they received it. Overpayments revealed more than 13 months afterwards should be waived, as per comparable practice in the private sector (such as the ‘backbilling’ rules set out by Ofgem which prevent energy suppliers from charging retrospective bills outside of a 12-month timeframe).
- Tax credit debts should also be treated differently within insolvency timeframes, as currently they are not covered by a debt relief order (DRO) when they reappear at a later stage (often lying dormant on the HMRC system until activated). Households with a DRO (and likely to be in acute problem debt) are therefore still encumbered by historical tax credit debt, yet remain unable to receive another DRO for six years; the alternative is to file for bankruptcy which is, perhaps ironically, unaffordable for many in need as it costs £600.

Introduce affordability assessments into the benefits deductions process to ensure that deductions are implemented in a way that is affordable to the claimant. The DWP should make an affordability assessment based on SFS data captured by a JobCentre work coach (or as agreed with a regulated third party) to determine what level of deduction should be applied to the claimant given their circumstances. Where appropriate, this should be referred on to the debt aggregator in the Cabinet Office Debt Management Function in order to consolidate multiple debts owed to the government and private debts subject to deductions, such as utility bills and rent arrears.

Reduce the maximum level at which third-party debts and benefit overpayments can be recovered to 10 per cent of the standard allowance. The 10 per cent maximum level should be set in order to protect the effectiveness of the welfare system to provide financial support for those in need (without simply recovering it back through deductions), while retaining fairness for creditors where debts need to be repaid. This is already the case where some housing associations have requested that the DWP lower deductions so that debt is recovered more sustainably and proportionately from their residents. It is imperative, however, that this is not the automatic rate of recovery, and that these deductions are made at a claimant level corresponding to an affordability assessment as recommended above.

Introduce a clearer and more accessible route through which people can secure a reduction in their allowance deduction, if this is still appropriate after the adoption of affordability assessments – for example, someone experiencing a profound financial shock or an erroneously misapplied deduction. The DWP debt management team and JobCentre Plus work coaches should be equipped with greater discretionary powers to secure a reduction having consulted with claimants and trusted third-party debt organisations.

Meet the government’s commitment to include Universal Credit-related debts within Breathing Space as early as possible after launch in 2021. For this new scheme to offer a genuine ‘breathing space’ for people in problem debt, it is essential to include all creditors. The omission of Universal Credit advances and deductions from its remit at the launch of Breathing Space would represent a missed opportunity. However, with launch likely to be delayed due to the ongoing Coronavirus crisis, the Government should attempt to include this aspect of the scheme on its introduction.