

STILL COLLECTING DUST

Ensuring fairness in council tax collection

August 2024



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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 2024 and beyond, we will continue to advance the cause of social justice so that more people can continue to fulfil their potential.

Acknowledgements

The CSJ would like to extend our thanks to the many individuals and organisations who shared their time, expertise, evidence, and feedback in the preparation of this report. We would like to specially thank the supporters of the Debt Unit, including Lowell, Aryza, Equifax, and Money Wellness who make our work possible.



We would like to thank our research partner Money Advice Trust, who supported us to produce this paper and helped make our work possible.



We would like to thank all the individuals who have shared their expertise, evidence, feedback and time in the preparation of this report. This includes (but is by no means limited to): The Money and Pensions Service, the UK Household Longitudinal Survey Team at the University of Essex, Tom Ahern, Meg van Rooyen, Grace Brownfield, Jasmin Dhaliwal, and all other stakeholders who engaged with us.

Disclaimer: The views and recommendations in this report are those of the CSJ and do not necessarily represent those of the individuals or organisations mentioned above. Minor amends were made to the text of this report following a further proof read post publication.

Disclaimer: The analysis, interpretation and recommendations that originate from our use of the Debt Need Survey 2022 are those of the CSJ and are not the responsibility of and do not necessarily represent the Money and Pensions Service.

Executive Summary

This report is about raising council tax collection standards and building on the progress made to do so over the last few years. In 2021, debt advisers and enforcement agencies – convened by the Centre for Social Justice – came together in partnership to create the Enforcement Conduct Board (ECB), a new voluntary oversight body.¹ Since then, the Board has been working towards its goals of raising standards, improving accountability, building a complaints framework and reviewing the extent of vulnerability amongst households referred to enforcement. The pursuit of a fairer collections regime has been a collective endeavour and all parties have committed to making it a success.

Following the launch of the Enforcement Conduct Board, the Ministry of Justice committed to reviewing the option of putting it onto a statutory footing and this review is set to take place no later than November 2024.²

In anticipation of this review, we seek to refresh our view of the nature of local government debt collection – where enforcement is the primary means of collection - and the households who fall behind on their council tax. We focus on Council Tax because it is a high value debt that local government collects at scale. Using the UK Household Longitudinal Survey (Understanding Society), a large household survey of more than 16,000 households run by the University of Essex, we build a representative view of the 1.3 million households who say they fell behind in 2022/23. We find that:

- While increasingly fewer households report being behind on their council tax compared to 2010/11, the amount those households fall behind on is increasing. We find that it is increasingly households at the bottom of the income spectrum that fall behind.
- Households in council tax arrears struggle to pay their bills. The median household behind on their council tax has £1,020 a month after housing – 48 per cent lower than households not behind on their arrears - and this falls to £148 after food and energy costs are deducted.
- Local authorities with high levels of income deprivation have lower levels of council tax collection and higher levels of enforcement (bailiff) activity. Regression analysis shows that for every 1 percentage point increase in income deprivation, an authority's council tax collection rate declines by 0.28 per centage points.
- 25 per cent of those who fall behind on their council tax receive Council Tax Reduction, a means tested benefit for those on low incomes.

We have conducted a large freedom of information request of local authorities, which reveals that about 1.3 million instructions for council tax enforcement were provided in 2022/23, slightly lower than recent levels.³ When bailiff activity for Council Tax – which is the primary focus of this report – and parking is taken together, 2.5 million instructions were made, an increase of 19 per cent since 2016/17.

1 Centre for Social Justice, *Taking Control for Good: Introducing the Enforcement Conduct Authority*; Civil Enforcement Association, *Enforcement News: The quarterly magazine from CIVEA, the Civil Enforcement Association – Summer 2022*.

2 Hansard, *Financial Services Bill, Volume 811: Lord True*.

3 Please note, this figure is not comparable to the number derived from Understanding Society.

Since its inception, the Enforcement Conduct Board has made significant progress in bringing forward effective oversight of the enforcement sector. Its accreditation scheme achieved significant voluntary uptake and ECB accredited firms account for over 95 per cent of enforcement work undertaken in England and Wales.⁴ Progress has also been made to begin producing a complaints procedure and to develop new national standards for enforcement action.⁵ This progress should be welcomed.

However, the current consensus suffers from several shortcomings. Most importantly, as it stands, the Enforcement Conduct Board is a voluntary body and it has no basis in law, meaning the oversight structure as it stands is fragile. In light of the raised vulnerability of people in debt and the invasive nature of enforcement, we believe the Enforcement Conduct Board should be given the limited statutory powers it needs to ensure it can carry out its primary oversight functions described above. Operationalising the Board in this way would build on the progress made so far and provide a long-term framework for proportionate, sustainable oversight. To achieve this, the government should amend the Tribunals, Courts, and Enforcement Act 2007 to provide for a body to provide oversight of the enforcement industry.

But a better enforcement process requires more than high-quality, proportionate oversight. Local authorities must be able to differentiate between those who can't and won't pay. Our research suggests that there are households who choose not to pay their council tax. Although they are limited in number, they should be met with a vigorous enforcement regime to safeguard the public purse.

But where families genuinely struggle to repay, local authorities, acting as creditors, should have an effective sifting process to ensure fewer vulnerable households are referred to enforcement in the first instance. It is too often the case that the first time an individual is identified as vulnerable is when an enforcement agent knocks on the door. Not only does this create undue difficulty for vulnerable households who cannot pay, it results in higher fees for everyone who is the subject of enforcement.

To achieve this, the Department for Levelling Up, Housing, and Communities has already clarified that councils can flex their existing legislative powers to create time for them to engage with debtors before moving to enforcement. But even where powers are permissive, they can lead to path dependency.⁶ The next step to avoid this is to amend the Local Government Finance Act 1992 to end the requirement to pay a full annual bill after one missed payment and to explicitly allow local authorities to redistribute missed payments prior to moving to a liability order.

Local authorities should be encouraged to pursue a non-invasive means of collection in the first instance, either by requiring the pursuit of a non-invasive collection method first or removing the need for a liability order for an attachment of earnings, allowances, and benefits. Crucially, the government should remove the sanction of imprisonment as a punishment for nonpayment from legislation. While it is rarely used in practice, almost 10,000 people have been given suspended commitment orders – a custodial sentence where the offender does not go to prison - since April 2009, and the threat of imprisonment throughout the collection process only makes debts harder to handle.⁷ According to the National Audit Office, intimidating actions and additional charges make debts 15% - 29% harder to manage and increase levels of anxiety or depression.

As part of the sifting mentioned above, the most vulnerable should be steered away from enforcement. Our analysis of Understanding Society suggests that people in receipt of Council Tax

4 Enforcement Conduct Board, *Draft Business Plan 2024/25*. Particular credit should be granted to the Civil Enforcement Trade Association which has encouraged their members to apply for accreditation.

5 Enforcement Conduct Board, *Standards*; Enforcement Conduct Board, *Complaints*.

6 Richard Thaler, Cass Sunstein, *Nudge: The Final Edition*, (London, 2022).

7 National Audit Office, *Tackling problem debt*.

Reduction – a means tested benefit for those on low incomes - make up 25 per cent of those in arrears, yet just 31 councils in England and Wales tell us they exempt them from enforcement action. Their limited ability to repay suggests that tailored support is likely to be more effective at increasing collection rates.

It is well known that many councils currently face financial difficulty. In the recent election, both the sustainability of the current settlement and the potential for re-evaluating council tax bands and/or raising council tax featured. The suitability of outdated council tax bands has clearly been in jeopardy for a long time and reform is needed, but improving collection standards can also serve as a short-term win for improving council finances. Evidence from the National Audit Office notes that sensitive collection - which is widely adopted in the private sector where standards are higher - can improve collection compared to aggressive action and fees that make debts harder to handle.

Raising council tax will also have a knock on effect on those at the very bottom. Research by the Institute for Fiscal Studies shows that the introduction of Council Tax Reduction- including the introduction of minimum council tax payments that require households previously receiving full support to contribute to their bill - may have raised council tax receipts but decreased collection rates, indicating an inability to pay. Raising council tax further without ensuring vulnerable households get support will serve to exacerbate the trend we see of debt advice clients owing ever greater amounts of council tax.⁸

Fortunately, this can be ameliorated by preventing households from missing out on what they're due. 1.7 million claims for Council Tax Reduction are left unmade due to the fragmented administration of the benefit, yet we know many of these households likely end up subject to enforcement action.⁹ Evidence from HM Treasury shows that 10 per cent of households who were contacted during a pilot study because they owed council tax debt were moved onto Council Tax Reduction.¹⁰

Local authorities can improve uptake by using data provided to them by the Department for Work and Pensions via the Universal Credit Data Manager, but many feel blocked from doing so by legal uncertainty. Some local authorities appear unsure if they can use the 'intent' to apply for Council Tax Reduction provided in a UC application as an actual application and don't process these potential applications as a result. We recommend that the Department for Work and Pensions or any other relevant department should provide a central legal opinion on the appropriateness of this and amend legislation to allow intent to be treated as an application if required.

Pairing these changes would genuinely transform the collections process for vulnerable families while protecting the public purse. It would drive up the effectiveness of collections by removing those least able to pay while freeing up capacity to deal with those who can.¹¹

8 Institute for Fiscal Studies, *The impacts of localised council tax support schemes*

9 Policy in Practice, *Missing out 2024: £23 billion of support is unclaimed each year*.

10 HM Treasury, *The Balance Sheet Review Report: Improving public sector balance sheet management*, November 2020.

11 The proportion of non-high court cases that settled after being paid in full fell from 21% to 15% between 2018 and 2022. Ministry of Justice, *Review of the Taking Control of Goods (Fees) Regulations 2014*.

Summary of Key Recommendations

Putting the Enforcement Conduct Board on a long-term footing:

- **Recommendation:** The Ministry of Justice should take steps to put the Enforcement Conduct Board on a statutory footing.
- **Recommendation:** The Enforcement Conduct Board should be given the general power to create rules and guidance in pursuit of assigned strategic objectives.
- **Recommendation:** The Enforcement Conduct Board should be empowered to impede agents' ability to obtain a certificate to conduct enforcement activities where they breach the ECB's standards.

Amending the legislative framework to drive best practice:

- **Recommendation:** Regulation 23, paragraph 3 of The Council Tax (Administration and Enforcement) Regulations 1992 should be amended to end the requirement to pay an entire council tax bill upon one missed payment.
- **Recommendation:** Regulation 23, paragraph 3 of The Council Tax (Administration and Enforcement) Regulations 1992 should be amended to provide billing authorities with the ability to distribute missed payments to other monthly instalments.
- **Recommendation:** Amend Regulation 52 of the Council Tax (Administration and Enforcement) Regulations to require billing authorities to pursue an attachment of earnings, allowances, and benefits before the use of enforcement agents.
- **Recommendation:** Regulation 47 of The Council Tax (Administration and Enforcement) Regulations 1992 should be repealed to end the commitment of people in debt.

Promoting best practice and ensuring vulnerable household receive the support they're due:

- **Recommendation:** Local authorities should seek to avoid the use of enforcement action against those in receipt of Council Tax Reduction.
- **Recommendation:** The Department for Levelling Up, Housing, and Communities and the Department for Work and Pensions should ensure local authorities are using data provided to them by the DWP to contact potentially eligible recipients of Council Tax Reduction.
- **Recommendation:** The Department for Work and Pensions or any other relevant department should publish a central legal view on the appropriateness of interpreting the intention to claim Council Tax Reduction provided by a Universal Credit application as an application itself.

Introduction

This report is the third piece in our series of work to drive up standards in government debt collection. In 2020, the CSJ released *Collecting Dust*, which charted a new path to improve government debt collection. This was followed by *Taking Control for Good*, the result of the CSJ's partnership with enforcement agencies and debt advisers to design and launch a new voluntary oversight body, the Enforcement Conduct Board.

Over the last few years, much progress has been made to drive up standards in local government debt collection, most notably with the founding of the Enforcement Conduct Board, a voluntary oversight body for the enforcement industry, still colloquially known as bailiffs. The ECB will create new national standards and provide an independent complaints procedure to ensure vulnerable families get the redress they deserve when things go wrong.

But there is still much to be done to improve local government debt collection. Following the launch of the Enforcement Conduct Board, the Ministry of Justice committed to reviewing the option of putting it onto a statutory footing and this review is set to take place no later than November 2024.¹² Ahead of that review, we carry out an investigation into the circumstances households who fall behind on their council tax – where enforcement is the primary means of collection – find themselves in and propose recommendations to build on the progress mentioned above.

To do this, we use two large survey datasets, the UK Household Longitudinal Survey and the Debt Need Survey by the University of Essex and Money and Pensions Service respectively. We have also produced a timely update of freedom of information requests which map the extent of enforcement across England and Wales.

The structure of the report is as follows:

- In Chapter 1, we briefly introduce the state of council tax debt and how some families find themselves falling into ever more debt to local government.
- In Chapter 2, we use two large representative surveys to show how the families who fall behind on their council tax are likely to be on low incomes and show significant signs of deprivation
- In Chapter 3, we use a large scale freedom of information requests of local authorities to show the extent of enforcement in England and Wales, where it takes place, and its link to income deprivation.
- In Chapter 4, we propose a package of reforms to build on the progress made to drive up standards in government debt collection and to ensure that households obtain the support they are eligible for.

¹² Hansard, *Financial Services Bill*, Volume 811: Lord True.

Methodology

To understand the scale of council tax arrears and the circumstances people in debt find themselves in, we have analysed two data sets. These are as follows:

The UK Household Longitudinal Survey (Understanding Society).

Understanding Society is the UK Household Longitudinal Study, which is based at the Institute for Social and Economic Research at the University of Essex.¹³ Understanding Society is a household panel study, interviewing everyone in a household to see how different generations experience life in the UK. In this paper, we use waves 1 to 13, which were carried out between 2009-2011 and 2021-2023 respectively. Most of our analysis is of Wave 13. Wave 13 contains more than 16,000 households. Where individuals are referred to, we have linked the household level data to the data of individuals living in those households at the time the survey was collected. In Wave 13, we are able to link data to 27,411 people. The data are weighted.

The Debt Need Survey 2022

The Debt Need Survey 2022 is a panel-based survey produced by the Money and Pensions Service. The Debt Need Survey 2022 was collected between 19th July and 16th September 2022. It has a sample of over 22,000 interviews.¹⁴

Understanding the extent of enforcement activity:

To understand the extent of enforcement activity across England and Wales, we worked with the Money Advice Trust, our research partner for this report, to repeat and expand Stop the Knock.

Stop the Knock is a large scale freedom of information request submitted to local authorities across England and Wales. We analyse the data relating to Council Tax in that exercise here. To see the full results of the request, please see: www.stoptheknock.org

13 University of Essex, Institute for Social and Economic Research. (2023). Understanding Society: Waves 1-13, 2009-2022 and Harmonised BHPS: Waves 1-18, 1991-2009 [data collection]. 18th Edition. UK Data Service. SN:6614, <http://doi.org/10.5255/UKDA-SN-6614-19>. For more information, see: [Understanding Society](https://www.understandingsociety.ac.uk/).

14 Money and Pensions Service, *Technical Report: 2022 Debt Need Survey*.

Chapter 1:

Debt to Local Government

Over the course of the last decade, evidence produced by debt advice agencies has shown that the burden of debt clients are seeking help with is changing. As the extent of consumer credit debt has declined in response to the Financial Conduct Authority's regulation of the consumer credit market, debt to the government has entered the foreground.¹⁵ Chief amongst this debt is Council Tax because of the scale of debt accrued and the speedy and disproportionate use of enforcement agents – more commonly known as bailiffs – that local authorities are empowered to use by legislation.¹⁶

In this chapter, we briefly explain what Council Tax is before moving on to present evidence that suggests those who fall behind on their council tax appear to be falling behind on ever greater amounts of debt. We shall expand further on this in Chapter 2, where we build an evidence base which indicates the connection between council tax debt and income deprivation.

What is Council Tax?

Council Tax is a domestic property tax administered by local authorities in England and Wales known as 'billing authorities'. Increasingly large parts of England have a single tier of local government and in this instance the billing authority is the unitary authority, a metropolitan district, or London borough council.¹⁷ In areas where two-tier local authorities remain, the billing authority is the district council.¹⁸

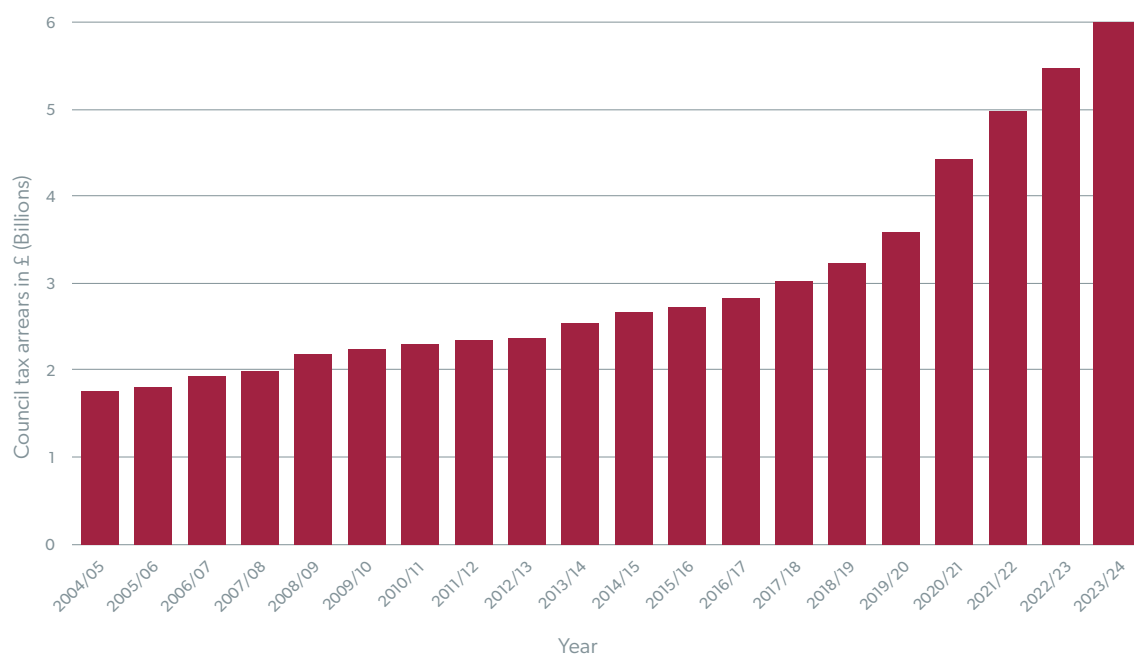
15 Citizens Advice, *The Costs of Collection: The High Price of Council Tax Debt Collection*; Citizens Advice, *Council Tax Collection isn't Efficient or Fair*; Citizens Advice, *Unavoidable Debt: Coronavirus and Council Tax Debt*; Citizens Advice, *Bailiffs Behaving Badly: Stories from the Frontline*.

16 Legislation.gov.uk, *Local Government Finance Act 1992*.

17 Legislation.gov.uk, *Local Government Finance Act 1992*

18 *Ibid.*

Figure 1: Cumulative amount owed in council tax arrears.



Source: Department for Levelling Up, Housing and Communities

Council Tax is not solely comprised of taxes used by the billing authority. Precepting authorities of any kind (such as county councils and combined authorities) can instruct the billing authority to collect additional Council Tax that is passed to the precepting authority to carry out its functions. For example, some local authorities are empowered with the ability to apply a precept for adult social care.

Council Tax Debt is Rising

In recent years, as the burden of Council Tax has increased, arrears have risen. This is particularly in response to recent economic shocks, such as the Covid-19 pandemic and the cost-of-living crisis. As shown in Figure 1, the pace of arrears has been increasing. Despite the collection rate for Council Tax increasing from an initial 92.6% in 1993/94 to 96 per cent in 2022/23, the amount of arrears has increased substantially.¹⁹ Over time, the cumulative amount owed in arrears to local councils has significantly increased, rising from £1.7 billion in 2004/05 to £5.4 billion in 2022/23.²⁰

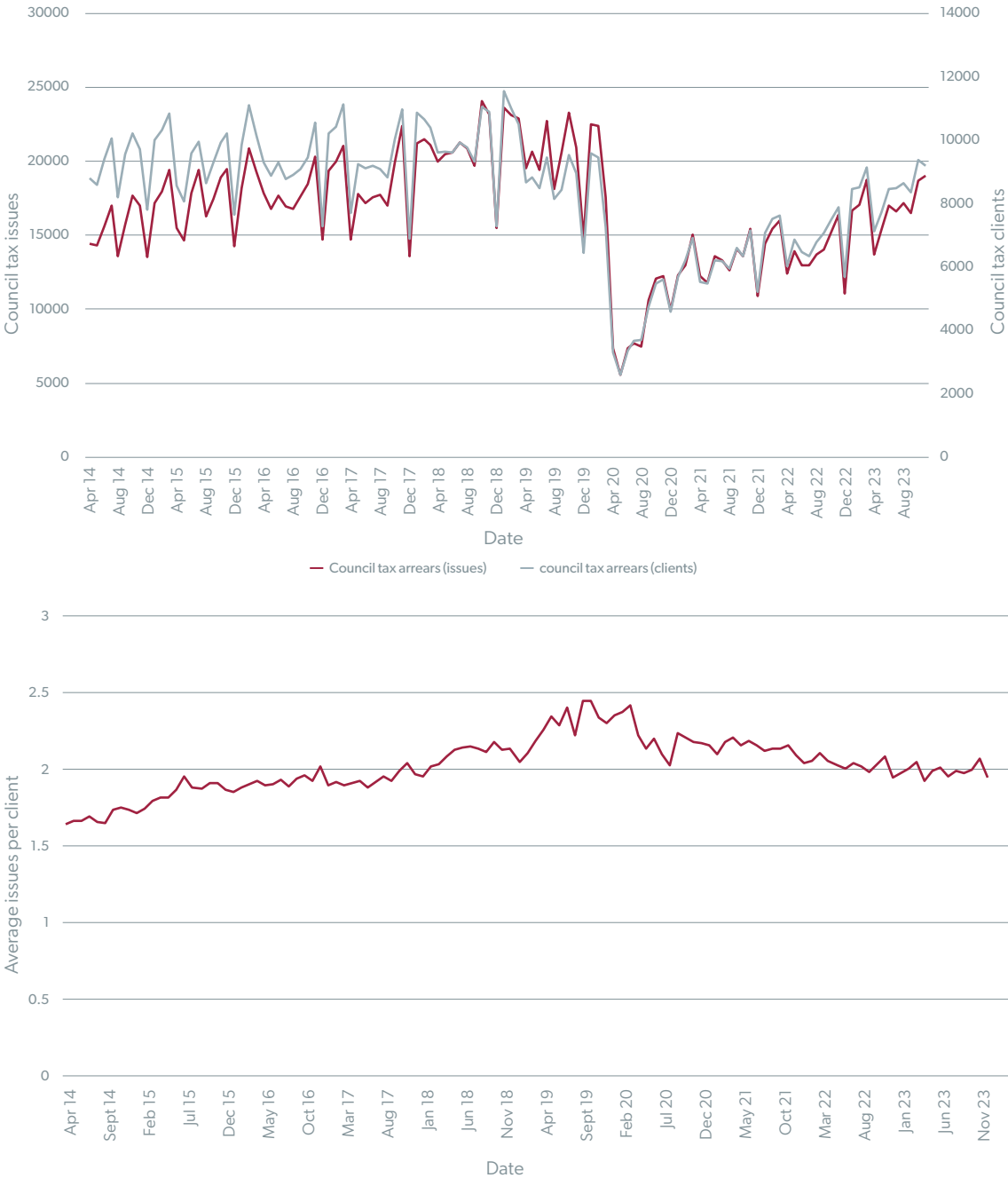
As other debts have fallen away, debt to local government has become more prominent in the composition of debts seen by debt advice agencies. Analysis of data produced by Citizens Advice in Figure 2 below shows that the volume of council tax issues seen by the charity rose substantially in the short term after a pandemic-induced decline and has almost returned to pre-covid levels. Citizens Advice saw 7,358 council tax issues in April 2020 – when debt advice like everything else was shocked by Covid – but this has since risen to just under 19,000 issues a month in November 2023.

The long-term trajectory is harder to disentangle. The number of clients seen by Citizens Advice was broadly flat prior to the pandemic, but the complexity of the cases seen was increasing as shown in Figure 3.

¹⁹ Institute for Fiscal Studies, *A Survey of UK Local Government Finance*.

²⁰ Figures not adjusted for inflation. It should be noted that some arrears may date back to 1993 when Council Tax was introduced.

Figures 2 and 3: Number of council tax issues seen by Citizens Advice and the average number of council tax issues per client with council tax issues seen by Citizens Advice.



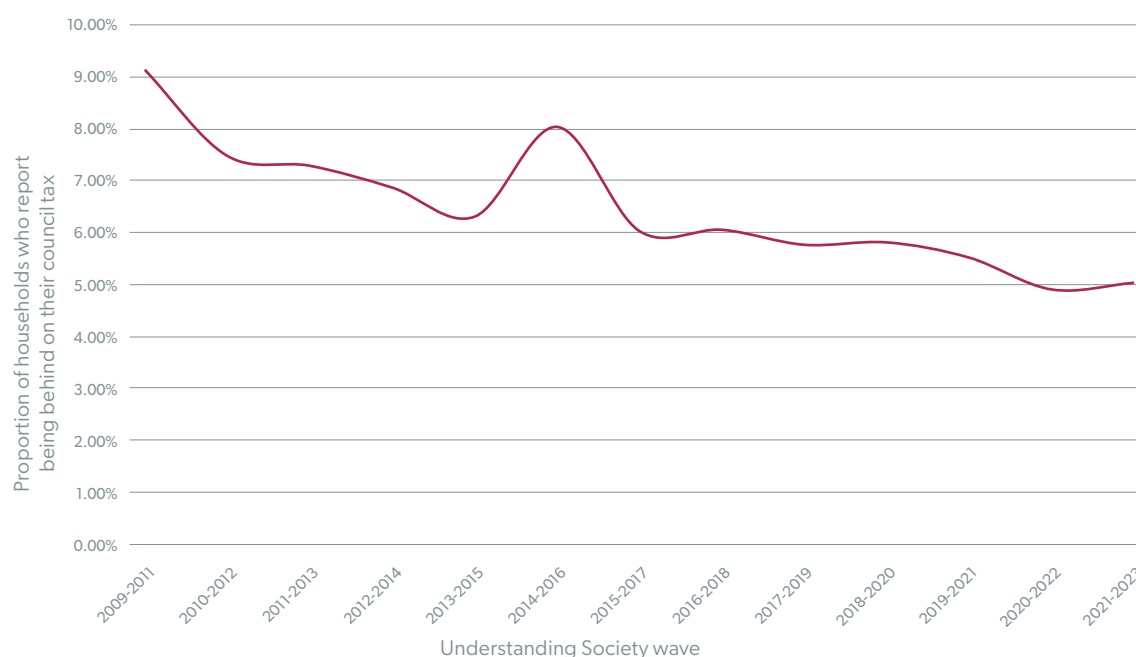
Source: CSJ analysis of Citizens Advice data

Within this context, it is important to note that the rate of council tax arrears appears to be falling. CSJ analysis of data from the UK Household Longitudinal Survey, a large household panel survey produced by the University of Essex, suggests that the percentage of households that are behind on their council tax has been declining since 2009-2011.

Data from Understanding Society suggests that approximately 5 per cent - totalling some 1.3 million - households were behind on their council tax in Wave 13 (2021 – 2023), declining steadily from about 9.14 per cent in 2009/2011.²¹

Interestingly, Understanding Society does not appear to reflect the increase in the number of households who are believed to have fallen behind on their council tax during Covid-19, when collection rates fell and arrears rose.²² At the time, the collection rate dropped from 96.8 per cent to 95.7 per cent as shown in Figure 7 below.²³ This suggests levels may be slightly higher than the image provided here. By comparison, 6.86 per cent of people in the Debt Need Survey 2022 – a large panel survey produced by the Money and Pensions Service - say they are behind on their council tax.²⁴

Figure 4: Households who report being behind on their council tax in Great Britain.



Source: CSJ analysis of UK Household Longitudinal Survey (Understanding Society). (n = 273,571)²⁵

Note: Question: In the last twelve months, have you ever found yourself behind with paying your Council Tax? Question asked of households in England, Wales, or Scotland where Council Tax band is provided.

21 The reader will notice that the percentage of households behind on their Council Tax spikes in 2014-2016 or Wave 6. Wave 6 incorporates a new immigrant and ethnic minority boost sample, which improves the representativeness of the sample. To reflect this, a new weight is introduced in Wave 6, and we suspect this may partially explain the disruption in the trend. Readers may wish to consult the following documents for an assessment of Understanding Society. University of Essex, Institute of Social and Economic Research (2011), *Maintaining Cross-Sectional Representativeness in a Longitudinal General Population Survey*; University of Essex, Institute of Social and Economic Research (2023), *Trends in Panel Attrition in Understanding Society Waves 1 to 13*.

22 Citizens Advice, *Unavoidable Debt: Coronavirus and Council Tax Debt*; Department for Levelling Up, Housing, and Communities, *Collection Rates for Council Tax and Non-Domestic Rates*.

23 Figure 7 can be found on page 18.

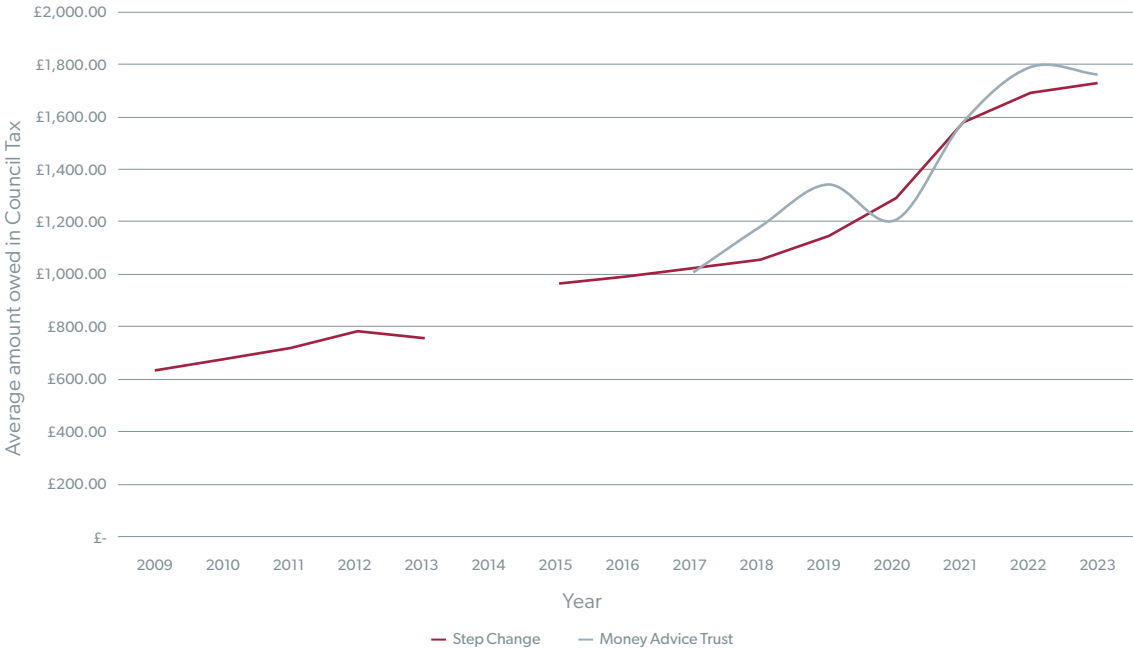
24 The Debt Need Survey asks the question: Are you currently behind on any of the following bills or credit commitments? Council Tax is given as an option. The sample size is 20,986. Money and Pensions Service, *Debt Need Survey*.

25 University of Essex, Institute of Social and Economic Research (2023.) *Understanding Society: Waves 1-13, 2009-2023*. Fieldwork for the UK Household Longitudinal Survey is intended to be carried out over a period of 24 months, but a few interviews cannot be conducted during this period and are followed up after. Readers may refer to survey's [website](#) for exact timings of the waves.

While undoubtedly good for the households who have escaped financial difficulty, the increasing pace of rising arrears in the context of a lower rate of arrears suggests that the households who have fallen behind face an increasing burden. Further evidence from debt advice agencies adds weight to this view.

Data released by debt advice agencies suggests that the amount their clients owe to local authorities in Council Tax has been increasing. StepChange – for whom we have data for a longer time period - reports that the average amount its clients owe has increased from £633 in 2009 to £1,689 in 2022. A similar trend of rising arrears also emerges from data provided by the Money Advice Trust, rising from £1,005 in 2017 to almost £1,800 in 2022. As we shall show later in this paper, an increasing burden could accord with the view that those who fall behind on their council tax are those who would struggle to pay even small bills.

Figure 5: Amount owed in council tax arrears by clients of debt advice agencies.



Source: StepChange Debt Charity and Money Advice Trust²⁶

In summary, this evidence suggests that as arrears to local authorities mount up, cases of council tax arrears are becoming more severe in terms of their complexity and total amount owed. In the next chapter, we shall present an evidence base that indicates it is increasingly vulnerable families who fall behind and show a link between council tax arrears and income deprivation.

Debts to government bodies are serious in themselves because they indicate that a consumer has started to accrue “problem debt” and they are no longer in control of their financial situation. They are also serious because they are – amongst other debts such as energy and rent arrears – what debt advisers refer to as *priority debts*. Priority debts are debts that are deemed to be a priority to repay because of the seriousness of the consequences for those who are unable to pay them. In the case of Council Tax, the consequences include the use of bailiffs / enforcement agents and, in rare cases, imprisonment.

26 StepChange, *Personal Debt Statistics and Trends*.

Priority debt is given the name by debt advisers because the consequences of not paying them are more serious and immediate than non-priority debt. Priority debts include rent arrears, Council Tax, and energy debts. Failing to pay could lead to eviction, energy being disconnected, bailiff action, or other legal action including imprisonment.

Non-priority debt has fewer immediate consequences if it is not possible to pay, though these are still serious. Non-priority debts include credit card debts, payday loans, and water bills (which legally cannot be cut off). Failing to pay will still damage a person's credit rating and legal action can be taken to recover the debt or secured assets, for example a car or hire purchase.

The process of collecting these debts has been subject to significant criticism by people in debt, charities, and parliamentarians for the heavy-handed debt collection techniques they both mandate and encourage.²⁷ This includes the legal framework that allows the person to be made liable for their entire council tax bill upon a single missed payment to the looming threat of imprisonment it provides, even if it is rarely used. It also includes the widespread use of bailiffs / enforcement agents – who add fees for every stage of debt collection - by billing authorities, as well as agent conduct, to locate people in debt and collect from them, a procedure which causes considerable stress to people in debt while adding fees and has mixed success. Critiques, therefore, cover both the legal framework and the practice of the collection regime.

Billing authorities must have a regime that allows them to collect money owed to the public purse and that procedure needs to be a credible deterrent against wilful non-payment. But it is also important the system is flexible and sensitive to the needs of vulnerable people who fall behind on their bills because of their limited means. Currently, that balance remains unstruck.

Despite positive change since the introduction of the Courts, Tribunals, and Enforcement Act 2007 – more of which will be discussed in Chapter 3 - the regime remains ripe for reform. This is particularly the case for the legal framework that billing authorities use to collect debt because it encourages them to seek enforcement action, shifting the burden the collection process onto vulnerable families who struggle to keep up with their bills. This paper offers a credible reform package to improve the collections regime while retaining the ability to contend with those who wilfully refuse to pay their debts.

Before we can outline those changes in Chapter 3, it is important to demonstrate evidence to support our thesis that households and people in debt who fall behind on their council tax are vulnerable families who struggle to repay rather than those who wilfully refuse to do so. Doing so contextualises our view that enforcement should be tailored and sensitive to the needs of vulnerable families who require support to pay their bills.

²⁷ Citizens Advice, *Bailiffs behaving badly: stories from the frontline*. UK Parliament, Hansard: *Topical Questions: Volume 688: debated on Tuesday 2nd February 2021*.

Chapter 2:

Who Falls Behind?

To craft a proportionate regime for the collection of Council Tax, it is important to understand the circumstances in which people in debt who fall behind on their council tax find themselves. Much of the debate on the non-payment of Council Tax is built around the belief that there are two groups of people: those who can't pay and those who won't.²⁸

While being general in nature, the concern that people refuse to pay their council tax descends from esoteric claims by some people that they are "freeman on the land" – a legal fiction – and the widespread refusal to pay the Community Charge (known as the Poll Tax) in the late 1980s, when millions of people refused to pay local taxation.²⁹ Indeed, the Guardian used the term *can't pay, won't pay* in 1999.³⁰

However, data released by the Department for Levelling Up, Housing, and Communities shows that local authorities have enjoyed consistently high collection rates since 2005/6, dropping slightly when Council Tax Support was devolved to local authorities as part of the localism agenda and paired with a significant cut in funding and again during the COVID-19 pandemic.³¹

Figure 6: Council tax collection rate in England.



Source: CSJ Analysis of Department for Levelling Up, Housing, and Communities³²

²⁸ Liverpool City Council, *We are targeting Council Tax defaulters who won't pay, not those who can't pay*, July 2023

²⁹ The Guardian, *Poll Tax is History*. London Borough of Bexley, *Freeman on the Land and legal challenges to Council Tax; Value of White Horse District Council, Freeman on the Land and challenges to the legality of council tax*. Local Government Lawyer, *How to approach sovereign citizens and a freeman-on-the-land*, May 2023.

³⁰ Ibid.

³¹ Institute for Fiscal Studies, *The Impacts of Localised Council Tax Support Schemes*.

³² Department for Levelling Up, Housing, and Communities, *Collection Rates for Council Tax and Non-Domestic Rates*.

Where people in debt genuinely refuse to pay, such as those who claim to be freemen on the land, it is right and appropriate that an enforcement regime is available to billing authorities to enforce repayment and collect the money for the public purse. But where people in debt genuinely struggle to repay the money they owe, that regime ought to be proportionate and sensitive to their needs to allow the money to be collected while not causing or exacerbating undue hardship.

As of present – there is a limited amount of literature that uses representative data sources to understand the demographic and financial profile of those in council tax arrears, a record we now seek to set straight. To do this, we use further data from Wave 13 of the UK Household Longitudinal Survey, a survey of over 16,000 households in the UK. We also use data from the Debt Need Survey 2022, which is produced by the Money and Pensions Service, an arm's length body of the Department for Work and Pensions and the largest funder of free debt advice in England.

Household income and financial vulnerability

Most people feel an obligation to pay what they owe, and the same is true for Council Tax. With sizeable repercussions for non-payment, there is also a strong incentive for households to pay the tax if they are able to. Therefore, household income is naturally a variable of interest when seeking to understand if households who fall behind on their council tax can't pay or won't pay.

Our analysis of Understanding Society shows – as intuitively might be expected – that households in lower income deciles generally show a higher rate of council tax arrears. Deciles are calculated as a household's equivalised net income after housing costs, and figures are equivalised using the OECD scale.³³ Figure 7 below shows that over 1 in 10 households in the lowest income decile report having been behind on their Council Tax compared to 1 in 20 households across Great Britain.

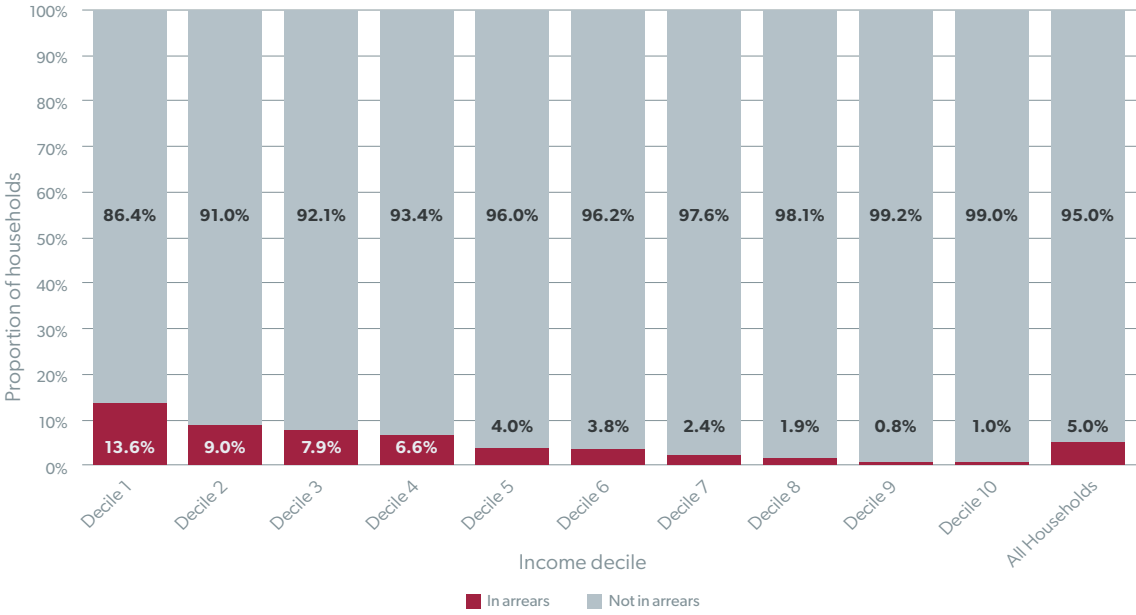
Significantly, 85 per cent of households who are behind on their Council Tax are in the first five income deciles, suggesting a large proportion of households who fall behind on their Council Tax have limited financial resources after their housing costs are accounted for. Using this equivalised income metric, our analysis suggests that 47 per cent of households who are behind are in relative poverty, defined as 60 per cent of the net median household income after housing costs.

Further to this, we show how this has changed over time. Since Wave 1 (2009-2011), all income deciles except for the first – the most deprived – have become less likely to be behind on their Council Tax. Notably, we detect a growing gap between the poorest households and the rest of the population. In 2009-2011, the poorest income decile were just 1.4 times more likely to say that they had fallen behind on their Council Tax than the national figure whereas in 2021-2023, they were 2.7 times more likely.³⁴ This suggests that many of those who still fall behind on their council tax are more likely to genuinely be unable to afford it.

33 The OECD equivalence scale is a method of adjusting household incomes to account for the differing needs of households. Household needs grow with each additional member, but they do not grow in a proportional way due to economies of scale. The equivalence scale assigns each household a value in proportion to its needs. For more information, see: Organisation for Economic Co-operation and Development, *What are Equivalence Scales?*; University of Essex, Institute for Social and Economic Research, *Understanding Society Mainstage Variable*.

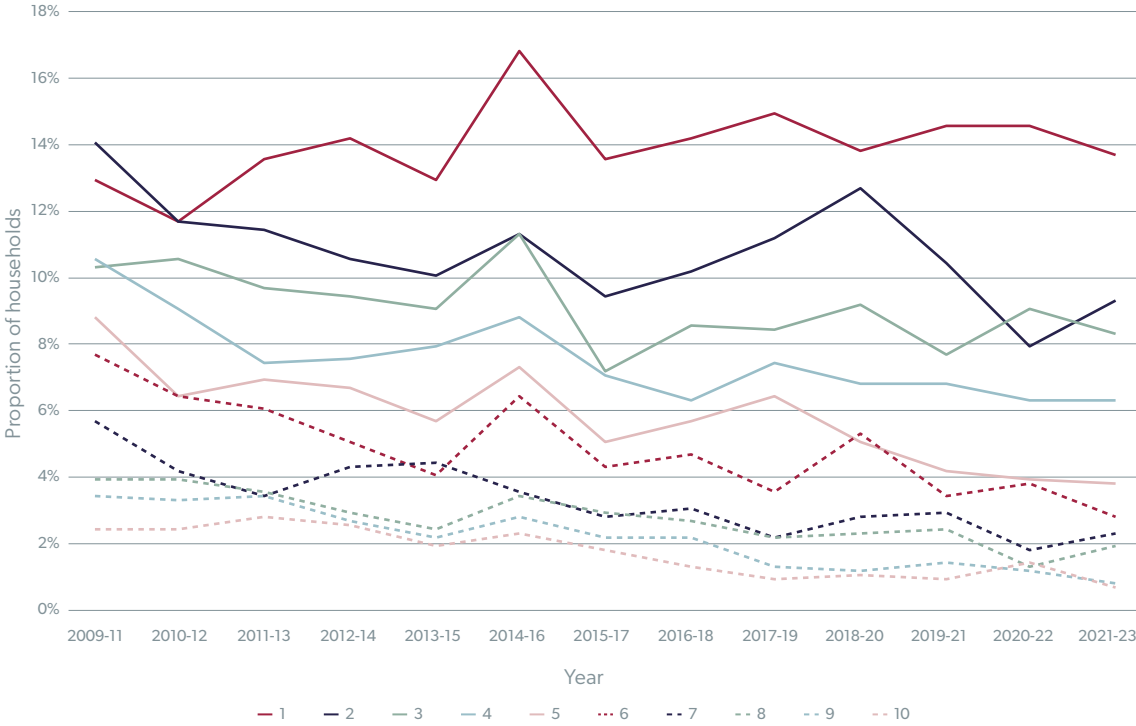
34 See Figure 9 below.

Figure 7: Percentage of households that are behind on their council tax by income decile.



Source: CSJ analysis of UK Household Longitudinal Survey (Understanding Society) Wave M. (n = 14,921) ³⁵

Figure 8: Percentage of households that are behind on their council tax by income decile.

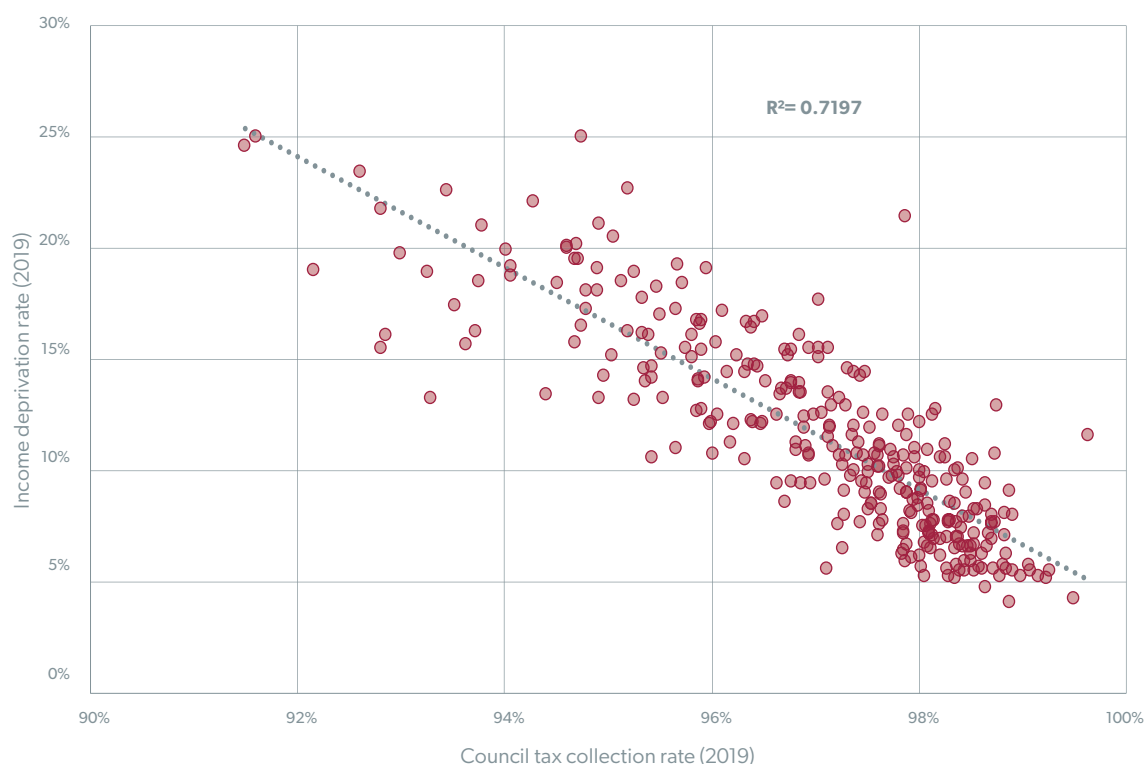


Source: CSJ analysis of UK Household Longitudinal Survey (Understanding Society) Wave M

35 University of Essex, Institute of Social and Economic Research (2023.) *Understanding Society: Waves 1-13, 2009-2023.*

This data is corroborated by further analysis provided below. Using data on income deprivation and local authority council tax collection rates produced by the Office for National Statistics and the Department for Levelling Up, Housing, and Communities, we find a strong negative correlation between levels of income deprivation and council tax collection rates. Local authorities with greater levels of income deprivation generally show lower collection rates. Put a different way, regression analysis suggests that for every percentage point increase in income deprivation, a local authority's council tax collection rate declines by 0.28 percentage points. The relationship broadly remains when compared to 2022/23 council tax collection data.

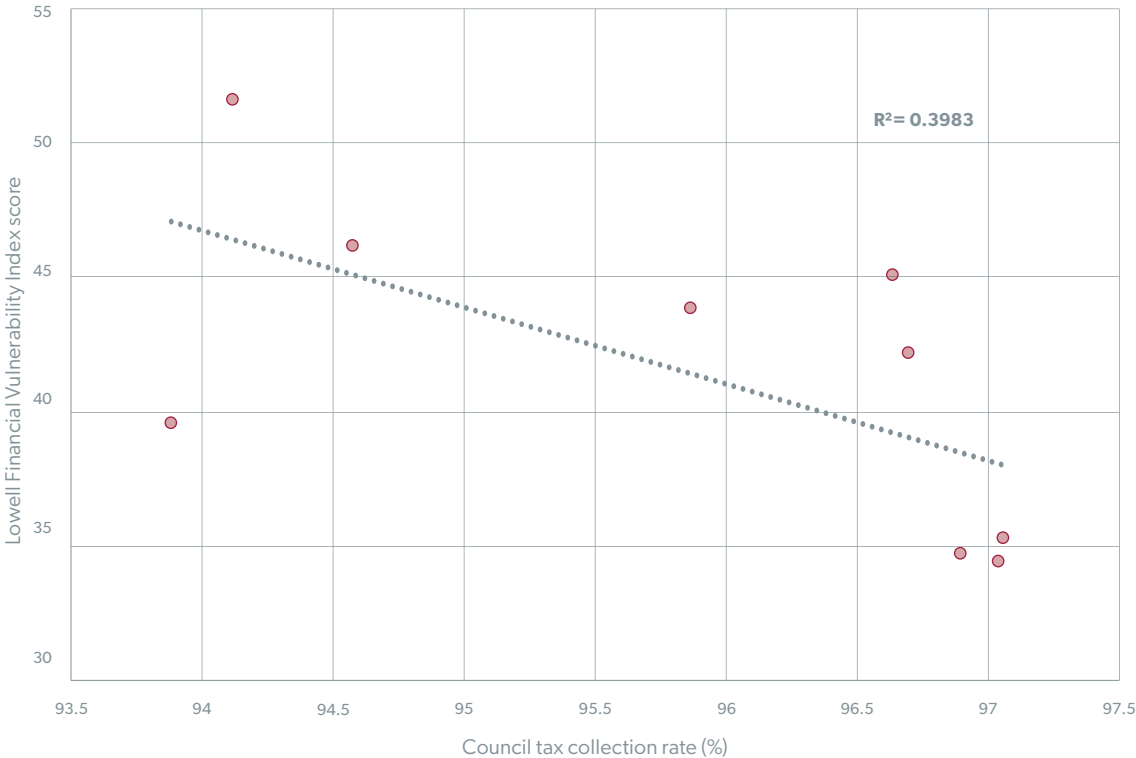
Figure 9: Relationship between council tax collection rate and income deprivation rate by local authority.



Source: CSJ analysis of Office for National Statistics and Department for Levelling Up, Housing, and Communities data³⁶

36 Office for National Statistics, *Exploring local income deprivation*, 2021.

Figure 10: Relationship between council tax collection rate and Lowell Financial Vulnerability Index score.



Source: CSJ analysis of Department for Levelling Up, Housing, and Communities data and Lowell Financial Vulnerability Index³⁷

Additionally, Figure 10 above shows a similar relationship between the Lowell Financial Vulnerability Index (where having a higher score indicates a higher degree of financial vulnerability) and council tax collection rates. This measure is a wider measure of overall financial vulnerability that incorporates a lack of emergency savings, the use of alternative financial products, and benefit claims among other things.³⁸

To complete this picture, we chart a clearer view of household income below in Figures 11 and 12. We show the cumulative percentage of equivalised household income by arrears status before and after housing costs.³⁹

Both sets of lines clearly show that households behind on their council tax are materially poorer than those that aren't, but this relationship becomes more pronounced for households behind on their council tax after their housing costs have been deducted. In the left-hand panel, the median household behind on their council tax has £1,282 to spend before deductions compared to £1,821 for households not behind on their council tax, which is 30 per cent lower. However, when housing costs are deducted, this divide is inflated. The median household behind on their council tax has £1,020 left compared to £1,671 for households not falling behind, 40 per cent lower. The difference grows even wider when reported costs for food and fuel are deducted.

³⁷ Lowell, *Financial Vulnerability Index*.
³⁸ Lowell, *Financial Vulnerability Index*.
³⁹ Surveys are sometimes known to underreport income metrics due to reporting issues and this has been known for benefit data. Understanding Society is not immune to these deficiencies, but the survey has been shown to closely track official estimates from the Family Resources Survey, a survey conducted by the Department for Work and Pensions. See: Adam Corlett, Resolution Foundation, *Improving Our Understanding of UK Poverty Will Require Better Data*; Paul Fisher, Omar Hussein, *Understanding Society: the Income Data*, (Fiscal Studies: The Journal of Applied Public Economics).

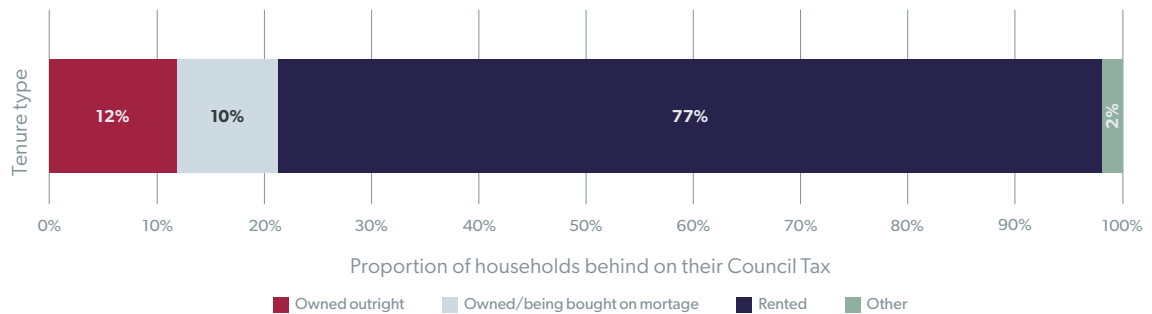
Figures 11 and 12: Cumulative percentage of households for equivalised household net income by council tax arrears status without deductions and after housing costs.



Source: CSJ analysis of UK Household Longitudinal Survey (Understanding Society) Wave M. (n = 14,921) ⁴⁰

This appears to be a stark difference and is explained by looking at the tenure breakdown of households that fall behind on their council tax. As Figure 13 below shows, our analysis suggests that families who fall behind on their council tax are more likely to live in households that are rented and rented households are more likely to say they are behind on their council tax. 13.33 per cent of rented households say they are behind on their council tax and subsequently make up over 75 per cent of households who are behind on the tax. This disparity helps to explain the difference in equivalised household incomes shown above.

Figure 13: Distribution of households in council tax arrears by tenure.

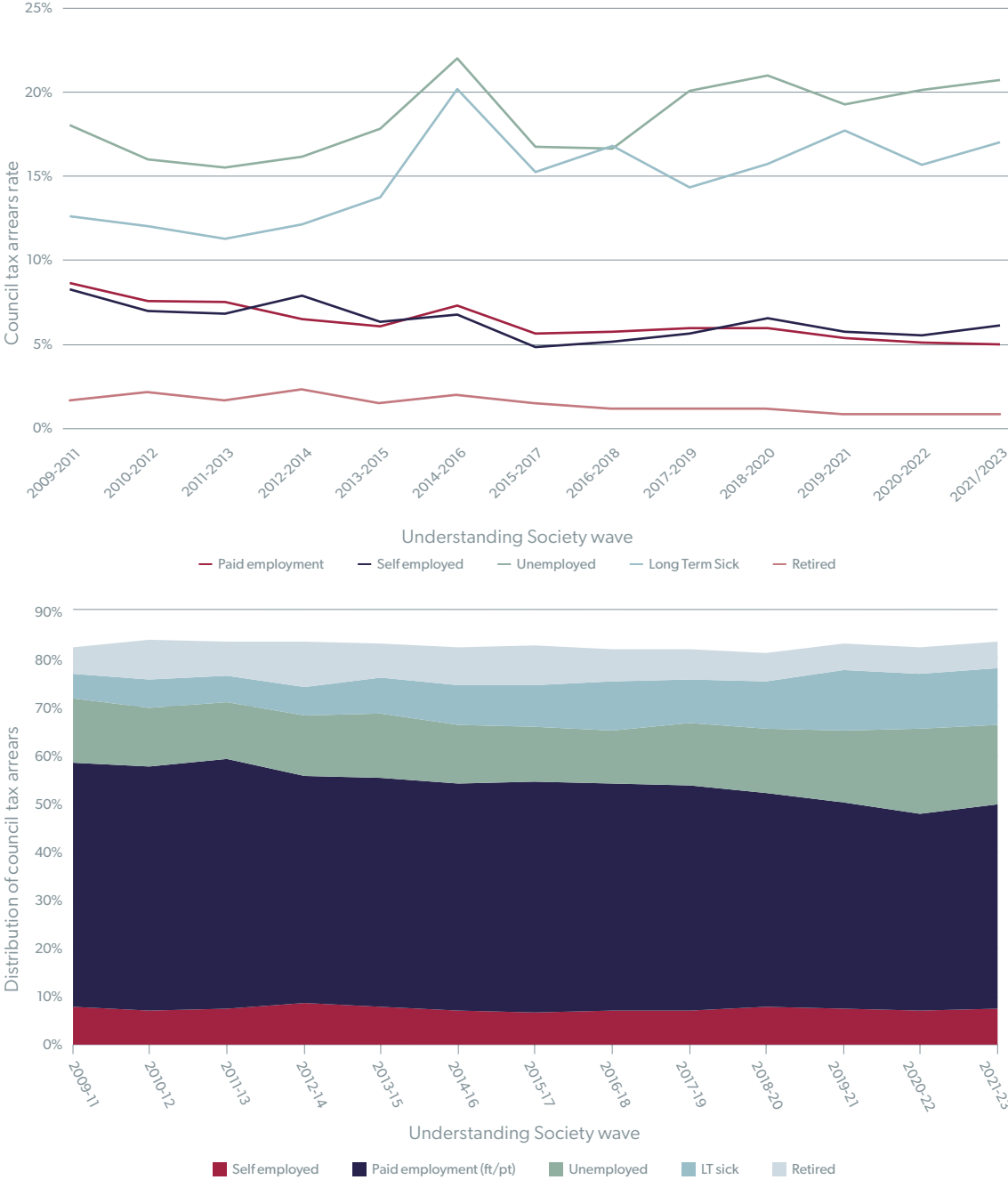


Source: CSJ analysis of UK Household Longitudinal Survey (Understanding Society) Wave M. (n = 14,921)

40 University of Essex, Institute of Social and Economic Research (2023.) *Understanding Society: Waves 1-13, 2009-2023.*

It is also driven by a change in the working status composition of households that fall behind on council tax. By distributing Understanding Society household-level data to the individuals who live within the household, we're able to show that rates of council tax arrears for individuals who are unemployed and long-term sick have increased over recent years. This paired with the declining rate of employed individuals falling behind has served to grow the proportion of unemployed individuals in the whole composition.

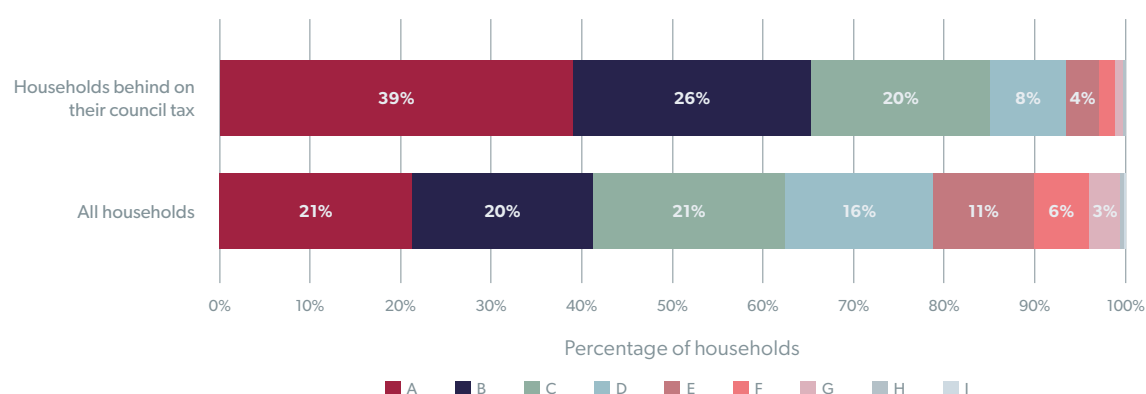
Figures 14 and 15: Rate and distribution of council tax arrears by job status.



Source: CSJ analysis of UK Household Longitudinal Survey (Understanding Society). (n = 472,129 and 30,669)

To add further context, we look at the size of the households (in numbers of people) who are falling behind and the council tax band of the property they are in. Firstly, we find that households who fall behind are more likely to be larger than their peers. Almost a quarter of households who say they fell behind on their council tax have 4 or more members compared to 17 per cent of all households. We also find that they are generally likely to be in a lower council tax band. As Figure 16 below shows, almost 40 per cent of households in arrears live in band A properties despite Band A being only 21 per cent of the housing stock. Band A is the lowest council tax band and therefore suggests that those households that do fall behind are struggling with smaller bills.

Figure 16: Distribution of all households and households in council tax arrears by council tax band.

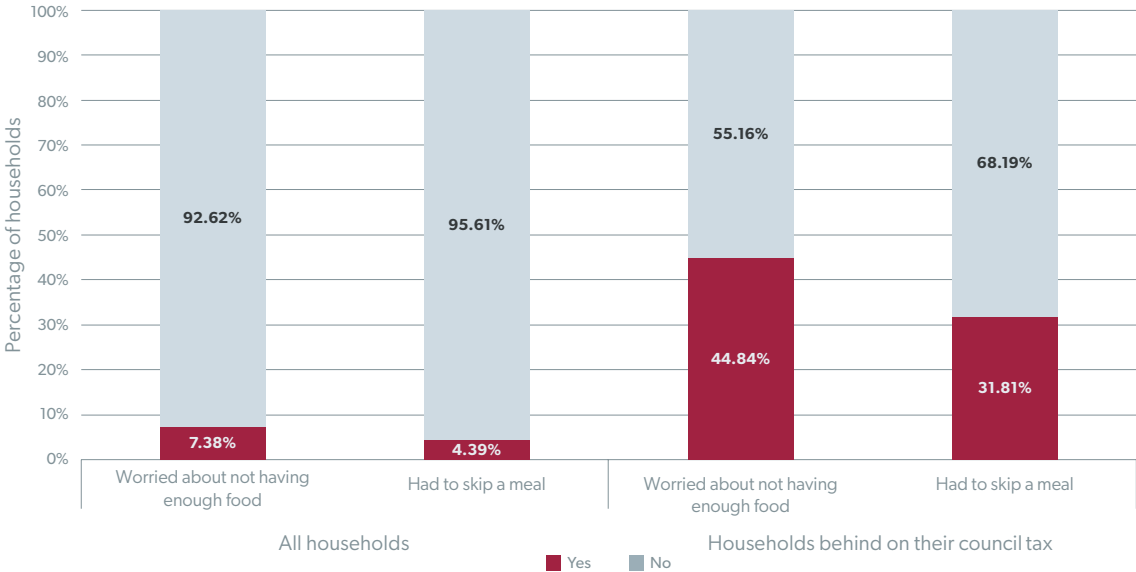


Source: CSJ analysis of UK Household Longitudinal Survey (Understanding Society) Wave M (n = 15,856)

Finally, we can glimpse into how households appear to be managing financially by asking them about how they view their financial future and investigating if they show signs of possessing a limited financial buffer. To test this, we first ask households if they are worried about a basic cost of living: food.

Figure 17 below shows that households that are behind on their council tax are considerably more likely to report that they struggle. Only 7.38 per cent of all households said they had worried about not having enough food to eat compared to almost 45 per cent of households who are behind on their council tax. We also see a significant difference in the proportion of households who say they have had to skip a meal.

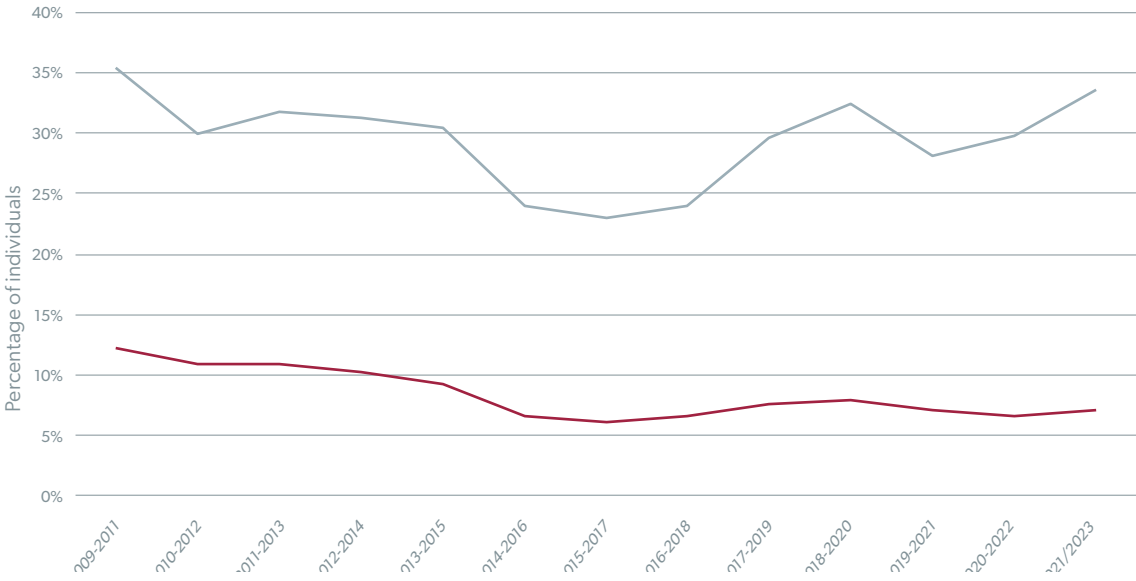
Figure 17: Percentage of households who have reported food insecurity.



Source: CSJ analysis of UK Household Longitudinal Survey (Understanding Society) Wave M. (n = 14,906 and 14,911)

Further to this, we ask households how they feel about their financial present. We find that households falling behind on their council tax have a bleak outlook. While the general mood for the whole population has increased since 2009-2011, it has deteriorated for those falling behind on their council tax. Just 12 per cent of all respondents said they were finding it quite difficult or very difficult to get by in 2009-2011, declining to 7 per cent in 2021-2023. However, 35 per cent of those behind on their council tax said they're finding it quite or very difficult to get by in 2009-2011, remaining broadly unchanged since 2009-2011 but with clear fluctuation throughout the period.

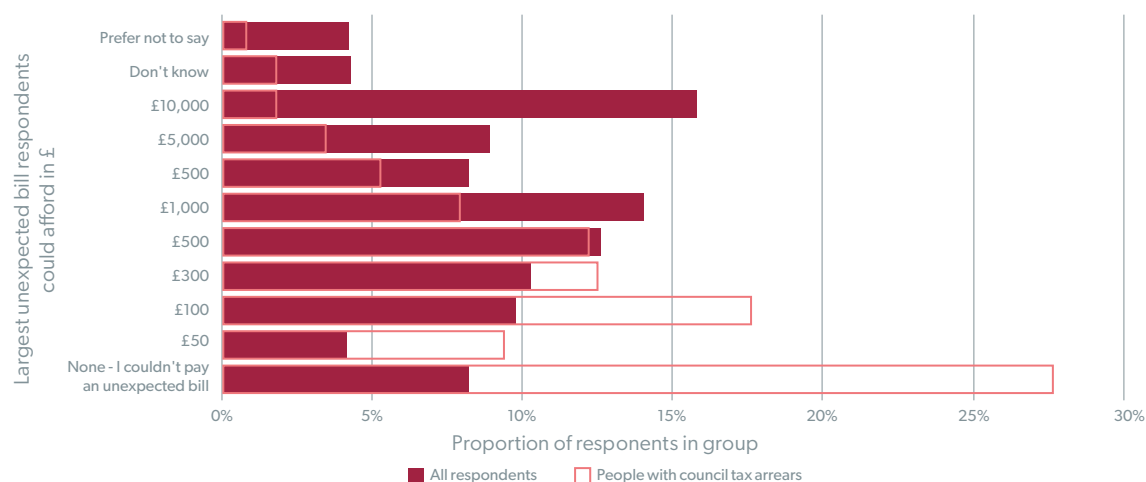
Figure 18: Percentage of individuals who say they are finding it difficult to get by financially.



Source: CSJ analysis of UK Household Longitudinal Survey (Understanding Society) Wave M. (n = 493,251 and 30,536) ⁴¹

41 University of Essex, Institute of Social and Economic Research (2023.) *Understanding Society: Waves 1-13, 2009-2023.*

Figure 19: Percentage of respondents by the largest bill they say they could afford.

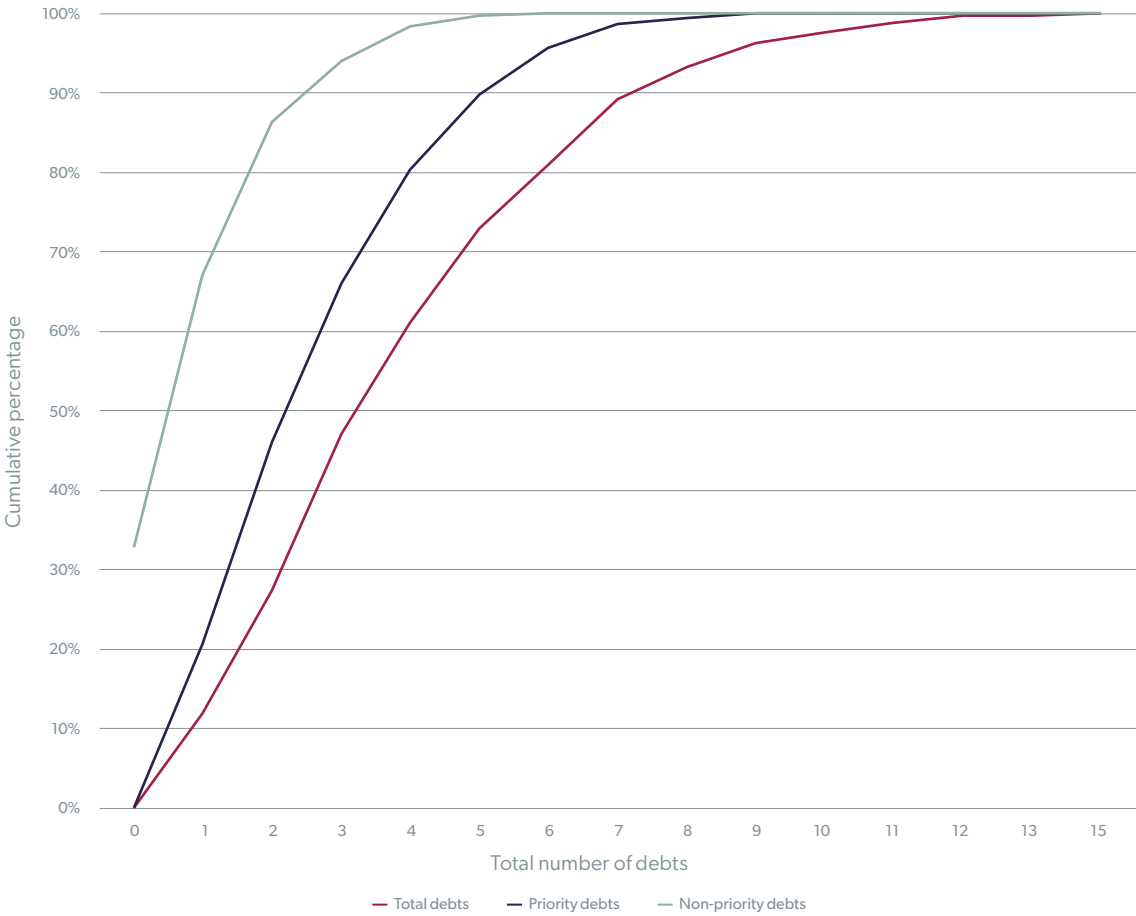


Source: CSJ analysis of Debt Need Survey 2022 (Money and Pensions Service)

Given the findings above, it comes as little surprise that many households behind on their council tax tell us that they couldn't afford any unexpected bill. According to the Debt Need Survey 2022, 28 per cent of respondents behind on their council tax say they could not afford any unexpected bill at all, rising to over half of respondents who are behind on their council tax (55 per cent) who say they could not afford anything over £100. This is compared to just 8 per cent of all respondents who say they could not afford any unexpected bill.

Finally, we also use the Debt Need Survey 2022 to understand the debt profile of respondents who say they have fallen behind on their council tax. Using this data, we find that those who are falling behind on essential bills generally also hold other debts. Figure 20 below shows that over 50 per cent of respondents in council tax arrears reported having more than 3 debts, including council tax arrears. We break these down in Figure 21 below.

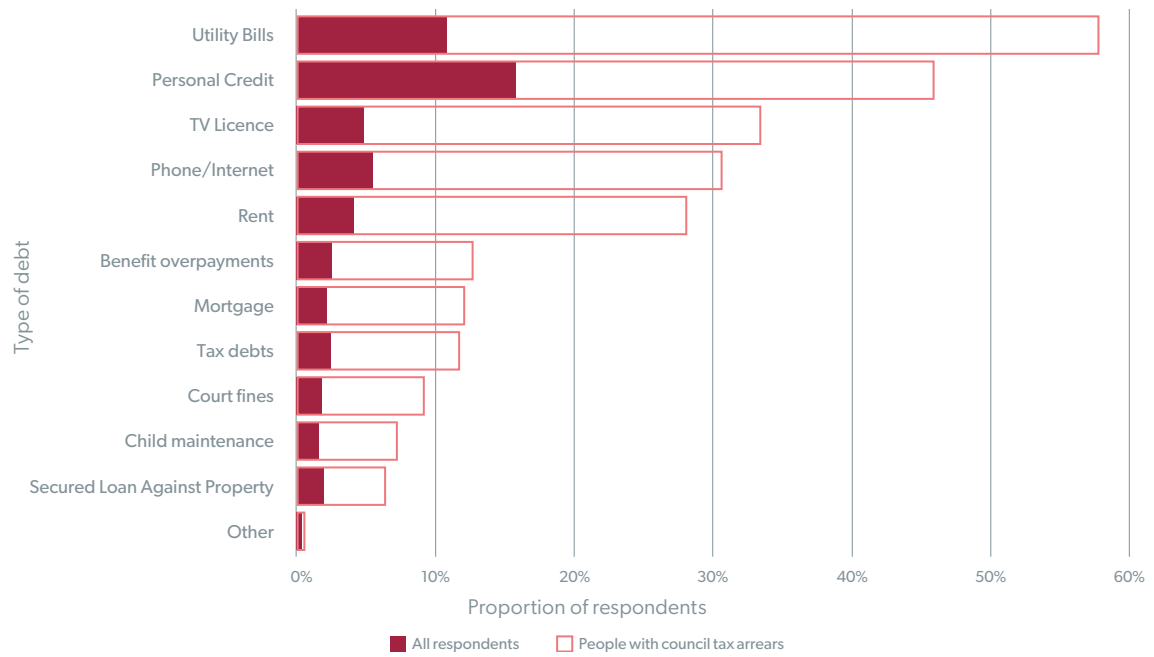
Figure 20: Cumulative percentage of the number of bills or credit commitments people in council tax arrears are behind on.



Source: CSJ analysis of Debt Need Survey 2022 (Money and Pensions Service)

We find that respondents in council tax arrears are significantly more likely to report holding debts that suggest they are in significant financial difficulty. 58 per cent of respondents who are behind on council tax report that they are behind on their utility bills (defined as electricity, gas, or water), compared to 11 per cent of all households. Other common debts include personal credit, phone and internet bills, and rent.

Figure 21: Proportion of respondents who say they are behind on a bill for all respondents and those in council tax arrears.



Source: CSJ analysis of Debt Need Survey 2022 (Money and Pensions Service)

Chapter 3:

The Use of Enforcement

What is enforcement?

Enforcement agents – still colloquially known as ‘bailiffs’ - are used to enforce the payment of money owed to private companies and public bodies. These debts may include debts to local government, utility bills, rent arrears, parking fines, road charges, and unpaid child support. Enforcement agents possess a legal power to attend a person’s home, remove their possessions, and sell them at public auction.⁴²

This process is undertaken via the use of powers contained in Part 3 and Schedule 12 of the *Tribunals, Courts, and Enforcement Act 2007* and the subsequent *Taking Control of Goods Regulations 2013* and *Taking Control of Goods (Fees) Regulations 2014*.⁴³ These pieces of legislation and regulation set out the three stages of enforcement. These are the:

Compliance stage: This stage “comprises all activities relating to enforcement from the receipt by the enforcement agent of instructions to use that procedure in relation to a sum to be recovered up to but not including the commencing of the enforcement stage.” For example, this may include contacting the individual to engage them and collecting information on them to assess their means to pay.

Associated Fee: £75 + 0% of sum to be recovered exceeding £1,500.

Enforcement stage: This stage “comprises all activities relating to enforcement from the first attendance at the premises in relation to the instructions up to but not including the commencement of the sale or disposal stage.

Associated Fee: £235 + 7.5% of sum to be recovered exceeding £1,500.

Sale or Disposal stage: This stage “comprises all activities relating to enforcement from the first attendance at the property for the purpose of transporting goods to the place of sale, or from commencing preparation for sale if the sale is to be held on the premises, until the completion of the sale or disposal” of goods. Very few cases reach this stage.

Associated Fee: £110 + 7.5% of sum to be recovered exceeding £1,500.

Fees (as seen above) to compensate enforcement agents are set by the Ministry of Justice and are collected from the person in debt by adding the sum to their total debt. The fees shown are for non-High Court debts. The process differs for High Court debts and fees are slightly higher.

⁴² House of Commons Library, *Enforcement officers (previously known as bailiffs)*.

⁴³ Legislation.gov.uk, *Tribunals, Courts, and Enforcement Act 2007*; Legislation.gov.uk, *The Taking Control of Goods Regulations 2013*; Legislation.gov.uk, *The Taking Control of Goods (Fees) Regulations 2014*.

Enforcement agents are not debt collectors, who are individuals or companies that typically recover money owed to consumer credit companies. Debt collectors are subject to a different regulatory regime underpinned by the *Financial Services and Markets Act 2000* and are regulated by the Financial Conduct Authority.⁴⁴ Debt collectors are not certified by the courts to act as enforcement agents and do not have the same legal powers as enforcement agents.

Types of enforcement agents

There are several types of enforcement agents, each with different functions. We are mostly concerned with civil enforcement agents in this report because of their role in enforcing Council Tax. The majority of civil enforcement agents are employed by a small number of firms of varying sizes, while others are self-employed or employed directly in-house.⁴⁵ The number of enforcement agents is recorded by the Ministry of Justice and CIVEA notes that there were about 1,700 civil enforcement agents in January 2023.⁴⁶

Civil enforcement agents (or certified enforcement agents)

Civil enforcement agents are employed to enforce non-High Court orders and are normally employed by private enforcement agencies or are self-employed. All civil enforcement agents are individually certified by the County Court and registered with the Ministry of Justice.⁴⁷ Civil enforcement agents enforce debts such as council tax arrears, parking fines, traffic fixed-penalty notices, and child support payments.

High Court enforcement officers

High Court Enforcement Officers are appointed to enforce High Court orders or County Court orders transferred to the High Court by the creditor. Debts include utility bills, business debts, tribunal awards, and rent arrears.

County Court bailiffs

County Court bailiffs are employed directly by HM Court and Tribunals Service to enforce County Court Judgments and orders made by the Tribunals Service that have been transferred to the County Court for enforcement. This includes the collection of debts regulated by the Consumer Credit Act 2006 (for example, credit cards, personal loans, or overdrafts).⁴⁸

Civilian Enforcement Officers (or Approved Enforcement Agents)

Civilian enforcement officers are employed by the Magistrates' Court under the *Access to Justice Act 1999*, the *Magistrates' Courts (Civilian Enforcement Officers) Rules 1990* and the *County Courts Act 2003*.⁴⁹ These agents enforce magistrates court orders, including distress warrants and commitment for non-payment of fines.

44 Legislation.gov.uk, *Financial Services and Markets Act 2000*; Legislation.gov.uk, *The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 Part II*.

45 Ministry of Justice, *Review of the 2014 enforcement agents reforms by the Tribunals, Courts, and Enforcement Act 2007: Government Response*.

46 Ministry of Justice, *Review of the 2014 enforcement agents reforms by the Tribunals, Courts, and Enforcement Act 2007: Government Response*; Civil Enforcement Association, *Enforcement News: The quarterly magazine from CIVEA, the Civil Enforcement Association – Winter 2023*.

47 Ministry of Justice, *Certified Bailiff Register*.

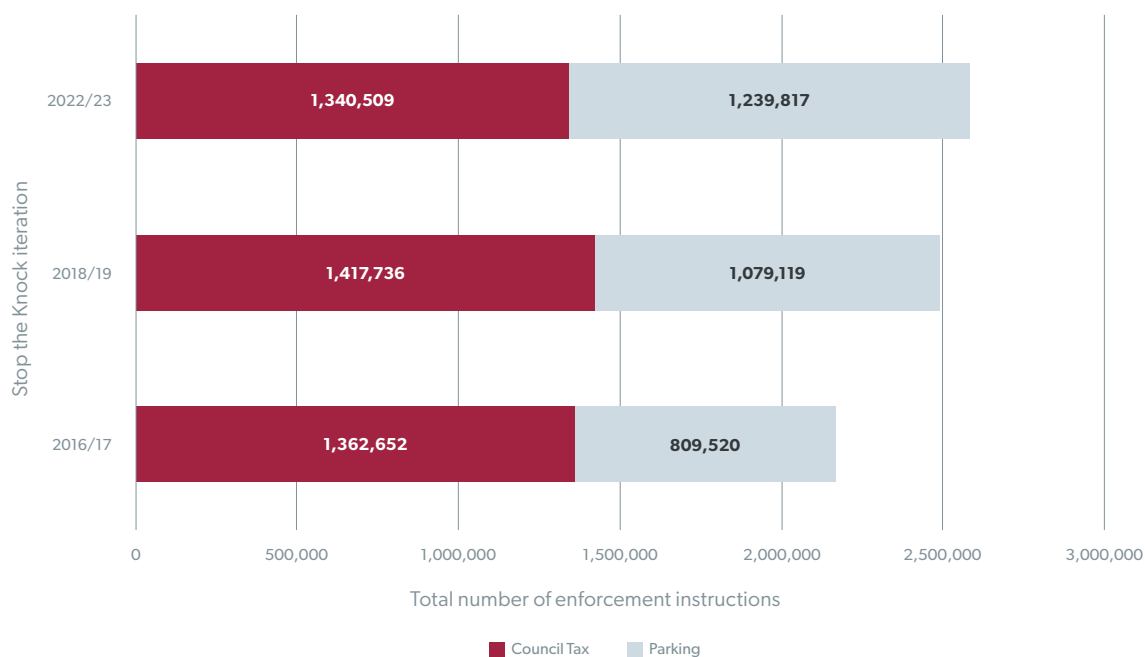
48 House of Commons, Justice Select Committee: *Bailiffs: Enforcement of debt: Seventeenth Report of Session 2017-2019*.

49 Legislation.gov.uk, *Access to Justice Act 1999*; Legislation.gov.uk, *The Magistrates' Courts (Civilian Fine Enforcement) Rules 1990*; Legislation.gov.uk, *Courts Act 2003*.

The use of enforcement

According to the Ministry of Justice, the civil enforcement industry received about 4.1 million cases in 2022, of which about 28 per cent were for Council Tax.⁵⁰ This equates to roughly 1.14 million council tax cases, slightly lower than our findings, which suggest that local authorities instructed enforcement agents 1.3 million times in 2022/23.⁵¹

Figures 22: Total number of enforcement instructions in England and Wales broken down by cause.



Source: Money Advice Trust (Stop the Knock 2016/17 and 2018/19) and Money Advice Trust and Centre for Social Justice.

But these findings tell us little about how enforcement action varies across England and Wales. To explore this further, we submitted freedom of information requests to local authorities to understand their use of enforcement agents over the period of 2022 to 2023. This exercise repeats and extends previous editions of Stop the Knock by the Money Advice Trust, who were our research partners for this report.

50 Note – these figures refer to cases received by CIVEA, the principle trade association for civil enforcement in England and Wales.

51 Ministry of Justice, *Review of the Taking Control of Goods (Fees) Regulations 2014*.

Interpreting our council tax enforcement instruction to household percentage indicator.

In previous iterations of Stop the Knock, local authorities have noted that their use of enforcement action for Council Tax is higher because of their greater overall size and increased levels of deprivation. We attempt to address both of these in our analysis to provide a fair assessment of enforcement use by local authorities.

To control for the size of each local authority, we normalise the data from our freedom of information requests by dividing the total number of times a local authority has instructed enforcement agents for a council tax debt by the number of households in the local authority.⁵² This creates our enforcement instruction to household percentage indicator. The indicator allows us to compare local authorities that responded to our freedom of information request while taking account of their size. We compare this indicator across local authorities for each iteration of Stop the Knock below.

Please note, the correlation lines should be treated with caution. Despite submitting freedom of information requests, not all local authorities respond to our request. This means that we do not possess full results for each local authority across each iteration of Stop the Knock and every local authority therefore does not appear in every graph. This is imperfect; but our analysis is constrained by the availability of data.

To show the effects of income deprivation, we plot a scatter plot in Figure 26 showing the correlation between our enforcement indicator and an income deprivation metric produced by the Office for National Statistics. We choose to use an older edition of Stop the Knock for this because it is a closer match to the time period the ONS' income deprivation indicator was produced for.

Of the local authorities that responded to our freedom of information request, local authorities instructed enforcement action against the equivalent of 7 per cent of households respectively, with a reasonable amount of variation.⁵³ The figures below provide more detail to this finding. We find some correlation between our enforcement instruction to household percentage between different iterations of Stop the Knock, suggesting that some local authorities are more likely to use enforcement action than others.

⁵² We use the Annual Population Survey, using households that contain at least one person aged 16 to 64.

⁵³ Please note this is an unweighted average. This may include recycled liability orders.

Figures 23 and 24: Correlation between enforcement instruction to household percentage in 2016/17 and 2017/18 and Correlation between enforcement instruction to household percentage 2017/18 and 2022/23 by local authority in England and Wales.



Source: Analysis of Freedom of Information data produced by the Centre for Social Justice and the Money Advice Trust⁵⁴

54 Figure 23: Each dot represents a local authority. There are 288 local authorities represented. Where local authorities have merged, we have merged the data collected by constituent local authorities. Figure 24: Each dot represents a local authority. There are 301 local authorities represented. Where local authorities have merged, we have merged the data collected by constituent local authorities.

We further explore this in Figure 25 below where we chart how local authorities change year on year. While we generally find a broad clustering of local authorities near the centre, with minor movements either way, some local authorities – those in the top right panel of Figure 25 – appear to have been increasing their bailiff use over the last 7 years.

Figure 25: Change in Enforcement Instruction to Household Percentage in 2016/17 and 2017/18 and the change between Enforcement Instruction to Household Percentage in 2017/18 and 2022/23 by local authority in England and Wales.

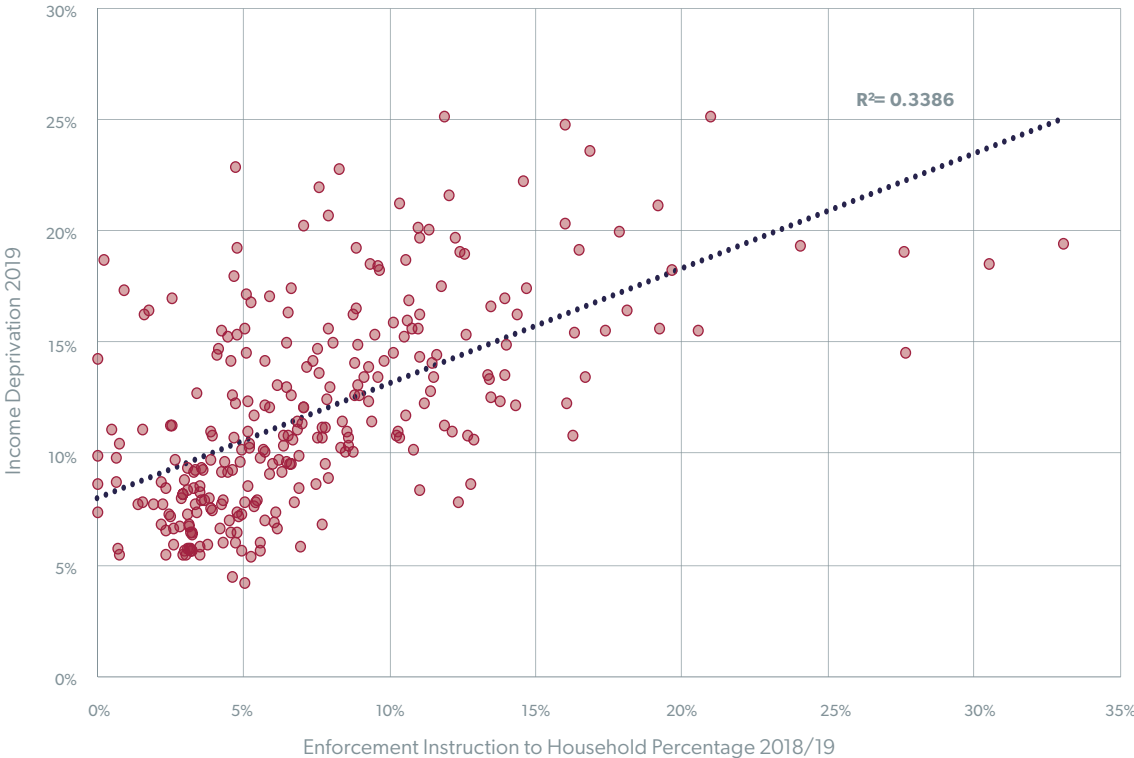


Source: Analysis of Freedom of Information data produced by the Centre for Social Justice and the Money Advice Trust⁵⁵

In response to previous iterations of Stop the Knock, local authorities have mentioned that their use of enforcement is associated with their difficulty collecting Council Tax because of deprivation in their area and we find evidence to support this. In Figure 26 below, we show some correlation between the use of enforcement and income deprivation. In other words, where income deprivation is higher, some local authorities generally use more enforcement. This supports our earlier findings, which show that those who fall behind on Council Tax often struggle to pay what is required of them.

55 Each dot represents a local authority. There are 282 local authorities represented. Where local authorities have merged, we have merged the data collected by constituent local authorities.

Figure 26: Correlation between enforcement instruction to household percentage in 2018/19 and income deprivation 2019 by local authority in England.



Source: Analysis of Office for National Statistics, Department for Levelling Up, Housing, and Communities, and the Money Advice Trust⁵⁶

The policy context:

The policy landscape has been animated since the establishment of a new legal framework for enforcement agents in the Courts, Tribunals, and Enforcement Act 2007. The legal framework is articulated below, but this section will provide an account of the changing policy landscape as a context to complement the discussion contained later in the paper.⁵⁷

Despite being passed in 2007, Part 3 of the Enforcements, Tribunals, and Courts Act 2007 – which contains provisions for the use of enforcement action – was not fully implemented until 2014. In 2012, the coalition government announced its intention to strengthen protections against rogue bailiffs and the ‘unsound, unsafe or unfair methods’ used by them to collect debts aggressively.⁵⁸

A Ministry of Justice led consultation, entitled *Transforming Bailiff Action*, established the standards enforcement agents must meet, the particulars of the enforcement process and it set out the *Taking Control of Goods Regulations* and associated fees and certification regulations which govern the process. The consultation set out the three stages of enforcement that enforcement agents undertake. These are the compliance, enforcement, and sale stages.

56 Office for National Statistics, *Exploring local income deprivation: A detailed picture of disparities within English local authorities to a neighbourhood level*.

57 Readers may wish to read this section and the chapter on the legal framework for enforcement action concurrently.

58 Ministry of Justice, *Transforming bailiff action: How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections. Consultation Paper CP 5/2012v*.

The broad policy objectives were to:

- Disincentivise aggressive enforcement;
- Incentivise earlier recovery of debt;
- Provide protection against inappropriate enforcement behaviour;
- Simplify the process for enforcement agents, people in debt, and creditors;
- Provide adequate provision for people in debt, particularly the vulnerable;
- Maintain and improve the effectiveness of enforcement;
- Fairly and adequately remunerate enforcement agents for the work they do.⁵⁹

At the time, it was agreed not to define circumstances where an individual may be considered vulnerable for several reasons. The government was cautious that people in debt may feign vulnerability to avoid their financial obligations, whereas others suggested that defining vulnerability too prescriptively may lead to a tick box exercise or leave some vulnerable people unable to access help because their situation resided outside the official definition.⁶⁰

The Ministry of Justice subsequently published a one-year review of the reforms in 2018 to review if any major unintended consequences had arisen as a result of the reforms.⁶¹ The review was broadly positive, concluding that the 2014 reforms had provided increased clarity for people in debt and led to a general increase in people in debt seeking help. However, debt advice organisations provided evidence of continued poor practice and, in response, the Ministry of Justice launched a further call for evidence to investigate the persistence of reported malpractice on the part of some enforcement agents.

At a similar time, the Ministry of Justice Select Committee – the parliamentary committee with responsibility for shadowing the Ministry of Justice – began an investigation into malpractice. The committee concluded that the enforcement sector was ‘under-regulated’ in light of the vulnerability of the people it deals with and believed the complaints system for enforcement agents, which was then limited to complaining to the firm, trade association, court, and Local Government and Social Care Ombudsman, was ‘fragmented and hard to navigate’.⁶² It recommended:

- The creation of an independent complaints procedure;
- The creation of an independent regulator to stop unfit enforcement agents and companies from practising, change the culture of enforcement, and raise standards;
- That an independent regulator should review fees and make recommendations to the Ministry of Justice;
- That body-worn cameras should be made mandatory for all enforcement agents visiting homes and businesses.

The then Justice Secretary updated the house in 2019 to confirm that the government would accept the committee’s recommendation to require enforcement agents to wear cameras.⁶³ The COVID-19

59 Ministry of Justice, *One year review of Enforcement Agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007*.

60 Ministry of Justice, *Transforming bailiff action: How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections*. Consultation Paper CP 5/2012; Ministry of Justice, *Transforming bailiff action: How we will provide more protection against aggressive bailiffs and encourage more flexibility in bailiff collections*. *The Government Response*.

61 Ministry of Justice, *One year review of Enforcement Agent reforms introduced by the Tribunals, Courts and Enforcement Act 2007*.

62 House of Commons Justice Select Committee, *Bailiffs: Enforcement of Debt, Seventeenth Report of Session 2017-2019*.

63 UK Parliament, *Enforcement Update, Statement made on 22nd July 2019, Statement UIN HCWS1776*. It is worth noting that CIVEA already required agents to wear cameras.

pandemic delayed the government's full response to the inquiry and its further review of the reforms until 2022.

In the meantime, general agreement on the potential for an independent regulator led to the formation of the Enforcement Oversight Working Group composed of representatives from the enforcement industry and debt advice sector, which was chaired by the Centre for Social Justice. This work culminated in the foundation of the Enforcement Conduct Board (ECB), a voluntary regulator with a mandate to raise standards in the sector, improve accountability across the enforcement sector, adjudicate complaints, and protect the vulnerable.⁶⁴ The ECB has since made sustained progress at bringing the civil enforcement sector into its regulatory sphere. The Ministry of Justice has committed to reviewing the need for statutory underpinning for the ECB by November 2024.⁶⁵ The progress of the ECB and potential next steps will be discussed in chapter 4.

In 2022, the Ministry of Justice responded to the committee's enquiry confirming further work to assess the state of the enforcement sector. In July 2023, it published a review of the Taking Control of Goods (Fees) Regulations and a further consultation in October 2023. The consultation explores further steps to determine what activities must be taken in the compliance stage as well as increasing communication between enforcement agents and people in debt amongst other things. It is ongoing.⁶⁶

64 Centre for Social Justice, *Taking Control for Good*, July 2021.

65 House of Commons Justice Committee, *Bailiffs: Enforcement of Debt: Government Response to the Committee's Seventeenth Report of Session 2017-2019*.

66 Ministry of Justice, *Taking Control of Goods Regulations Consultation 2023*.

Chapter 4:

Improving Local Government Debt Collection

The progress made since the introduction of the Courts, Tribunals, and Enforcement Act in 2007 is welcome and it has focussed on defining modern enforcement and improving the conduct of agents, but this is just one part of the system. The legislative framework also matters, and, in its current state, it allows people in debt who have limited ability to pay to be swiftly moved to enforcement. In the chapter that follows, we recommend further changes to improve both the legislative framework and drive-up standards in debt collection to narrow the gap between standards in the public and private sector.

Improving the Legislative Framework

The current structure of the legal framework for the collection and enforcement of Council Tax is designed to ensure that the needs of creditors, such as local authorities, and people in debt are balanced. But a number of deficiencies exist in legislation which have the effect of making arrears worse for people in debt and pushing them further into a debt spiral. Specifically, the current framework allows for the swift movement of those who fall behind on their council tax into enforcement when it may not be the most appropriate or the best means of collecting debt. Where the legislation permits this, path dependency can emerge, so it is important to ensure the regime is calibrated to provide support to people who genuinely struggle to afford their payments.

Below, we examine some of these issues and propose recommendations to resolve them.

Extending all council tax payment plans to 12 months

By default, Regulation 21 and Schedule 1 Part 1 of the Council Tax (Administration and Enforcement) Regulations requires that households pay their council tax in 10 instalments starting at the beginning of the financial year in April. Although the option to request the opportunity to pay over a 12-month period – or indeed any other period that satisfies the council and household - exists as per the same regulation, it is not standard and it is unclear how many households choose to pay in this way.

Altering the regulations to make payments over a 12-month period the default would allow households breathing room to reduce their monthly payments by spreading them out over a greater degree of time. Doing so would not prejudice the local authority's ability to collect debt because missed payments would remain subject to the reminder notice process that allows for the entire bill to become payable (as per the next page).

In our analysis below, we attempt to understand how many households this might help. To do this, we append the regional average council tax bill per band to respondents of Understanding Society and work out their payment total over 10 months and over 12 months. We find that spreading payments over a 12-month period would result in very few households having an income surplus rather than an income shortfall. Despite this, it still has the potential to help some households manage their cash flow.

Recommendation 1: Amend Schedule 1, Part 1 of the Council Tax (Administration and Enforcement) Regulations to make paying over 12 months – rather than 10 months – the default.

By default, Regulation 21 and Schedule 1 Part 1 of the Council Tax (Administration and Enforcement) Regulations requires that households pay their council tax in 10 instalments starting at the beginning of the financial year in April. Although the option to request the opportunity to pay over a 12 month period – or indeed any other period that satisfies the council and household - exists as per the same regulation, it is not standard and it is unclear how many households choose to pay in this way.

Altering the regulations to make payments over a 12-month period the default would allow households breathing room to reduce their monthly payments by spreading them out over a greater degree of time. Doing so would not prejudice the local authority's ability to collect debt because missed payments would remain subject to the reminder notice process that allows for the entire bill to become payable (as per below).

It could be instituted via statutory instrument with powers provided to the Secretary of State for Levelling Up, Housing, and Communities by the Local Government Finance Act 1992.

Requiring the payment of the full balance

As articulated above, there are several instances where a household becomes liable to pay their entire council tax bill. These are shown below in the table containing paragraph 3 and paragraph 4 of Regulation 23 of The Council Tax (Administration and Enforcement) Regulations 1992.⁶⁷

Table 1: Extract from Regulation 23 governing the administration of council tax.

- (3) If, within the period of 7 days beginning with the day on which a reminder notice is issued, the liable person fails to pay any instalments which are or will become due before the expiry of that period, the unpaid balance of the estimated amount shall become payable by him at the expiry of a further period of 7 days beginning with the day of the failure.*
- (4) If, after making a payment in accordance with a reminder notice which is the second such notice as regards the relevant year, the liable person fails to pay any subsequent instalment as regards that year on or before the day on which it falls due, the unpaid balance of the estimated amount shall become payable by him on the day following the day of the failure.*

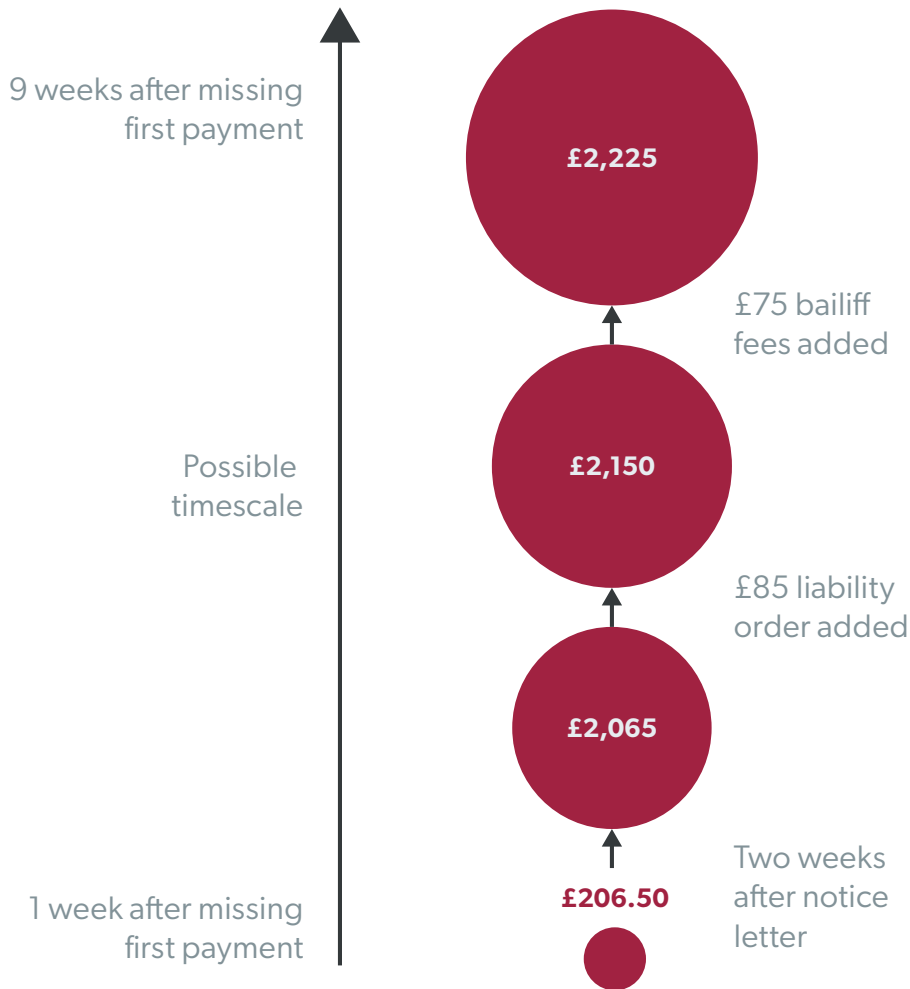
Source: The Council Tax (Administration and Enforcement) Regulations 1992⁶⁸

67 Legislation.gov.uk, *The Council Tax (Administration and Enforcement) Regulations 1992*.

68 Legislation.gov.uk, *The Council Tax (Administration and Enforcement) Regulations 1992*.

In practice, people in debt may miss a £206.50 council tax payment and become liable to pay the full £2,150 bill just two weeks after missing the instalment. This can automatically occur because it is built into the regulations as per the above. Naturally, people in debt who struggle to pay instalments also struggle or are entirely unable to pay the entire annual bill.

Image 1: Possible escalation of council tax debt⁶⁹

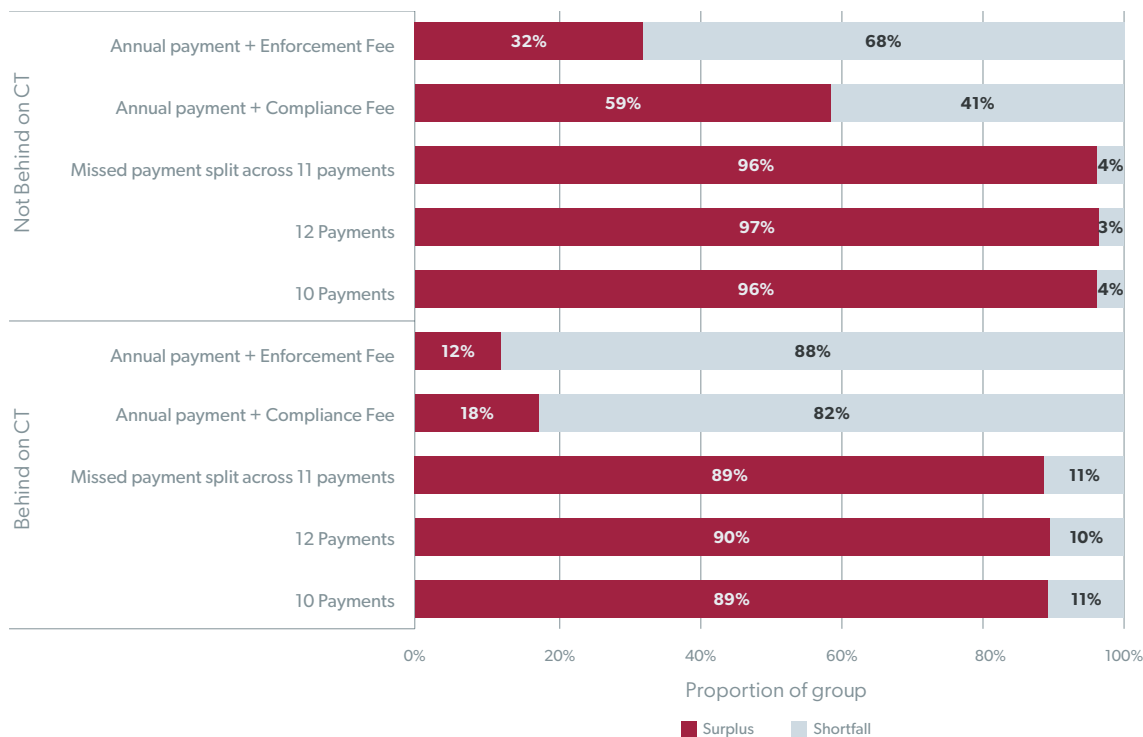


Source: CSJ analysis

In Figure 27 below, we show the proportion of households who face an income shortfall where an entire council tax bill becomes due. To do this, we use data from the UK Household Longitudinal Survey, a large household survey run by the University of Essex. We find that aggressive enforcement tips significant proportions of households into an income shortfall regardless of whether they are already behind on their council tax or not. Given the evidence we presented earlier that showed significant disparities between the incomes of those who are and are not behind on their council tax, the more pronounced effect of enforcement on already struggling households is to be expected.

⁶⁹ Please note, the circles are not proportionate.

Figure 27: Proportion of households in income surplus or shortfall after housing costs in different council tax collection scenarios.



Source: CSJ Analysis of data from the Department for Levelling Up, Housing, and Communities, Ministry of Justice, Scottish Government, Welsh Government, Freedom of Information Requests from billing authorities and UK Household Longitudinal Survey (Understanding Society), Wave 13⁷⁰

Given the findings above, it is reasonable to argue that requiring payment of the entire annual sum just a short period after a missed payment is counterproductive. Billing authorities are not given enough time, as some have noted, to engage with people in debt before the full amount becomes payable and are enabled by legislation to rush to the enforcement process.⁷¹ While billing authorities do not necessarily need to pursue the full amount via a liability order immediately as it becomes due – this will be discussed below – the regulations provide them with the power to do so rather than engage with people in debt and work on a sustainable repayment plan. The result is a framework that builds in path dependency and incentivises bad practice.

TDX/Equifax Debt Services Case Study⁷²

In our extensive debt practitioner experience, both in the private and public sector, when a consumer misses a payment, collections activity commences with the main objective to re-establish contact with the consumer and discuss and agree their debt resolution. Proactive contact treatment would involve a combination of contact methods, such as telephony, lettering, and digital channels such as emails and would last at least 30 days.

70 Note: A weakness of our analysis is that we can use survey data to calculate equivalised household income after housing costs. Households face other costs, including fuel, food, and other day to day costs that we have not modelled here. This suggests that more households might be in a shortfall in our scenarios than we present here.

71 Mid Sussex District Council, *Written Evidence Submitted by Mid Sussex District Council [CTC 005]*.

72 *Note: Figures are accurate as of 1st April 2024 and are based on the TDX Recoveries Management Service

If contact is established, a discussion of the debt repayment would involve understanding the consumer's circumstances and typically, if payment in full is deemed unaffordable, a repayment plan would be explored. In the last 12 months of all payers, we observed that only 35% of consumers have made payments in full, 45% make a partial payment towards their debt, whilst the remaining 20% have entered repayment arrangements to spread out the cost in line with their affordability.

In terms of arranging payment plans, guidelines may differ across industries, however it is best practice to ensure that the repayment plans are affordable and appropriate to the consumer's circumstances. In the last 12 months we have seen a median plan length of 14 months for the private sector, and in the public sector the median plan length has increased from eight to ten months. In terms of plan breakage rate, we observe that plans mainly fail in the first six months of being set up, those that continue after this time tend to continue to pay without much further breakage i.e. it has become part of their regular outgoings and is therefore sustainable.

Finally, we have seen both private and public sector organisations evolving their approach since the Covid pandemic by allowing extensions to their stipulated plan duration requirements if consumers show signs of vulnerability or financial hardship and could benefit from additional forbearance.

To remedy this, we propose a series of solutions to improve engagement with people in debt by billing authorities at an early stage in the collections process and reduce the need for enforcement while maintaining its effectiveness where it is appropriate. This can be achieved by ending the practice whereby someone becomes liable for the entire annual bill upon missing one payment.

We propose for Regulation 23 of the Council Tax (Administration and Enforcement) Regulations 1992 to be amended to begin the process of issuing a reminder notice on the second missed payment. This will introduce an opportunity for local authorities to proactively engage with the person in debt for a longer period of time ahead of the formal collections process.⁷³ This engagement should seek to contact the person beyond the use of a notice or letter and understand their financial situation.

Recommendation 2: Regulation 23 of The Council Tax (Administration and Enforcement) Regulations 1992 should be amended to end the requirement to pay an entire council tax bill upon one missed payment.⁷⁴

Figure 27 shows that aggressive enforcement tips significant proportions of households into an income shortfall regardless of whether they are already behind on their council tax or not. Given the evidence we presented earlier that showed significant disparities between the incomes of those who are and are not behind on their council tax, the more pronounced effect of enforcement on already struggling households is to be expected.

⁷³ Legislation.gov.uk, *The Council Tax (Administration and Enforcement) Regulations 1992*.

⁷⁴ Legislation.gov.uk, *The Council Tax (Administration and Enforcement) Regulations 1992*.

Given the findings above, it is reasonable to argue that requiring payment of the entire annual sum just a short period after a missed payment is counterproductive. Billing authorities are not given enough time to engage with people in debt before the full amount becomes payable and are enabled by legislation to rush to the enforcement process.⁷⁵ This incentivises bad practice.

To remedy this, we propose for Regulation 23 of the Council Tax (Administration and Enforcement) Regulations 1992 to be amended to begin the process of issuing a reminder notice on the second missed payment. This will introduce an opportunity for local authorities to proactively engage with a person in debt for a longer period ahead of the formal collections process.⁷⁶ This engagement should seek to contact the person beyond the use of a notice or letter and understand their financial situation. Upon a second missed payment, the process of issuing a reminder notice should begin to start the collection and enforcement process and protect the ability of billing authorities to use enforcement where appropriate.

It could be instituted via statutory instrument with powers provided to the Secretary of State for Levelling Up, Housing, and Communities by the Local Government Finance Act 1992.

Further tweaks to Regulation 23 could be made to support vulnerable households. As set out in Table 1 above, the bill-payer must pay both instalments which are due but also *instalments that will become due* in the 7-day period covered by a reminder notice. Where someone is struggling to make a single payment, an additional payment falling due within the 7-day period is unlikely to be paid, making the whole sum payable. This does not need to be the case.

Removing this requirement would not prejudice the billing authority's ability to make the whole sum payable, as per paragraph 4 of regulation 23, where instalments are consistently missed. Regulation 23 requires the whole sum to become payable where an instalment is missed after two previous instalments were initially missed but subsequently paid following a reminder notice.⁷⁷

By limiting the scope of a reminder notice to the total amount unpaid at the time of issuance, this small regulatory tweak would provide some vulnerable families with more breathing room to manage their bills. It can be implemented via statutory instrument under powers given to the Secretary of State by the Local Government Finance Act 1992.⁷⁸

Recommendation 3: Regulation 23 of The Council Tax (Administration and Enforcement) Regulations 1992 should be amended to limit the scope of a reminder notice to just the amount due upon issuance of the notice.⁷⁹

As set out in Table 1 above, the bill-payer must pay both instalments which are due, but also *instalments that will become due* in the 7-day period covered by a reminder notice. Where someone is struggling to make a single payment, an additional payment falling due within the 7-day period is unlikely to be paid, making the whole sum payable. This need not be the case.

⁷⁵ Mid Sussex District Council, *Written Evidence Submitted by Mid Sussex District Council [CTC 005]*.

⁷⁶ Legislation.gov.uk, *The Council Tax (Administration and Enforcement) Regulations 1992*.

⁷⁷ Legislation.gov.uk, *The Council Tax (Administration and Enforcement) Regulations 1992*.

⁷⁸ Legislation.gov.uk, *The Local Government Finance Act 1992*; Legislation.gov.uk, *The Council Tax (Administration and Enforcement) Regulations 1992*.

⁷⁹ Legislation.gov.uk, *The Council Tax (Administration and Enforcement) Regulations 1992*.

Removing this requirement would not prejudice the billing authority's ability to make the whole sum payable, as per paragraph 4 of Regulation 23, where instalments are consistently missed. Regulation 23 requires the whole sum to become payable where an instalment is missed after two previous instalments were initially missed but subsequently paid following a reminder notice.

By limiting the scope of a reminder notice to the total amount unpaid at the time of issuance, this small regulatory tweak would provide some vulnerable families with more breathing room to manage their bills. It can be implemented via statutory instrument under powers given to the Secretary of State by the Local Government Finance Act 1992.⁸⁰

Where any amount is unpaid, billing authorities should be sensitive to the needs of their residents, where they are vulnerable and of limited financial resilience. Indeed, many are, and we have heard countless examples of good practice by billing authorities. But billing authorities possess limited flexibility to aid people in debt in the initial period. As it stands, when people in debt fail to make a payment, the full amount becomes payable where the missed instalment and any instalment that falls due within the 7-day period is not paid. This could be remedied with a simple further amendment to Regulation 23.

We propose that Regulation 23 be amended to allow billing authorities to reallocate missed payments across other monthly instalments where the billing authority deems it appropriate for the repayment of arrears. This is likely to be best delivered by distributing the missed payment equally across future repayments. This would provide people in debt with an additional window of time, at the digression of the billing authority, to organise their finances and help disrupt the path dependency currently built into the legal framework. This amendment would not prejudice the billing authority's ability to pursue persistent non-payers as per our proposed amended Regulation 23 above.

Recommendation 4: Regulation 23 of The Council Tax (Administration and Enforcement) Regulations 1992 should be amended to provide billing authorities with the ability to distribute missed payments to other monthly instalments.

Where any amount is unpaid, billing authorities should be sensitive to the needs of their residents, where they are vulnerable and of limited financial resilience. As it stands, when people in debt fail to make a payment, the full amount becomes payable where the missed instalment and any instalment that falls due within the 7-day period is not paid. This could be remedied with a simple further amendment to Regulation 23.

We propose that Regulation 23 be amended to allow billing authorities to reallocate missed payments across other monthly instalments where the billing authority deems it appropriate for the repayment of arrears. This would provide people in debt with an additional window of time, at the digression of the billing authority, to organise their finances. This amendment would not prejudice the billing authority's ability to pursue persistent non-payers as per our proposed amended Regulation 23 above.

80 [Legislation.gov.uk](https://legislation.gov.uk), *The Local Government Finance Act 1992*; [Legislation.gov.uk](https://legislation.gov.uk), *The Council Tax (Administration and Enforcement) Regulations 1992*.

It could be instituted via statutory instrument with powers provided to the Secretary of State for Levelling Up, Housing, and Communities by the Local Government Finance Act 1992.

Finally, there is a lack of clarity concerning the less invasive steps available to billing authorities when a full sum becomes payable. Where a full sum becomes payable, billing authorities may proceed in a number of ways. Generally, it is assumed that where that sum cannot be paid, billing authorities will seek to pursue a liability order before moving to a form of enforcement or income attachment.⁸¹ However, oral evidence provided by the-then responsible minister Lee Rowley to the Department for Levelling Up, Housing, and Communities (DLUHC) Select Committee suggested that billing authorities are provided some flex by regulation to seek repayment plans instead. It was noted by a witness from the civil service that:

“Even though the full liability becomes payable, councils work with the vulnerable people in their area to develop payment plans and so on. It is not the case that it all becomes payable and people have to pay it all at once. There is flex for councils to take sensible and sensitive decisions.”⁸²

While there may be potential for flex in the current wording of the regulations, it is not clear that billing authorities possess this power. The Department for Levelling Up, Housing, and Communities has since clarified that billing authorities can choose to implement a longer timeframe before requiring the full unpaid amount to be repaid. This progress is welcome but where powers are permissive, they may not necessarily be used.

To promote its use, we suggest that the regulations be further amended to oblige billing authorities to consider a repayment plan, even in circumstances where it extends beyond the financial year. This would extend creditors’ existing commitment to act proportionately as per point 9 of the Taking Control of Goods: National Standards.⁸³ This obligation would remain in keeping with the prescriptive nature of the regulations for the administration and enforcement of council tax.

Recommendation 5: The Council Tax (Administration and Enforcement) Regulations should be amended to oblige billing authorities to consider repayment plans where a full sum is due to be paid, even where a plan offers a time period longer than the current billing cycle.

Where there is flex in regulation to organise repayment plans in place of enforcement, we believe billing authorities are likely to use them where appropriate. But the prescriptive nature of the regulations sets out a clear path that is easy to automatically follow. To disrupt this and provide more support to vulnerable families, we recommend amending the regulations to oblige billing authorities to consider repayment plans where a full sum may be paid, even where said plan offers repayment over a time period longer than the current billing cycle. It could be instituted via statutory instrument with powers provided to the Secretary of State for Levelling Up, Housing, and Communities by the Local Government Finance Act 1992.

81 Legislation.gov.uk, *The Council Tax (Administration and Enforcement) Regulations 1992*; Citizens Advice, *The Costs of Collection: The high price of council tax debt collection*.

82 House of Commons Levelling Up, Housing and Communities Select Committee, *Oral Evidence: Council Tax Collection*, HC 20. Evidence was provided by Nico Heslop.

83 Ministry of Justice, *Taking Control of Goods: National Standards*.

Seeking and using a liability order

Liability orders are issued by a magistrates' court as a legal mechanism to confirm the person's requirement to pay unpaid Council Tax. The liability order process is important because it marks a dividing line where informal negotiation has ceased to be effective and a legal route to recovery is required. They are provided for by the Local Government Finance Act 1992 and the regulations governing the process are contained in the Council Tax (Administration and Enforcement) Regulations 1992.⁸⁴

Billing authorities may only seek them after an unpaid amount has remained unpaid post the issuance of a reminder and final notice. Magistrates' courts are required to make an order if it is satisfied that the sum has become payable by the defendant and not paid.

Once acquired, a liability order opens enforcement options for the billing authority to pursue. These are:

- Enforcement by enforcement/bailiff action detailed in section 14 of the Local Government Finance Act 1992 and provided for as above.⁸⁵
- An attachment of earnings order detailed in section 5 of Schedule 4 of the Local Government Finance Act 1992 and provided for in the Council Tax (Administration and Enforcement) Regulations 1992.⁸⁶
- An attachment of benefits detailed in section 6 of Schedule 4 of the Local Government Finance Act 1992 and provided for in The Council Tax (Deductions from Income Support) Regulations 1993.⁸⁷

The process of acquiring a liability order incurs a cost to the council and this is cost as passed to the person in debt as per the regulations below.

Table 2: Extract from Regulation 27 governing the application for a liability order

(6) The court shall make the order if it is satisfied that the sum has become payable by the defendant and has not been paid.

(7) An order made pursuant to paragraph (6) shall be made in respect of an amount equal to the aggregate of—

(a) the sum payable, and

(b) a sum of an amount equal to the costs reasonably incurred by the applicant in obtaining the order.

Source: *The Council Tax (Administration and Enforcement) Regulations 1992*⁸⁸

The cost of achieving a liability order is set at 50p by the Magistrates' Courts Fees Order 2008 as amended by the Court of Protection, Civil Proceedings and Magistrates' Courts Fees (Amendment) Order 2008, but billing authorities may also a charge equal to the costs "reasonably incurred" in pursuit of the order as above.⁸⁹

84 Legislation.gov.uk, *Local Government Finance Act 1992*.

85 Legislation.gov.uk, *Local Government Finance Act 1992*.

86 Legislation.gov.uk, *Local Government Finance Act 1992*; Legislation.gov.uk, *The Council Tax (Administration and Enforcement) Regulations 1992*.

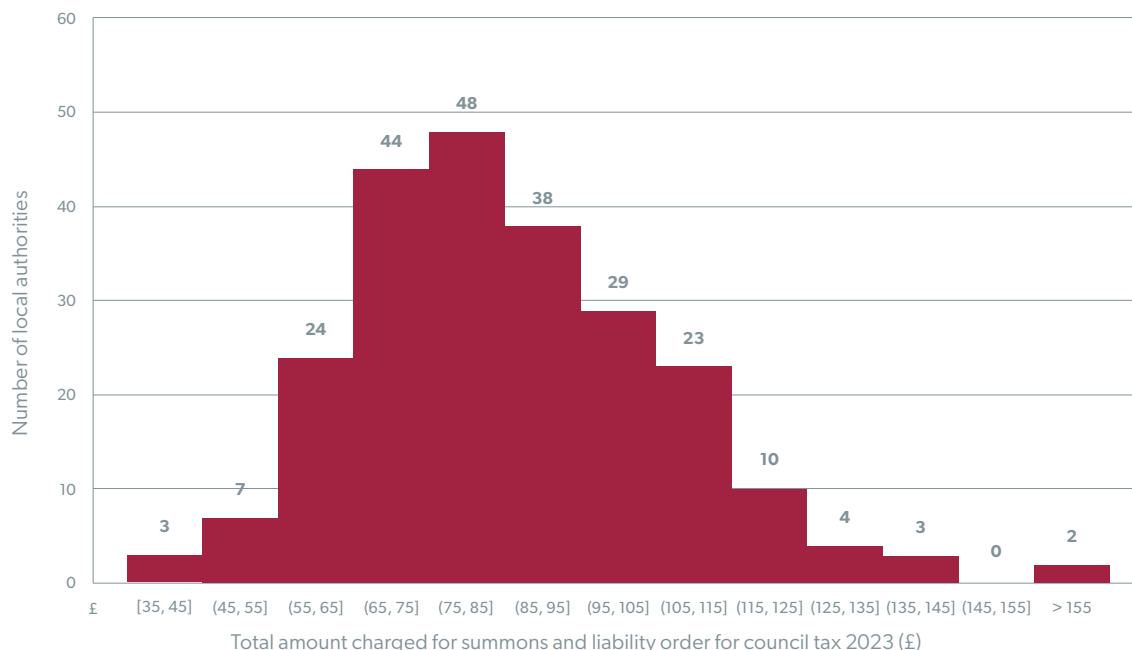
87 Legislation.gov.uk, *Local Government Finance Act 1992*; Legislation.gov.uk, *The Council Tax (Deductions from Income Support) Regulations 1993*.

88 Legislation.gov.uk, *The Council Tax (Administration and Enforcement) Regulations 1992*.

89 Legislation.gov.uk, *The Magistrates' Courts Fees Order 2008*; Legislation.gov.uk, *The Court of Protection, Civil Proceedings and Magistrates' Courts Fees (Amendment) Order 2008*.

Evidence obtained by the Centre for Social Justice via freedom of information requests shows a degree of variation in the amount of money councils charge for this procedure. As Figure 28 shows below, while over half of councils charge between £65 and £95, a number charge more than that. For example, 28 per cent of local authorities told us that they charge between £95 and £140 for the process.

Figure 28: Histogram of total amount charged for court fees, summons, and liability order by billing authorities.



Source: CSJ Freedom of Information Request to Local Authorities (n = 234)

When dealing with vulnerable people in debt, it is important to ensure the cost of enforcement is kept as low as possible, a belief echoed in guidance issued by the Department for Levelling Up, Housing, and Communities.⁹⁰ Yet there is significant variation between how much local authorities charge for their part of the enforcement process, which suggests some people in debt may be charged more than necessary. In addition to variation between local authorities, evidence suggests that the magistrates' court may not always possess information setting out the breakdown of the reasonable charge added to the liability order before them.

In *Nicholson, R (on the application of) v Tottenham Magistrates (2015)*, the High Court found that the magistrates' court did not possess a breakdown and resultingly could not evaluate if the cost to be added to the liability order was reasonably incurred as they are required to by Regulation 27.⁹¹ It deemed that the council's representative was unable to provide a breakdown and it therefore benefited from the magistrates' court's unlawful decision.⁹²

90 GOV.UK, *Council Tax Collection: Best Practice Guidance for Local Authorities*, 2021.

91 *Bailii, England and Wales High Court (Administrative Court) Decisions: Nicholson, R (on the application of) v Tottenham Magistrates & Anor (2015)*.

92 *Bailii, England and Wales High Court (Administrative Court) Decisions: Nicholson, R (on the application of) v Tottenham Magistrates & Anor (2015)*.

Without clear evidence of compliance by billing authorities, the most effective way of protecting people in debt is to fix a cap on the cost of liability orders to ensure that vulnerable people in debt are not overcharged. Where a specific case costs significantly more than the cap, the court could be empowered to add the sum. This amendment would help protect vulnerable people in debt who are unlikely to dispute their liability. The appropriate fee should be decided by a review and amended as appropriate.

Recommendation 6: Amend Regulation 34 of the Council Tax (Administration and Enforcement) Regulations to cap the fees added for a liability order.

Billing authorities are able to recover the costs of obtaining a liability order under powers granted to them by the Council Tax (Administration and Enforcement) Regulations 1992, adding further debt on vulnerable people in debt. Evidence obtained by the CSJ shows considerable variation in the amount of money billing authorities charge for this procedure.

When dealing with vulnerable people in debt, it is important that the cost of enforcement is kept as low as possible, a belief echoed in guidance issued by the Department for Levelling Up, Housing, and Communities.⁹³ In some instances, billing authorities have been unable to provide evidence of the costs reasonably incurred by them in pursuit of the order as required by regulation.

Without clear evidence of compliance by billing authorities, the most effective way of protecting people in debt is to fix a cap on the cost of liability orders to ensure that vulnerable people in debt are not overcharged. Where a specific case costs significantly more than the cap, the court could be empowered to add the sum. This amendment would help protect vulnerable people who are unlikely to dispute their liability. The appropriate fee should be decided by a review and amended as appropriate.

It could be instituted via statutory instrument with powers provided to the Secretary of State for Levelling Up, Housing, and Communities by the Local Government Finance Act 1992.

In addition to establishing a charge ceiling, the government should support steps to reduce the costs on billing authorities associated with acquiring a liability order. These include the use of virtual hearings and bulk reviews.

Virtual Hearings: At the beginning of the process, a magistrates' court issues a summons to the individual in arrears, and this offers them an important opportunity to dispute their liability for the debt. However, very few people in debt actually appear before the court.

Low levels of attendance are likely to occur because people in debt do not dispute their liability because they are often on low incomes. The use of a physical court, therefore, appears to add additional fees for a process that is largely a formality. Given this, we argue the process should be made as efficient as possible to reduce the cost it imposes on billing authorities and people in debt.

93 GOV.UK, *Council Tax Collection: Best Practice Guidance for Local Authorities*, 2021.

One such way to improve the efficiency of the process would be to allow people in debt to indicate – in response to a summons – that they wish to challenge the result and indicate if they would like to do so at a physical or virtual hearing. In cases where people in debt do not respond, a virtual hearing should be prioritised to reduce cost.

Recommendation 7: Virtual hearings should be prioritised for the processing of a liability order to reduce the associated costs passed on to people in debt.

A court summons is an important opportunity for people in debt to dispute their liability for unpaid council tax, but very few people in debt actually attend the court. Low attendance is likely to occur because people in debt do not dispute their liability.

The use of a physical court therefore appears to add additional fees to vulnerable people in debt for a process that is largely a formality. Given this, we argue the process should be made as efficient as possible to reduce the cost it imposes on billing authorities and people in debt.

One such way to improve the efficiency of the process would be to allow people in debt to indicate – in response to a summons – that they wish challenge the result and indicate if they would like to do so at a physical or virtual hearing. In cases where people in debt do not respond, a virtual hearing should be prioritised.

Bulk reviews: The prospect of bulk reviewing liability orders is consistently raised as a potential means for reducing the cost of liability orders to people in debt.⁹⁴ However, evidence released by HM Courts and Tribunals Service suggests that liability orders are already listed and heard in bulk, with a billing authority advising on specific instances that they would like to be adjourned or withdrawn. It is unclear how this process may be made more efficient.⁹⁵

Prioritising debt remedies

A further option to reduce additional costs to vulnerable people in debt is to provide priority to methods of enforcement other than the use of enforcement agents and the Taking Control of Goods process, avoiding the need for additional fees. Regulation 52 of the Council Tax (Administration and Enforcement) Regulations provides billing authorities with the ability to pursue any single enforcement remedy at a time, in any order. The specific regulations can be found in Table 3 below.

Table 3: Extract from Regulation 52 governing the enforcement of council tax.

- (2) Steps under this Part by way of attachment of allowances, attachment of earnings, distress, commitment, bankruptcy, winding up or charging may not be taken against a person under a liability order while steps by way of another of those methods are being taken against him under it.
- (3) Subject to paragraphs (1) and (2)—

94 House of Commons Levelling Up, Housing and Communities Select Committee, *Oral Evidence: Council Tax Collection*, HC 20.

95 HM Courts and Tribunals Service, *Freedom of Information Request FOI-87871*.

(a) attachment of allowances, attachment of earnings or distress may be resorted to more than once, and

(b) attachment of allowances, attachment of earnings or distress may be resorted to in any order or alternately (or both).

Source: *The Council Tax (Administration and Enforcement) Regulations 1992*⁹⁶

In its current form, the regulations provide equal weighting to measures that cost the billing authority (an attachment of earnings) in staff time, engagement, and administration and those whose potential costs to the billing authority are limited (the use of enforcement agents).

This structure incentivises billing authorities to pass people in debt to enforcement agents because the compliance stage transfers the task of locating and contacting the individual from the billing authority to the enforcement agency. Additionally, the passage to enforcement reallocates the cost of enforcement to the individual in the form of the compliance stage fee, whereas the billing authority's ability to claim is mostly limited to the liability order process.

Amending the existing regulations to require billing authorities to pursue a less invasive means of enforcement, such as an attachment of earnings, allowances, and benefits, would allow people in debt to repay their debt in repayments and avoid fees associated with enforcement action.

Recommendation 8: Amend Regulation 52 of the Council Tax (Administration and Enforcement) Regulations to require billing authorities to pursue an attachment of earnings, allowances, and benefits before the use of enforcement agents.

In its current form, regulations incentivise billing authorities to pass people in debt to enforcement as a means of circumventing further work on behalf of the authority to contact and reach a repayment plan with the person in debt. This process leads to further fees for vulnerable people in debt.

We propose to amend Regulation 52 to ensure billing authorities pursue less invasive means of enforcement before moving to the use of enforcement agents. This would provide people in debt the opportunity to make manageable repayments without the need for additional fees or a home visit. It also prioritises the use of enforcement for the most difficult cases of non-payment.

This recommendation could be instituted via statutory instrument with powers provided to the Secretary of State for Levelling Up, Housing, and Communities by the Local Government Finance Act 1992.

Further to this, the government may wish to amend paragraph 14 – the paragraph providing the power to use enforcement – of the Local Government Finance Act 1992 to make clear that the use of enforcement is subject to conditions outlined in Regulation 52.

96 [legislation.gov.uk](https://www.legislation.gov.uk), *The Council Tax (Administration and Enforcement) Regulations 1992*.

Alternatively, the government could remove the need for a liability order for an attachment of earnings, allowances, and benefits. Additionally, the government should uprate the amount that can be deducted via an attachment of earnings to reflect increases in inflation.⁹⁷

The Threat of Imprisonment:

In extreme circumstances, local authorities may seek an order from a magistrates' court to commit a person in debt to prison for up to 90 days. Specific circumstances must be met to make a commitment order. A person must have been through the enforcement process but not possess sufficient goods to pay the amount owed. Following this, a magistrates' court must find the person's failure to repay the debt to be due to wilful refusal or culpable neglect and can then make a commitment order. Below, we provide a copy of some of the most important parts of the regulation that allows this.

Table 4: Key extracts from Regulation 47 governing the administration and enforcement of council tax.

47.—(1) Where a billing authority has sought to enforce payment by use of the Schedule 12 procedure pursuant to regulation 45, the debtor is an individual who has attained the age of 18 years, and the enforcement agent reports to the authority that he was unable (for whatever reason) to find any or sufficient goods of the debtor to enforce payment, 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.

(7) The order in the warrant shall be that the debtor be imprisoned for a time specified in the warrant which shall not exceed 3 months, unless the amount stated in the warrant is sooner paid; but—

Source: *The Council Tax (Administration and Enforcement) Regulations 1992*⁹⁸

Despite such stringent restrictions, there are instances where people in debt are committed to prison, although they have declined in recent years. Data published by the Ministry of Justice shows that there have been 298 admissions to prison for the non-payment of council tax since 2010, but this has fallen to 0 since 2019.

⁹⁷ For existing levels, see Legislation.gov.uk, *The Council Tax (Administration and Enforcement) Regulations 1992, Schedule 4*.

⁹⁸ Legislation.gov.uk, *The Council Tax (Administration and Enforcement) Regulations 1992*; Legislation.gov.uk, *The Tribunals, Courts and Enforcement Act 2007 (Consequential, Transitional and Saving Provision) Order 2014*.

Figure 29: Non-criminal admissions to prison for the Community Charge / Council Tax.



Source: Ministry of Justice⁹⁹

While commitments may be low, data obtained by the Centre for Social Justice shows that almost 10,000 people have been given suspended commitment orders since April 2009, including over 4,000 in the last decade.

Where commitment is used, evidence suggests that it is concentrated in specific areas. Evidence produced by PayPlan shows that Bradford Metropolitan Council commenced committal proceedings 969 times and committed 18 people in 2016/17, a sizeable proportion of all proceedings in that year. This suggests vulnerable people in debt are at greater risk of commitment in different parts of the country.¹⁰⁰

Concerningly, there have been a number of high-profile instances where debtors have been incorrectly committed to prison because a magistrate’s court deemed them to be culpable. In 2017, Melanie Woolcock was sentenced to 81 days in prison after failing to keep up with a repayment plan for her council tax. She was later released when the High Court deemed there was “no evidential basis on which the magistrates’ court could conclude that there had been culpable neglect in non-payment.”¹⁰¹ Below, we provide a further case study.

99 Ministry of Justice, *Prison Receptions from 1990 – 2022*. Please see table A2_12. Please note, 2015 has two records due to computer changes at the MoJ.

100 PayPlan, “I can’t believe we still do that”: *The Case for Ending Imprisonment for Council Tax Debt in England and Wales*.

101 BBC News, *Porthcawl woman jailed ‘unlawfully’ over council tax arrears*.

Case Study: Amanda Aldous¹⁰²

In 2011, Amanda Aldous was committed to prison for unpaid council tax arrears. She served 74 days before being granted bail.

The High Court declared the magistrates' decision to commit Amanda Aldous to prison unlawful. It found the decision to commit Aldous unlawful on five grounds. These include failure to make separate enquiries for each year of liability owed, to meet the legal requirement to investigate Aldous' means for each year of unpaid arrears, to consider Aldous' offer to pay £20 per week towards discharging her liability as required by Regulation 47, an assessment to determine if failure to pay is due to wilful refusal or culpable neglect, and failure to make enquiries to assess the effect of imprisonment on Mrs Aldous' children. In light of this, the High Court quashed the magistrates' decision.

The effects of commitment can be deeply traumatising for those wrongfully committed. PayPlan – a debt advice provider – provides examples where clients believe they may be committed to prison even where there is no realistic prospect of them being imprisoned lawfully.

“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.”¹⁰³

Even where debtors are not committed, the threat of commitment – or the relaying of the potential for commitment by enforcement agents – can cause vulnerable people in debt anxiety and make their debts harder to manage. Evidence produced by the National Audit Office shows that intimidating letters, phone calls, or doorstep visits cause a 22 per cent increase in the probability of anxiety or depression levels rising.¹⁰⁴ Below, we provide an example of a request received by PayPlan.

“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?”¹⁰⁵

England remains the only country in the UK where someone may be imprisoned for the non-payment of council tax. Given the clear instances where magistrates' courts have been found to misjudge the debtor's culpability, the use of commitment is difficult to justify. While there must be some form of deterrent for wilful non-payment, commitment to prison is antiquated and unnecessary. We therefore recommend that the government end the sanction of imprisonment and replace it with a more fitting punishment. These may include bank arrestment and community orders.

102 Rona Epstein, *Punishing the Poor: The Scandal of Imprisonment for Council Tax Debt*.

103 PayPlan, “I can't believe we still do that”: *The Case for Ending Imprisonment for Council Tax Debt in England and Wales*.

104 National Audit Office, *Tackling Problem Debt*.

105 PayPlan, “I can't believe we still do that”: *The Case for Ending Imprisonment for Council Tax Debt in England and Wales*.

Recommendation 9: Regulation 47 of The Council Tax (Administration and Enforcement) Regulations 1992 should be repealed to end the commitment of debtors.

Despite such stringent restrictions, there are instances where people in debt are committed to prison, although they have declined in recent years. Even where it is not used, the threat of commitment is made to people in debt and this can increase the difficulty they face dealing with their debts.

England remains the only country in the United Kingdom where someone may be imprisoned for the non-payment of council tax. Given the clear instances where magistrates' courts have been found to misjudge the individual's culpability resulting in the unlawful imprisonment of vulnerable people in debt, the use of commitment is difficult to justify.

While there must be some form of deterrent for wilful non-payment, commitment to prison is antiquated and unnecessary. We recommend that the government end the sanction of imprisonment and replace it with a more fitting punishment.

Improving Conduct and Oversight

Having proposed proportionate changes to the legal framework for the collection of council tax, we turn to the conduct of enforcement agents and oversight of the industry. Debt advice agencies consistently report cases of poor conduct and harm caused to consumers by enforcement action, including significant breaches of the Taking Control of Goods Regulations.¹⁰⁶

Case Study: Negative Outcome

Source: Money Advice Trust

One client has a council tax debt of £375. The client offered to pay half of the debt, but the enforcement agent decided to visit anyway, resulting in an additional fee being added to the debt. The client is on jobseeker's allowance, but the enforcement agent has informed them they have 24 hours to pay the debt otherwise they will go to prison.

Case Study: Negative Outcome

Source: Money Advice Trust

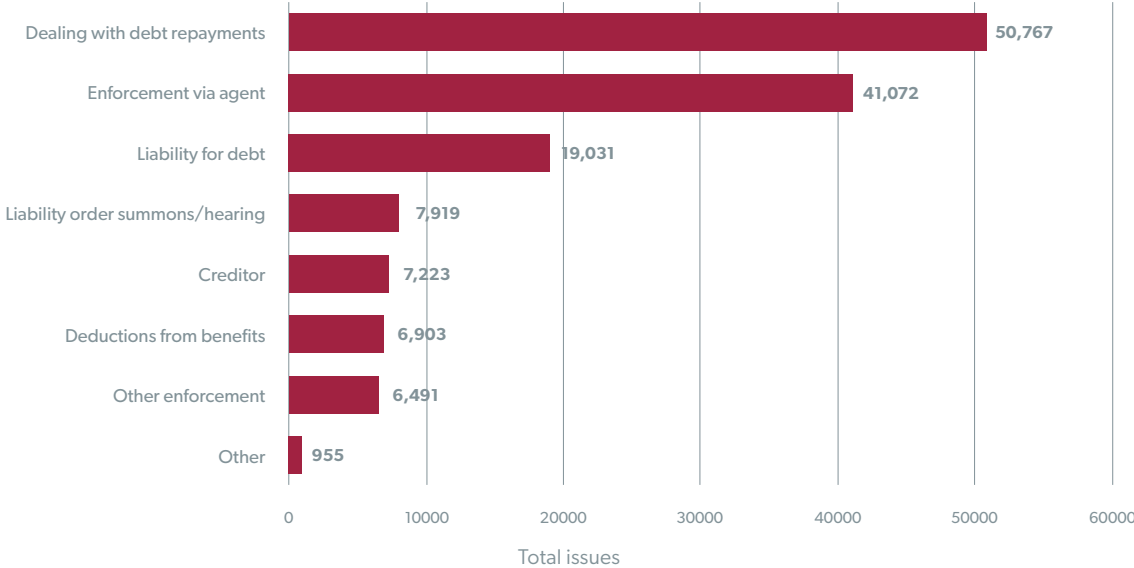
One client has been referred for a Debt Relief Order and has sent a letter to all her creditors asking them to hold action whilst she applies for a DRO. While other creditors have done so, the enforcement agent is refusing to stop contacting the client. The agent has threatened to take the client's car, which is in a bad condition and off the road.

¹⁰⁶ Citizens Advice, *Bailiffs Behaving Badly: Stories from the Frontline*.

Data released by Citizens Advice below shows that a significant proportion of issues seen by their advisers about Council Tax relate to how the debt is collected. This can range from claims that enforcement agents take control of exempt goods – goods which are exempt from seizure – to misrepresenting their ability to enter a property or acting aggressively towards debtors.¹⁰⁷ Alternatively, CIVEA – the primary trade association for civil enforcement – notes that very few complaints are received about the conduct of enforcement agents.¹⁰⁸ Given this juxtaposition, the Ministry of Justice Select Committee concluded that it is difficult to truly understand if and when regulations are breached.¹⁰⁹

It is reasonable to ask why people in debt may or may not make a complaint about the conduct of enforcement agents. The enforcement process is, by its nature, an invasive procedure for vulnerable people in debt.¹¹⁰ Complaints that focus only on this, where no rules have been broken, are likely to be unfounded. However, a steady stream of issues that are reported by debt advice agencies suggest poor practice remains and that vulnerable people in debt may be dissuaded from making complaints by their vulnerability, particularly if they feel that the complaint will not be resolved.

Figure 30: Citizens Advice council tax arrears issues in 2022/23



Source: Citizens Advice

Despite this, there has been significant progress in building an effective oversight framework for the industry, which has been supported by all stakeholders. In 2021, a collaboration between the debt advice sector and enforcement agents chaired by the Centre for Social Justice established the Enforcement Conduct Board, a voluntary oversight body. The Board’s objective is to provide effective oversight of the industry with a defined mandate as set out in Appendix 1. Since its founding, the ECB has progressed in its aim to bring effective oversight to the industry by beginning to construct a new set of National Standards and a complaints procedure to be implemented in the next year. The Ministry of Justice has committed to reviewing the need for statutory underpinning for the ECB by November 2024.

107 Citizens Advice, *The rules of enforcement: Making a complaint about the behaviour of bailiffs in a self regulated system*; Citizens Advice, *A law unto themselves: How bailiffs are breaking the rules*.
 108 Civil Enforcement Association, *Written evidence submitted to the Department for Levelling Up, Housing, and Communities Select Committee*.
 109 House of Commons Justice Select Committee, *Bailiffs: Enforcement of debt*.
 110 House of Commons Levelling Up, Housing and Communities Select Committee, *Council Tax Collection, Second Report of Session 2023 – 24*, p. 20

We believe the ECB can truly drive up standards in the enforcement industry, but it needs to be equipped with the right tools to achieve its aim and this includes statutory underpinning. We equally believe that we must be realistic about the extent to which the body can ameliorate all issues in the market. As we have detailed in Chapter 4, many of the issues facing vulnerable debtors emerge as a result of the legal process as well as the conduct of enforcement agents.

Given the looming deadline for the Ministry of Justice's review of the need for statutory underpinning, we set our recommendation to put the Enforcement Conduct Board on a statutory footing and define some of the limited statutory powers we think the ECB needs to achieve its goal. We then go on to discuss how councils can improve their processes to ensure only the right customers experience enforcement and government can improve uptake of available support.

Providing the ECB limited statutory powers

Since its inception, the Enforcement Conduct Board has made significant progress in bringing forward effective oversight of the enforcement sector. The ECB's accreditation scheme achieved significant voluntary uptake and accredited firms account for over 95 per cent of enforcement work undertaken in England and Wales. Progress has also been made to begin producing a complaints procedure and develop new national standards to define modern enforcement. This progress is welcome.

However, the current consensus suffers from a number of shortcomings. Most importantly, as it stands, the Enforcement Conduct Board is a voluntary body and it has no basis in law, meaning the oversight structure, as it stands, is fragile. A strong legal footing would make the Board more accountable to the government and provide it with a long-term future.

Throughout this paper, we have shown evidence to suggest the households that are subject to enforcement action are likely to be vulnerable. We have shown that they are often on low incomes and possess limited financial resilience. Their vulnerability indicates that they could suffer significant harm when things go wrong. Enforcement is an invasive procedure that is disruptive by its nature and firms that carry it out should be overseen by an effective and supportive oversight body.

The CSJ has heard examples of good practice in the enforcement industry, but where things go wrong, vulnerable families should have access to a complaints system that they can have confidence in. That can be achieved through statutory underpinning. We recommend that the Ministry of Justice take steps to put the Enforcement Conduct Board on a statutory underpinning to provide a long-term footing for effective oversight of the sector.

Achieving statutory underpinning for the Enforcement Conduct Board will require primary legislation and this new legislation could be inserted into the Tribunals, Courts, and Enforcement Act 2007.¹¹¹ Primary legislation could make a new part of the 2007 Act to provide for a designated oversight body and provide it with general duties/strategic objectives, such as producing proportionate rules and standards, ensuring consumers are protected, and authorising enforcement agents and firms to conduct enforcement activities. Further details about the powers and responsibilities conferred upon the regulator could be detailed in a schedule. For example, inspiration could be taken from the Financial Services and Markets Act 2000, which provides legislation for the Financial Conduct Authority.¹¹² Throughout such a process, the legislation brought forward should be proportionate to the small size of the enforcement industry.

¹¹¹ Legislation.gov.uk, *Tribunals, Courts, and Enforcement Act 2007*.

¹¹² Legislation.gov.uk, *Financial Services and Markets Act 2000 Part 1A, Chapter 1*; Legislation.gov.uk, *Financial Services and Markets Act 2000 Schedule 1ZA*.

Where practical delivery is concerned, amendments could be made to the 2007 Act via a different piece of primary legislation being introduced by the Government. Below, we shall discuss which powers we think should be conferred on the Enforcement Conduct Board.

Recommendation 10: The Ministry of Justice should take steps to put the Enforcement Conduct Board on a statutory footing.

Since its inception, the Enforcement Conduct Board has made significant progress in bringing forward an effective oversight regime for the enforcement sector. Its accreditation scheme achieved significant uptake and ECB accredited firms account for over 95 per cent of enforcement work undertaken in England and Wales.¹¹³

However, the current consensus suffers from a number of shortcomings. Most importantly, as it stands, the Enforcement Conduct Board is a voluntary body and it has no basis in law, meaning the oversight structure is fragile. Throughout this paper, we have shown evidence to suggest that the households that are subject to enforcement action are likely to be vulnerable. We have shown that they are often on low incomes and possess limited financial resilience. Their vulnerability indicates that they could suffer significant harm when things go wrong. Enforcement is an invasive procedure that is disruptive by its nature and firms that carry it out should be overseen by an effective and supportive oversight body.

Achieving statutory underpinning for the Enforcement Conduct Board will require primary legislation and this new legislation could be inserted into the Tribunals, Courts, and Enforcement Act 2007.¹¹⁴ Throughout such a process, the legislation brought forward should be proportionate to the size of the enforcement industry.

What powers does the Enforcement Conduct Board need?

Drawing together legislation to provide the Enforcement Conduct Board with the statutory powers it needs to provide effective oversight for the enforcement industry is complex but achievable. To achieve its function, the Enforcement Conduct Board will need the powers to:

- Set and enforce rules and standards;
- Deliver an independent and cost-efficient complaints procedure and apply sanctions for non-compliance;
- Collect data to monitor practices and remain abreast of changes in the sector;
- Collect a proportionate levy to fund the cost of regulation.

All of these functions could be carried out by giving the Enforcement Conduct Board (or any body provided for in legislation) a strategic objective to provide oversight for the enforcement industry. The creation of a strategic objective would provide a reasonable means of translating the ECB's existing objectives to improve accountability, adjudicate complaints, protect the vulnerable, and authorise agents and firms set out in its existing mandate. It also provides scope for powers currently reserved to the Ministry of Justice – such as the setting of fees – to be transferred to the body at a later date. An overarching strategic objective could be complemented by operational objectives, such as consumer protection and supporting the sustainability of the sector.

¹¹³ Enforcement Conduct Board, *Draft Business Plan 2024/25*.

¹¹⁴ Legislation.gov.uk, *Tribunals, Courts, and Enforcement Act 2007*.

Setting and enforcing rules and standards

Currently, the rules enforcement agents abide by are primarily set out in two documents. They are detailed in the *Taking Control of Goods Regulations 2014* and the non-binding National Standards released by the Ministry of Justice which set out expectations of how enforcement agents behave.

As part of its oversight, the Enforcement Conduct Board has committed to producing a new set of ECB standards for enforcement agents and agencies. This is so enforcement agents and people subject to enforcement action know what fair enforcement means and the standards will make high standards more consistent across the sector. The new standards will enhance the existing non-binding National Standards by updating the rules on important issues such as vulnerability and affordability, the actions of firms as well as individual agents, and current best practice.¹¹⁵

The ECB's Standards represent a significant improvement on the MoJ's existing National Standards because firms have agreed to comply with the standards and abide by the ECB's adjudication of complaints assessed against its new standards. This improvement is a clear example of the commitment of actors across the sector to increase the quality and consistency of enforcement. To ensure this is maintained, we believe that the ECB's standards should be the primary point of reference for the enforcement sector.¹¹⁶ To achieve this, the ECB's standards should supersede the Ministry of Justice's National Standards and the MoJ should withdraw them at the appropriate time.

Recommendation 11: The Ministry of Justice should withdraw its National Standards when the Enforcement Conduct Board releases its new National Standards.

As part of its oversight, the Enforcement Conduct Board has committed to producing a new set of ECB standards for enforcement agents and agencies. The new standards will enhance the existing non-binding National Standards by updating the rules on important issues such as vulnerability and affordability, the actions of firms as well as individual agents, and current best practice.¹¹⁷

The ECB's Standards represent a significant improvement on the MoJ's existing National Standards because firms have agreed to comply with the standards and abide by the ECB's adjudication of complaints assessed against its new standards. This improvement is a clear example of the commitment of actors across the sector to increase the quality and consistency of enforcement. To ensure this is maintained, we believe that the ECB's standards should be the primary point of reference for the enforcement sector. To achieve this, the ECB's standards should supersede the Ministry of Justice's National Standards and the MoJ should withdraw them at the appropriate time.

Currently, rules created by the ECB are voluntarily accepted by enforcement firms, but the prospect of statutory underpinning provides further opportunities for the ECB to advance its mission to raise standards in partnership with firms across the sector. To operationalise the creation and enforcement of rules, the ECB should be given the power to make rules and set standards in connection with its strategic objective(s). It should also be required to consult on rules it creates, as is the case with

¹¹⁵ Enforcement Conduct Board, *Standards*.

¹¹⁶ The Enforcement Conduct Board notes that its intention is for its standards to replace the National Standards.

¹¹⁷ Enforcement Conduct Board, *Standards*.

other oversight bodies. The general power to consult on and create rules that do not require further amendments to the Taking Control of Goods Regulations would enable the ECB to engage with firms and perform its oversight function in an agile way. This would allow it to stay abreast of developments in the market and encourage innovation, while still delivering on its core mandate to protect vulnerable people experiencing enforcement action.

To help firms apply the ECB's new standards where they are deemed difficult to define, the ECB should publish guidance that sets out best practice for enforcement agents and agencies. Guidance could adopt the approach used by the Financial Conduct Authority, that categorises guidance into "Must", "Should", and "May".¹¹⁸

Recommendation 12: The ECB should be given the general power to create rules and guidance in pursuit of its assigned strategic objectives, such as raising standards.

The prospect of statutory underpinning provides further opportunities for the ECB to advance its mission to raise standards across the sector. We recommend that the ECB should be given the general power to create rules in order to help it achieve its strategic objectives. The general power to consult on and create rules that do not require further amendments to the Taking Control of Goods Regulations would enable the ECB to engage with firms and perform its oversight function in an agile way. This would allow it to stay abreast of developments in the market and encourage innovation, while still delivering on its core mandate to protect vulnerable people experiencing enforcement action.

This begs the question of what type of rules a statutory oversight body might create. Generally, regulators may provide two models. Firstly, a prescriptive rules-based model provides predefined rules and regulations, creating clear and detailed guidance for compliance. In a different sphere, principles-based regulation offers broad principles and objectives, allowing for flexibility and adaptability in their application. Rather than prescribing specific actions firms must take, they articulate high-level principles, encouraging firms to exercise judgement in achieving regulatory objectives.

Enforcement currently operates with a mix of prescriptive rules set out in regulation and conduct rules and guidance set out in the Ministry of Justice's National Standards. The same is true in the consumer credit market where the Consumer Credit Act defines the wording of specific documents whereas rules provided by the Financial Conduct Authority are more general, informing firms of what they must do and what principles they should achieve. If the ECB were to be placed on a statutory footing, this would become a question worthy of discussion.

A second question that emerges from this discussion is where regulation is best placed to emanate from. Within consumer credit, the Treasury is exploring moving some legislation-based rules into the Financial Conduct Authority's remit because this format can provide greater adaptability in a rapidly evolving market.¹¹⁹ If the Enforcement Conduct Board were to be placed on a statutory footing, we generally prefer moving responsibility for activities connected to oversight and supervision to the ECB where possible and this discussion is something the enforcement sector may need to consider in the future.

¹¹⁸ Financial Conduct Authority, *Finalized Guidance: FG21/11 Guidance for firms on the fair treatment of vulnerable customers*, February 2021.

¹¹⁹ HM Treasury, *Reforming the Consumer Credit Act 1974: Consultation Response*; Financial Conduct Authority, *Review of retained provisions of the Consumer Credit Act: Final Report*.

Throughout this process, the question of enforcement fees – which are fixed in legislation - must be present, regardless of who they are charged to.¹²⁰ For the enforcement market to work well, the remuneration enforcement agents and agencies receive must bear a relationship to the cost of doing business, which includes regulation. In its latest consultation, the Ministry of Justice noted that annual fee reviews are not feasible and consulted on the implementation of a review after three years.¹²¹ It is important that this intention is fulfilled.

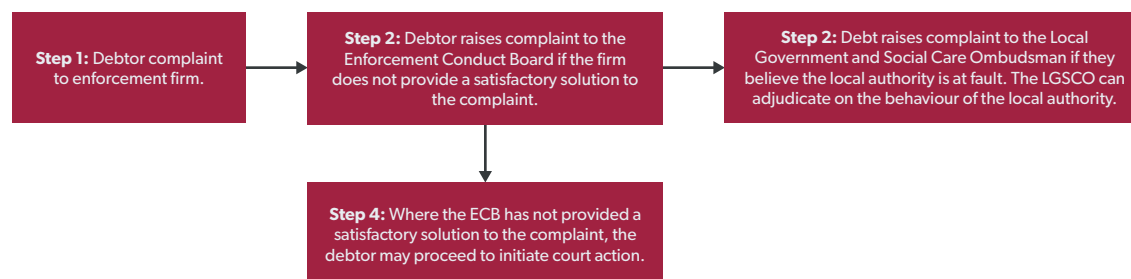
Delivering a complaints procedure and applying sanctions

Vulnerable people in debt should expect and deserve to receive redress where firms, individual agents, or local authorities breach the Taking Control of Goods Regulations and/or do not meet the standards that are expected of them. As a statutory oversight body, the Enforcement Conduct Board would be responsible for achieving this through supervising the industry and providing a robust, fair, and objective complaints procedure.

Currently, the complaints procedure for people in debt is fractured, with a number of statutory and non-statutory approaches available to people in debt. Schedule 12 of the Tribunals, Courts, and Enforcement Act allows people in debt to complain directly to the court where they feel an enforcement agent has breached the regulations. If it rules in the individual’s favour, the court may order the goods to be returned to them and damages to be paid.¹²² Further to this, the certification regulations described above allow the individual to make proceedings against an individual enforcement agent and the court may suspend or remove the agent’s certificate.¹²³ An individual may pursue non-statutory options by issuing a complaint to the firm and, in some – but not all – cases, may be able to escalate the complaint to the Local Government and Social Care Ombudsman.¹²⁴

We believe the complicated nature of the complaints system – including the array of forms, general perception of the seriousness of court action, and the costs of said action – deter vulnerable people from issuing a complaint, even where their complaint may be successful. Given the invasiveness of the process, we might expect more complaints might be made if the system were easily available, even if the complaints were mostly limited to the unpleasant experience people endure, which we doubt they would be.¹²⁵

In this context, the Enforcement Conduct Board’s mission to independently adjudicate complaints that the enforcement firm has been unable to resolve with the individual is an important one. While people in debt will continue to have the power to access the courts, the ECB’s introduction will provide a new means of travel through the complaints process, with further opportunities for people to advance their case should they be dissatisfied. We provide a flow chart below to set out one potential flow for a complaint to flow through the system.



120 Legislation.gov.uk, *Taking Control of Goods Fees Regulations 2014*.

121 Ministry of Justice, *Taking Control of Goods Regulations Consultation 2023*.

122 Legislation.gov.uk, *Tribunals, Courts and Enforcement Act 2007: Schedule 12*.

123 Legislation.gov.uk, *The Certification of Enforcement Agents Regulations 2014*.

124 Local Government and Social Care Ombudsman, *Enforcement agents*.

125 House of Commons, Levelling Up, Housing, and Communities Committee, *Oral Evidence: Council Tax Collection, HC 20*.

While debtors will continue to be able to access different parts of the complaints system without following this flow – this flow could allow them the best means to seek redress.

In a world where statutory underpinning becomes a reality, it may make sense to tidy up the flow of the complaints process to provide a single track for complaints. For example, if the authorisation of enforcement agents were to be moved from the courts to the Enforcement Conduct Board – which we support - then it may be preferable for the ECB to adjudicate on matters previously brought before the court with the option for judicial review. This tidying up process could provide a number of benefits for both debtors and firms. It would provide people in debt with a clear path to redress while also reducing the overall cost of redress for all parties, an important feature of any successful complaints procedure.

Sanctions: Where things go wrong, it is important for the Enforcement Conduct Board to have a credible means of enforcing its rules and using its powers proportionally to provide redress. The proportionality of any response will depend on the case in question, so we won't comment on it here, but sanctions are likely to include requiring a firm to take certain actions to improve its performance, financial penalties for non-compliance, and the ability to prevent a firm from conducting enforcement in extreme circumstances. All of these powers have precedent in other regulators.

It is important that the ECB and its sanctions regime covers the whole enforcement market. Currently, the ECB's ability to enforce its rules is predicated on its accreditation scheme. Becoming an accredited firm – which has seen significant take up – requires accepting the requirement to implement the ECB's recommendations following its handling of a complaint.¹²⁶ Where a firm or its agents breach the ECB's standards, the Board may then take proportionate action. However, its ability to sanction individual agents and non-firm enforcement agents remains unclear. It may be that firms take their own action if their agents become the subject of a complaint.

Alternatively, the Enforcement Conduct Board could be empowered to impede an individual agents ability to obtain a certificate to operate. This could be achieved by transferring the court certification process – which enforcement agents are required to pass – to the Enforcement Conduct Board by amending the Certification of Enforcement Agents Regulations 2014.¹²⁷ In another circumstance, the regulations could be amended to leave the certification process with the court but require it to take into account an agent's good standing with the ECB as part of the fit and proper person test. In any case, we envision these actions to be taken sparingly and in extreme breaches of the rules.

Recommendation 13: The Enforcement Conduct Board should be empowered to impede agents ability to obtain a certificate to conduct enforcement activities where they breach the ECB's standards.

It is important that the ECB and its sanctions regime covers the whole enforcement market. Currently, the ECB's ability to enforce its rules is built on its accreditation scheme. Becoming an accredited firm – which has seen significant take up – requires accepting the requirement to implement the ECB's recommendations following its handling of a complaint.¹²⁸ Where a firm or its agents breach the ECB's standards, the Board may then take proportionate action. However, its ability to sanction individual agents and non-firm enforcement agents remains unclear. It may be that firms take their own action if their agents become the subject of a complaint.

¹²⁶ Enforcement Conduct Board, *Accreditation*.

¹²⁷ Legislation.gov.uk, *The Certification of Enforcement Agents Regulations 2014*.

¹²⁸ Enforcement Conduct Board, *Accreditation*.

Alternatively, the Enforcement Conduct Board could be empowered to impede an individual agent's ability to obtain a certificate to operate. This could be achieved by transferring the court certification process – which enforcement agents are required to pass – to the Enforcement Conduct Board by amending the Certification of Enforcement Agents Regulations 2014.¹²⁹ In another circumstance, the regulations could be amended to leave the certification process with the court but require it to take into account an agent's good standing with the ECB as part of the fit and proper person test. In any case, we envision these actions to be taken sparingly and in extreme breaches of the rules.

Improving Council Engagement

As creditors, local authorities face a difficult balancing act. They are obliged to levy tax and collect unpaid arrears to provide public services and are doing so in an increasingly difficult financial environment where some councils are struggling to maintain themselves. Yet at the same time, local authorities as creditors are mindful of vulnerability amongst their tax base, and the Ministry of Justice's national standards requires them to consider the appropriateness of referring vulnerable families to enforcement agents.¹³⁰

Earlier in this paper, we showed how some local authorities are more likely to use enforcement action than others and that there does appear to be a link to income deprivation. In other words, local authorities with higher rates of income deprivation appear to make higher use of enforcement. This link makes it all the more important for local authorities to offer a strong package of support to households who fall behind on their bills. Where they do so, good outcomes can be achieved, such as diverting customers who were not right for enforcement away from it.

Case Study: Positive Outcome

Source: Money Wellness

A customer - aged 68 - approached Money Wellness with over £9,000 in debt, including £458 in council tax. The customer receives only the basic state pension (although is now in the process of applying for benefits) and has multiple strokes and a heart attack. The customer suffers with their mental health.

The local council booked a face-to-face meeting with the customer to identify what additional support they need to make a plan for clearing the debt.

Case Study: Negative Outcome

Source: Money Wellness

A customer approached Money Wellness owing around £4,000 of debt, including rent arrears, utility arrears, and council tax. These debts were built up after the customer's partner took their own life, causing the customer to suffer with their mental health and be signed off as unable to work.

The local council have instructed enforcement agents to start the collection process for £600 of unpaid council tax without meaningful attempts to engage or understand the customer.

¹²⁹ Legislation.gov.uk, *The Certification of Enforcement Agents Regulations 2014*.

¹³⁰ Ministry of Justice, *Taking Control of Goods: National Standards*.

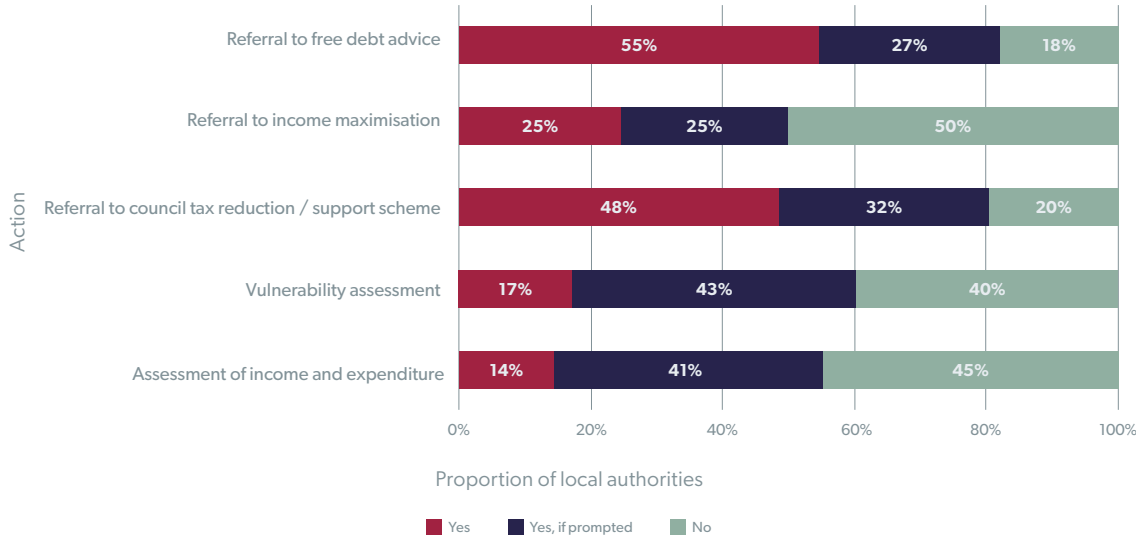
Therefore, part of our freedom information request sought to understand what support local authorities offer to vulnerable households and what more they could do to help to ensure those who genuinely cannot pay are helped to repay their arrears. We present our findings below.

Supporting people in debt before seeking a liability order

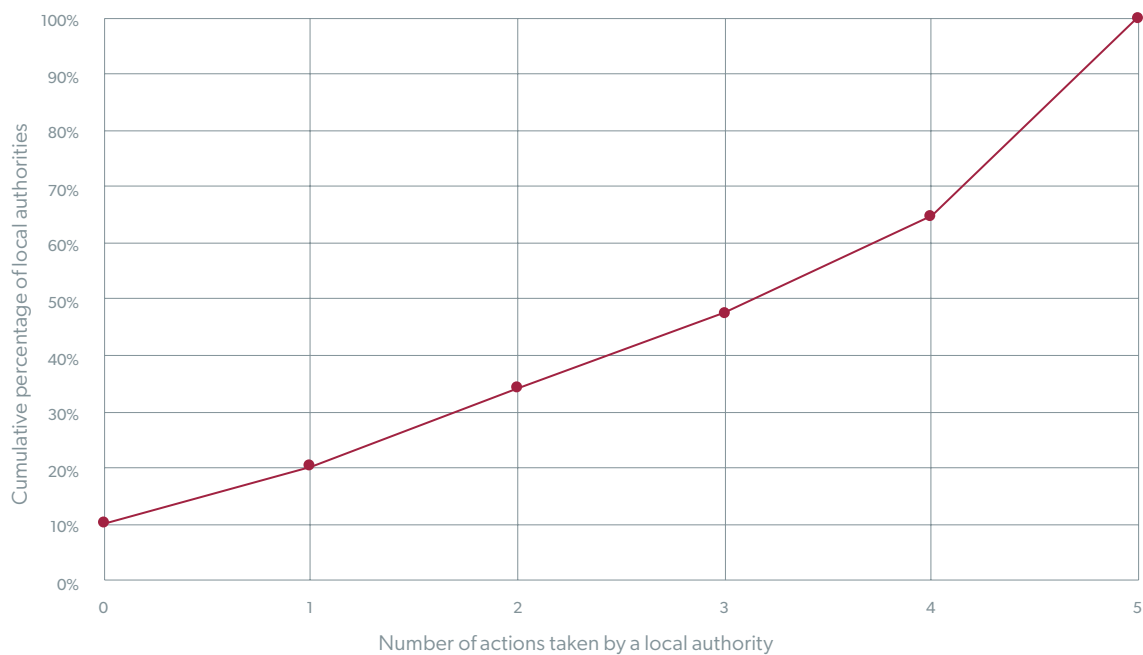
A liability order is the legal mechanism that asserts a person’s responsibility to repay a debt and it acts as a gateway to the use of enforcement and other debt collection mechanisms, such as an attachment of earnings. Importantly – as we showed earlier – liability orders are not free and the cost of them are usually passed onto people in debt. In light of this, we were interested to understand what actions local authorities take to understand a person’s situation and aid them in the handling of their claim beyond informing a debtor of their responsibility for the debt and attempting to create a payment plan.¹³¹

We present the findings in Figure 31 and Figure 32.

Figures 31 and 32: Proportion of local authorities that take specific actions prior to seeking a liability order for the repayment of council tax arrears and the cumulative percentage of local authorities that provide support actions to households behind on council tax arrears unprompted.



131 Please note that the actions we have investigated is not exhaustive.



Source: Analysis of Freedom of Information data produced by the Centre for Social Justice and the Money Advice Trust

Several key findings emerge from the above

- Over half of councils are likely to refer people in debt to a free debt advice service and council tax reduction;
- Councils appear less likely to conduct detailed assessments of debtors finances and vulnerability prior to pursuing a liability order for council tax arrears;
- A reasonable proportion of councils will offer further help if prompted to do so.

Further to this, Figure 32 above shows that a number of local authorities told us that they do not take any of these actions unprompted. 10 per cent of local authorities did not tell us they take any of the actions we ask about unprompted while 90 per cent told us they take at least one action unprompted. This suggests that there may be further room for improvement. While not all people in debt are willing to engage at an early stage, a greater support package for those who do engage prior to the acquisition of a liability order could reduce the number of people being passed to enforcement.

Reducing the need for enforcement action

Further to understanding how local authorities support people prior to achieving a liability order, we also asked them about some of the steps they take more generally. Here we look at if local authorities make use of the Standard Financial Statement and if they exempt recipients of Council Tax Reduction from enforcement action.

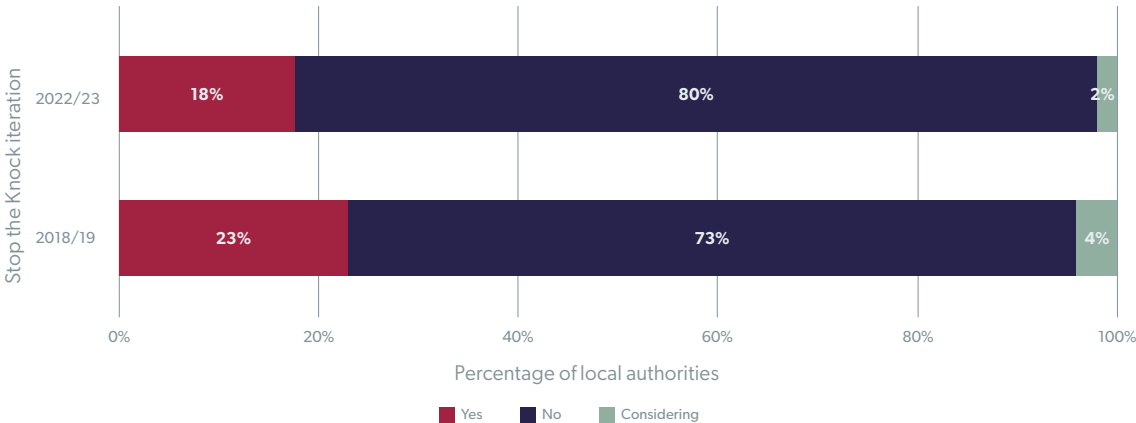
Use of the Standard Financial Statement: The Standard Financial Statement is a tool used to summarise a person's income and outgoings, along with any debts they owe. It provides a single format for financial statements, allowing debt advisers and creditors to work together to achieve good outcomes.¹³² Importantly, the tool creates consistency, has the potential for creating an easily

¹³² Standard Financial Statement, *What is the Standard Financial Statement?*

sharable income/expenditure profile for individuals with multiple debts, ensuring each creditor is working with the same information. This enables creditors to assess a person’s ability to repay what they owe and helps them to create affordable, realistic repayment plans.

Adopting the Standard Financial Statement is a voluntary measure for firms and local authorities, but it is widely used across the financial services sector and the Financial Conduct Authority directs firms towards it in its Consumer Credit Sourcebook.¹³³ As part of our freedom of information request, we ask local authorities if they use the statement and we present the findings in Figure 33 below.

Figure 33: Proportion of local authorities that said they use the Standard Financial Statement.



Source: Analysis of Freedom of Information data produced by the Centre for Social Justice and Money Advice Trust

Of the local authorities that responded to a Stop the Knock freedom of information request in their respective years, a slightly lower proportion of councils said that they use the Standard Financial Statement. Interestingly, there was some churn in the authorities that report using the Statement. The reasons for this are unknown, but the findings suggest that more work is needed to encourage authorities to adopt the Standard Financial Statement.

Exempting Council Tax Reduction Recipients from Enforcement Action: By virtue of receiving Council Tax Reduction – a means tested benefit – the local authority has determined, by their own criteria, that someone has limited financial means. Our analysis of Understanding Society data suggests that Council Tax Reduction recipients make up about 25 per cent of those who report being in council tax arrears.

Yet many local authorities continue to use enforcement action against those in recipient of Council Tax Reduction despite the likelihood of them genuinely being unable to pay, particularly given cuts to support after the devolution of the benefit during the Coalition Government.

Of the authorities that responded to us in their respective waves, 10 per cent say that they have a policy to exempt council tax reduction recipients from enforcement action. This is a very small move from about 9 per cent in 2018/19. While they may exempt households on an individual basis, the absence of a blanket policy means some households that genuinely cannot afford to repay their debts will have fees added to their bill, which mostly serves to exacerbate their existing difficulties. We recommend that local authorities should seek to avoid the use of enforcement action against those in recipient of council tax reduction in order to protect the most vulnerable people.

133 Financial Conduct Authority, *Consumer Credit Source Book (CONC) 8.5 – Financial statements and debt repayment offers*.

Recommendation 14: Local authorities should seek to avoid the use of enforcement action against those in receipt of council tax reduction.

By virtue of receiving Council Tax Reduction – a means tested benefit – the local authority has determined, by their own criteria, that someone has limited financial means. Yet many local authorities continue to use enforcement action against those in receipt of Council Tax Reduction despite the likelihood of them genuinely being unable to pay, particularly given cuts to support after the devolution of the benefit during the Coalition Government.

As noted above, 90 per cent of local authorities told us that they do not have a policy of exempting recipients of Council Tax Reduction from enforcement action. While they may exempt households on an individual basis, the absence of a blanket policy means some households that genuinely cannot afford to repay their debts will have fees added to their bill, which mostly serves to exacerbate their existing difficulties. We recommend that local authorities should seek to avoid the use of enforcement action against those in receipt of Council Tax Reduction in order to protect the most vulnerable people.

Improving uptake of Council Tax Reduction

We believe that improving the incentives in the collection regime will help households who want to pay their bills but struggle to do so. Updating the regulations to provide more time for engagement with vulnerable people in debt can help engagement at an early stage and avoid enforcement fees.

However, there are clearly some households for whom any bill is difficult to contend with. These are households that ought to be helped by the support mechanisms that already exist, in this case Council Tax Reduction.

Council Tax Reduction is a benefit that helps some households with the cost of their Council Tax. Council Tax Reduction replaced Council Tax Benefit and was devolved to local authorities as part of the Welfare Reform Act 2012.¹³⁴ Since then, each local authority has a responsibility to construct and administer a scheme for their own area. As a result of this, eligibility for each scheme differs as does its generosity.

Like many welfare benefits, take-up is not universal, and this can result in households being passed to enforcement when they may otherwise not have been if they had received the support they needed. The benefits can be substantial. Evidence published by HM Treasury suggests that of 9,900 people in debt who were contacted during a pilot study because they owed council tax debt, over 1,000 – or about 10 per cent - were moved onto Council Tax Reduction.¹³⁵ This suggests that improving the take up of Council Tax Reduction could significantly reduce the number of people passed to enforcement agents. Below, we explain how this could be achieved.

One key way to improve uptake of Council Tax Reduction is to encourage local authorities to make use of both the data provided to them by the Department for Work and Pensions and the existing legal gateways that allow them to use this information for the purpose of administering a Council Tax Reduction scheme.

¹³⁴ Legislation.gov.uk, *Welfare Reform Act 2012*.

¹³⁵ HM Treasury, *The Balance Sheet Review Report: Improving public sector balance sheet management*, November 2020.

Data sharing between the DWP and local authorities is governed by data protection principles, legal gateways that allow the sharing and use of personal data, and the DWP's own policy on what data may be shared and how it permits local authorities to use that data.¹³⁶ Data protection principles can be satisfied as the DWP already provides a significant amount of data to local authorities and has frameworks for sharing it.

When a claimant applies to Universal Credit, they are able to express their 'intent' to claim Council Tax Reduction. If they do so, their data will be passed to the local authority via the Universal Credit Data Manager. The legal gateway for this is provided by the Welfare Reform Act 2012 and the Social Security (Information sharing in relation to Welfare Services etc.) Regulations 2012.¹³⁷ The legislation allows the sharing of data for the making of a council tax reduction scheme and determining a person's entitlement or continued entitlement to a reduction under the scheme. Further to this, it allows for the use of the data for purposes *connected* to the making of the scheme and determining a person's entitlement. We believe a local authority could reasonably argue that contacting eligible recipients of the scheme is *connected* to the making of a scheme.¹³⁸

But not all local authorities appear to make best use of the data. Some local authorities use the information passed to them to identify and invite prospective recipients to apply for Council Tax Reduction, but it is not clear this occurs across the board.¹³⁹ We believe that contacting eligible recipients should be allowed under the regulations as they currently stand and all local authorities should use the data made available to them to drive up the take up of Council Tax Reduction. Both the Department for Levelling Up, Housing and Communities and the Department for Work and Pensions should ensure the data is being used to its fullest effect by local authorities. Doing so would help prevent households falling behind on their arrears and being passed to enforcement action.

Recommendation 15: The Department for Levelling Up, Housing, and Communities and the Department for Work and Pensions should ensure local authorities are using data provided to them by the DWP to contact potentially eligible recipients of Council Tax Reduction.

When a claimant applies to Universal Credit, they are able to express their intent to claim Council Tax Reduction. If they do so, their data will be passed to the local authority via the Universal Credit Data Manager. The legal gateway for this is provided by the Welfare Reform Act 2012 and the Social Security (Information sharing in relation to Welfare Services etc.) Regulations 2012.¹⁴⁰ The legislation allows the sharing of data for the making of a council tax reduction scheme and determining a person's entitlement or continued entitlement to a reduction under the scheme. Further to this, it allows for the use of the data for purposes *connected* to the making of the scheme and deterring a person's entitlement.¹⁴¹

136 Bevan Foundation, Policy in Practice, *A common approach to Welsh benefits: Feasibility Study*.

137 Legislation.gov.uk, *Welfare Reform Act 2012*; Legislation.gov.uk, *The Social Security (Information-sharing information to Welfare Services etc.) Regulations 2012*.

138 See: Legislation.gov.uk, *The Social Security (Information-sharing information to Welfare Services etc.) Regulations 2012* regulation 12, regulation 13, and regulation 14.

139 Royal Borough of Greenwich, *Letter from the Royal Borough of Greenwich to the Department for Work and Pensions*.

140 Legislation.gov.uk, *Welfare Reform Act 2012*; Legislation.gov.uk, *The Social Security (Information-sharing information to Welfare Services etc.) Regulations 2012*.

141 See: Legislation.gov.uk, *The Social Security (Information-sharing information to Welfare Services etc.) Regulations 2012* regulation 12, regulation 13, and regulation 14.

But not all local authorities appear to make best use of the data. Some local authorities use the information passed to them to identify and invite prospective recipients to apply for Council Tax Reduction, but it is not clear this occurs across the board.¹⁴² We believe that contacting eligible recipients should be allowed under the regulations as they currently stand and all local authorities should use the data made available to them to drive up the take up of Council Tax Reduction.

Further to this, there is a looming legal question about local authorities' ability to use a claimant's 'intent' to apply for Council Tax Reduction noted in their application as an application itself. Some local authorities appear to interpret the intent to claim as a proxy for an actual application while others do not.¹⁴³ Interpreting the intention to claim as an application would allow local authorities to move towards automating the uptake of Council Tax Reduction and ensure more households avoid bailiff action. The DWP has already taken some steps towards encouraging local authorities to make better use of data, such as allowing local authorities to decide how to re-use DWP data with sufficient legal advice, but more could be done.¹⁴⁴

In the first instance, the Department for Work and Pensions or any other relevant department could provide a central legal view on the appropriateness of interpreting the intention to claim provided by Universal Credit recipients as an application itself. Publishing a positive view would encourage local authorities to use the data provided to them by the Universal Credit Data Manager to automate applications to their Council Tax Reduction Scheme.

If the view were not a positive one, the DWP should take steps to amend legislation to allow for local authorities to interpret the intention to claim as an application itself. For example, Section 7 of the Social Security Administration Act 1992 could be used to make regulations that allow an application for Council Tax Reduction to be treated as an application in addition / naturally following one for Universal Credit.¹⁴⁵

Recommendation 16: The Department for Work and Pensions or any other relevant department should publish a central legal view on the appropriateness of interpreting the intention to claim Council Tax Reduction provided by a Universal Credit application as an application itself.

There is a looming legal question about local authorities' ability to use a claimant's 'intent' to apply for Council Tax Reduction noted in their application as an application itself. Some local authorities appear to interpret the intent to claim as a proxy for an actual application while others do not.¹⁴⁶ Interpreting the intention to claim as an application would allow local authorities to move towards automating the uptake of Council Tax Reduction and ensure more households avoid bailiff action.

142 Royal Borough of Greenwich, *Letter from the Royal Borough of Greenwich to the Department for Work and Pensions*.

143 Bevan Foundation, *Policy in Practice, A common approach to Welsh benefits: Feasibility Study*.

144 Department for Work and Pensions, *Local Authority Partnership, Engagement and Delivery Division: Data sharing re-use assessment template; Department for Work and Pensions, Memorandum of Understanding between the Department for Work and Pensions and local authorities: Access handling, exchange and protection of Department for Work and Pensions', Home Office, and HM Revenue and Customs data*.

145 Legislation.gov.uk, *Social Security Administration Act 1992 Section 7*.

146 Bevan Foundation, *Policy in Practice, A common approach to Welsh benefits: Feasibility Study*.

In addition to steps already taken by the DWP, the Department for Work and Pensions or any other relevant department could provide a central legal view on the appropriateness of interpreting the intention to claim provided by Universal Credit recipients as an application itself. Publishing a positive view would encourage local authorities to use the data provided to them by the Universal Credit Data Manager to automate applications to their Council Tax Reduction Scheme.

Recommendation 17: The Department for Work and Pensions should amend the Social Security Administration Act 1992 to allow for an application for Universal Credit to automatically trigger an application for Council Tax Reduction.

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¹⁴⁷ Legislation.gov.uk, *Social Security Administration Act 1992 Section 7*.

Conclusion

Over the last few years, significant progress has been made to drive up standards in local government debt collection. In 2021, debt advisers and enforcement agencies – convened by the Centre for Social Justice – came together in partnership to create the Enforcement Conduct Board (ECB), a new voluntary oversight body.¹⁴⁸ Since then, the Board has been working towards its goals of raising standards, improving accountability, adjudicating complaints, and reviewing the extent of vulnerability amongst households referred to enforcement. The pursuit of fairer collections regime has been a collective endeavour and all parties have committed to making it a success.

Following the launch of the Enforcement Conduct Board, the Ministry of Justice committed to reviewing the option of putting it onto a statutory footing and this review is set to take place no later than November 2024.¹⁴⁹

In anticipation of this review, we have set out the evidence to show who falls behind on their council tax and is therefore likely to be passed to enforcement. We find that households who fall behind on their council tax are significantly more likely to be on a low income and show signs of deprivation. Specifically, we find that lower council tax collection rates are significantly correlated with income deprivation. We also find that higher enforcement use is correlated with income deprivation.

Debt collection is an important function of government, but where households are clearly vulnerable, they should be treated sensitively to help them repay. But the structure of our collections system incentivises against this by providing opportunities for local authorities to quickly advance to enforcement.

In light of this, we propose a package of reforms to recalibrate the relevant legislation, put the Enforcement Conduct Board on a statutory footing, and ensure those who qualify for support get it. Taken together, these proposals can offer clarity for all parties in the collections process while maintaining high collections rates. As the National Audit Office notes, more sensitive and tailored debt collection techniques can lead to greater collection rates.¹⁵⁰ November 2024 is the next opportunity to drive up standards – we'd be foolish not to take it.

148 Centre for Social Justice, *Taking Control for Good: Introducing the Enforcement Conduct Authority*; Civil Enforcement Association, *Enforcement News: The quarterly magazine from CIVEA, the Civil Enforcement Association – Summer 2022*.

149 Hansard, *Financial Services Bill, Volume 811: Lord True*.

150 National Audit Office, *Tackling Problem Debt*.

List of Recommendations

Recommendation 1

Amend Schedule 1, Part 1 of the Council Tax (Administration and Enforcement) Regulations to make paying over 12 months – rather than 10 months – the default.

Recommendation 2

Regulation 23, paragraph 3 of The Council Tax (Administration and Enforcement) Regulations 1992 should be amended to end the requirement to pay an entire council tax bill upon one missed payment.

Recommendation 3

Regulation 23, paragraph 3 of The Council Tax (Administration and Enforcement) Regulations 1992 should be amended to limit the scope of a reminder notice to just the amount due upon issuance of the notice.

Recommendation 4

Regulation 23, paragraph 3 of The Council Tax (Administration and Enforcement) Regulations 1992 should be amended to provide billing authorities with the ability to distribute missed payments to other monthly instalments.

Recommendation 5

The Council Tax (Administration and Enforcement) Regulations should be amended to oblige billing authorities to consider repayment plans where a full sum may be paid, even where they offer a time period longer than the current billing cycle.

Recommendation 6

Amend Regulation 34 of the Council Tax (Administration and Enforcement) Regulations to cap the fees added for a liability order.

Recommendation 7

Virtual hearings should be prioritised for the processing of a liability order to reduce the associated costs passed on to the person in debt.

Recommendation 8

Amend Regulation 52 of the Council Tax (Administration and Enforcement) Regulations to require billing authorities to pursue an attachment of earnings, allowances, and benefits before the use of enforcement agents.

Recommendation 9

Regulation 47 of The Council Tax (Administration and Enforcement) Regulations 1992 should be repealed to end the commitment of people

Recommendation 10

The Ministry of Justice should take steps to put the Enforcement Conduct Board on a statutory footing.

Recommendation 11

The Ministry of Justice should withdraw its National Standards when the Enforcement Conduct Board releases its new National Standards.

Recommendation 12

The ECB should be given the general power to create rules and guidance in pursuit of its assigned strategic objectives.

Recommendation 13

The Enforcement Conduct Board should be empowered to impede agents ability to obtain a certificate to conduct enforcement activities where they breach the ECB's standards.

Recommendation 14

Local authorities should seek to avoid the use of enforcement action against those in receipt of Council Tax Reduction.

Recommendation 15

The Department for Levelling Up, Housing, and Communities and the Department for Work and Pensions should ensure local authorities are using data provided to them by the DWP to contact potentially eligible recipients of Council Tax Reduction.

Recommendation 16

The Department for Work and Pensions or any other relevant department should publish a central legal view on the appropriateness of interpreting the intention to claim Council Tax Reduction provided by a Universal Credit application as an application itself.

Recommendation 17

The Department for Work and Pensions should amend the Social Security Administration Act 1992 to allow for an application for Universal Credit to automatically trigger an application for Council Tax Reduction.

Appendix 1:

The Mandate of the Enforcement Conduct Board

Mandate

The principal mandate of the ECA is to ensure fair treatment and appropriate protection for people subject to enforcement. In doing so it will have particular regard to the need to protect people in financial difficulty or other vulnerable circumstances.

The delivery of this mandate is to be guided by five key principles.

1. Principles

1.1 Independence

1.1.1 The ECA will commit to upholding the principle of independence in all its activities. This relates (but is not limited) to aspects such as Board membership, those working for the ECA, as well as how the ECA will conduct its business.

1.2 Ambition

1.2.1 The ECA will commit to continually drive improvements in the enforcement sector through being ambitious in raising standards and collaborating with stakeholders to ensure fair treatment and appropriate protection for people subject to enforcement.

1.3 Proportionality

1.3.1 The ECA will work to the principle that any burden or restriction it imposes on individual agents, agencies and/or their activities should be efficient and necessary for the purpose of carrying out its mandate.

1.4 Collaboration

1.4.1 The ECA has been developed on the basis of collaboration between the enforcement sector and the debt advice sector. The ECA will commit to maintaining a spirit of collaboration between the enforcement sector and the debt advice sector as far as is appropriate.

1.5 Transparency

1.5.1 The ECA will exercise its functions as transparently as possible. One of the key outputs to that end will be an annual publication reporting its activity and findings – this will be published, shared and submitted to the Secretary of State for Justice.

2. Objectives

2.1 Raising standards

- 2.1.1 The ECA will drive up standards in the enforcement sector by setting out new effective standards, building on the Taking Control of Goods: National Standards (2014) (hereby 'National Standards'), supervising performance and conduct in the enforcement industry, and issuing firm and proportionate sanctions for non-compliance. This will aim to standardise practice and raise standards by ensuring the consistent application of regulations and codes of practice.
- 2.1.2 Standards will relate to (but will not be limited to) professional conduct; firms' policies and procedures; the treatment of vulnerable people; and fair and affordable repayment (see below, Function 8b).
- 2.1.3 As a matter of priority, the ECA will conduct a review of the National Standards in its first year of operation and will make recommendations to the Ministry of Justice on this basis.

2.2 Improving accountability

- 2.2.1 The ECA will increase accountability across the enforcement sector by holding enforcement firms and agents to account. This will be achieved primarily through supervisory activities (such as audits, reviews of firms' policies and procedures, compliance and complaints, reviews of enforcement agent footage, information requests and independent research); as well a firm and fair system of sanctions to penalise and strongly disincentivise non-compliance with the ECA's standards. This will also be achieved through the publication of an annual review of the ECA's activities, to be submitted to the Secretary of State for Justice.
- 2.2.2 The ECA will develop and introduce a new standardised complaints process so that everyone subject to civil enforcement will see a two-stage resolution to their cases within a set timeframe across all firms under the remit of the ECA (see below, Function 8e.2–4).

2.3 Adjudicating complaints

- 2.3.1 The ECA will host an independent complaints mechanism that will adjudicate complaints escalated from any bodies handling complaints relating to enforcement agents which fall under the ECA's remit.

2.4 Protecting the vulnerable and achieving fairness.

- 2.4.1 In line with its mandate, the ECA will commit to ensuring the fair treatment of people subject to enforcement in vulnerable circumstances, and to drive improvements in practice building on work already undertaken in this area. This will be primarily delivered through provision of new affordable repayment and vulnerability protocols drawing on best practice from other organisations, firms and bodies, as appropriate.

3. Remit

- 3.1 The ECA's initial remit will be over certificated enforcement agents (also known as civil enforcement agents) and all firms that employ them.

- 3.2 The ECA will – in the absence of statutory powers to compel all certificated firms and agents to fall under its authority – deliver a strategy to bring all certificated enforcement agents under its authority. The ECA chairperson will review whether and what statutory powers are necessary to bring as many certificated agents as possible under the authority of the ECA (in line with Function 8a). ECA authorised firms will be listed in a public register and kitemarks will be provided as appropriate.
- 3.3 The ECA, following its establishment, will consult on the most effective way to bring other types of enforcement agents – such as High Court Enforcement Officers, County Court bailiffs, and Civilian enforcement officers – under its remit.

4. Independence

- 4.1 The ECA will operate entirely independently. This includes (but is not limited to) the following:
 - 4.1.1 Having an independent chairperson, appointed collaboratively by the Working Group. The chairperson will in turn appoint independent board members.
 - 4.1.2 Having no direct or indirect control from enforcement agencies, agents, advice organisations, or trade bodies.
 - 4.1.3 Having its own independent budget.
 - 4.1.4 Having sufficient infrastructure and resources to operate fully independently, in accordance with Principle 1.3

5. Form, governance and establishment

- 5.1 The Enforcement Oversight Working Group will agree a collaborative process for appointing a chairperson to lead and design the development of the ECA in the run up to its establishment.
- 5.2 The appointed chairperson's primary duties will include (but will not be limited to):
 - 5.2.1 Advancing the development of the principles, objectives, functions, and governance of the ECA as is required for practical implementation – and building on the framework agreement set out herein.
 - 5.2.2 Commissioning an independent valuation of estimated operational costs as soon as feasible. This will take into account the policy, external engagement, IT and administrative staff required to fulfil the ECA's mandate, in accordance with Principle 1.3. An 'establishment budget' based on minimum viable product estimates will be provided as seed funding by enforcement sector representatives.
 - 5.2.3 Developing the ECA constitution, articles of association, terms of reference and companies house registration.
 - 5.2.4 Developing the terms and conditions of board membership and overseeing the appointment of board members.
 - 5.2.5 Overseeing all ECA activities and representing the authority externally until appropriate external engagement staff are acquired.
 - 5.2.6 Ensuring that all ECA activities are conducted according to the founding principles.
- 5.3 For a time-limited period, the appointed chairperson will be assisted in the early development of the ECA and its establishment by an Advisory Panel including representatives from the Ministry of Justice, enforcement industry, debt advice sector and Enforcement Oversight Working Group.

- 5.4 Enforcement industry representatives will provide the chairperson with appropriate financial support in the form of an ‘establishment budget’, enabling them to conduct the duties required to establish the ECA.

6. Funding

- 6.1 The ECA will be funded by pro-rata contributions from all firms that employ certificated enforcement agents.
- 6.2 In the event the ECA brings under its remit other types of enforcement agents (such as High Court Enforcement Officers, County Court bailiffs, and Civilian enforcement officers), it will review and adapt its funding arrangements accordingly.
- 6.3 In line with Principle 1.3, the rate of pro-rata funding contributions will be based on the independent operational cost estimates commissioned by the Chairperson (see 5.2.2) which will be proportionate to the ECA’s functional requirements, without placing unfair burdens on individual firms. These will rise with inflation as is appropriate.

7. Statutory status

- 7.1 The chairperson will undertake a rapid review of the appropriate statutory authority required by the ECA to carry out its mandate fully and effectively. The review will also examine and set out the routes available to achieve this. The chairperson will make recommendations to the Ministry of Justice review of the ECA’s activities announced by the Government in April 2021.⁹³
- 7.2 The scope of the chairperson’s review will include (but won’t be limited to) the statutory authority necessary to deliver the ECA’s mandate, principles, objectives, remit and functions (see s. 8). This will consider the precedent seen widely in sectors such as the financial services and utilities markets and will look particularly at whether/how statutory underpinning would enable the ECA to:
- compel high standards universally across the enforcement sector;
 - effectively limit the operation of substandard firms;
 - ensure it has the authority to act independently, in line with Principle 1.1.

8. Functions

8.1 Authorisation

- 8.1.1 At its establishment, the ECA will commit to working with the Ministry of Justice and wider stakeholders to develop an appropriate and workable authorisation process for enforcement agents and firms, considering the existing and well-established court certification process. This will support the ECA in bringing the enforcement sector under its remit as widely as possible (see s. 3).
- 8.1.2 The ECA will undertake a phased authorisation strategy during this process of engagement with the Ministry of Justice and stakeholders:
- 8.1.2.1 *At its establishment, the ECA will endeavour to bring enforcement firms and agents under its remit by contributing, as far as is appropriate, to an environment for local authorities and other purchasers of enforcement services which strongly encourages the services of enforcement agencies and individual agents who are authorised by the ECA.*
 - 8.1.2.2 *Taking into account a range of views, and working closely with the Ministry of Justice, the ECA will then pursue the most effective route to bring as many enforcement agencies and agents as possible under its remit (see 7.2). This could include (but will not be limited to):*

8.1.2.3 *The possibility of legislative amendments to The Certification of Enforcement Agents Regulations (CEAR) 2014 to make the decisions to issue certificates as set out in CEAR Part 1, section 3 conditional on ECA membership; and the cancellation or suspension of certificates as set out in CEAR 2014 section Part 1, section 10 conditional on ECA membership and/or sanctions.*

8.1.2.4 *The possibility of legislative changes to prohibit local authorities from purchasing the services of enforcement agencies and agents who are not authorised by the ECA.*

8.1.2.5 *The possibility of legislative changes to make ECA authorisation a condition of taking out liability insurance.*

8.1.3 Subsequently, and as far as is necessary to support the delivery of its mandate, the ECA will review the criteria for authorisation, building on existing requirements for certification as set out in The Certification of Enforcement Agents Regulations (CEAR) 2014 and including (although not limited to):

- Competencies on vulnerability.
- A commitment to ongoing professional development.

8.2 Standard setting and rule making

8.2.1 The ECA will seek the appropriate powers to create new binding rules and set minimum conditions, standards, and competencies, agreed in consultation with stakeholders, to which all agents and agencies under its remit must adhere.

8.2.2 The ECA will review and propose amendments to the official National Standards, such as the inclusion of a direction of authority to the ECA.⁹⁵

8.2.3 The ECA will consult widely to develop and issue new guidance on vulnerability, drawing on best practice from other organisations, bodies and firms, as appropriate.

8.2.4 The ECA will develop a best practice framework for fair and affordable repayment as determined by the ECA board following public consultation and drawing from existing frameworks, for example the Standard Financial Statement. This repayment framework will be developed with stakeholders taking into account a range of views, while focusing firmly on the delivery of the ECA's mandate.

8.2.5 Once developed, the ECA will assess firms against the fair and affordable repayment framework. It will also be published and disseminated among the customers of enforcement firms, such as Local Authorities.

8.2.6 Where enforcement firms are required to work to Service Level Agreements by customers, the ECA will work closely with customers and other stakeholders to bring the terms of Service Level Agreements into alignment with the ECA fair and affordable repayment framework.

8.2.7 The ECA will undertake thematic reviews into key issues as they emerge, in accordance with Principles 1.2 and 1.3.

8.3 Supervision and monitoring

8.3.1 The ECA will be responsible for overseeing the conduct of enforcement agents and agencies under its remit.

8.3.2 The ECA will have the authority to conduct supervisory activities over all enforcement agencies and agents under its remit. This will include (but will not be limited to):

8.3.2.1 *Requesting data and information (additionally to complaints data reports, see Function 8e.9);*

8.3.2.2 *Conducting visits to firms including spot checks where appropriate;*

8.3.2.3 *Conducting independent on-site assessment of firms' policies and procedures, including on compliance and complaints;*

8.3.2.4 *Conducting sample checks on call handling and enforcement agent video footage; 8c.2.v Auditing agencies; and*

8.3.2.5 *Conducting and commission its own independent research.*

8.3.3 The ECA will have the power to conduct annual audits of the enforcement industry. Currently, certificated enforcement firm audits are undertaken by independent compliance consultancy, with the Civil Enforcement Association (CIVEA) administering the process. The ECA chairperson will decide whether it wishes to bring this entire process under its remit.

8.4 Enforcement and Sanctions

8.4.1 The ECA will have the autonomy to impose sanctions on agents and agencies for non-compliance with the minimum conditions, standards, and competencies it has set out. 8d.2 Sanctions imposed by the ECA will:

8.4.1.1 *be based on a tariff, with variation in severity to allow for a proportional application according to severity of rule-breaking (in accordance with Principle 1.3).*

8.4.1.2 *be firm enough to act as effective deterrents for rule-breaking.*

8.4.1.3 *include (but will not be limited to): financial penalties; operational penalties (such as the withdrawal of the ECAs authorisation); and, for individual agents, the use of EAC2 process to determine whether an individual is fit to operate as an enforcement agent.*

8.4.1.4 *be published.*

8.4.2 The specificities of sanctions will be agreed by the ECA and will be subject to periodic review.

8.4.3 The ECA will commit to reviewing the efficacy of sanctions, based on data it will collect, on a periodic basis.

8.4.4 The ECA will develop and set out a clear appeal process to deal appropriately with challenges to enforcement action it takes.

8.5 Complaints adjudication

8.5.1 In its capacity as the authority for the enforcement industry, the ECA will host an independent complaints mechanism to adjudicate escalated complaints. This will be fully in accordance with ECA's Principle 1.1 of Independence and will determine complaints by reference to what is, in its opinion, fair and reasonable in all the circumstances of the case.

8.5.2 Separately, the ECA will commit to develop, introduce, and mandate a simplified two-stage complaints process to unify and improve accountability across the enforcement sector. The new standardised complaints process means that everyone subject to civil enforcement will see a two-stage resolution to their cases within a set timeframe across all firms under the remit of the ECA.

8.5.3 At stage one, firms will be required to address complaints within a set timeframe from notification of incident. This will include a deadline for the recognition of a complaint upon notification, as well as provision to incentivise effective early resolution. If a case is not resolved before the set timeframe, it will become automatically eligible for escalation. Complainants may request for complaints to be escalated before the timeframe, and the ECA will use discretion to consider early escalation.

8.5.3.1 *The ECA will issue guidance on firms' complaints handling processes within stage one, drawing from good practice seen in the sector.*

- 8.5.3.2 *The ECA will host an independent adjudication for disputes escalated to stage two, or 'ECA stage'. Herein, the ECA will host an independent review of evidence such as body-worn and complainant video footage as well as individual testimonial. The ECA will then pronounce a judgement on a case, and will apply the appropriate redress in accordance with ECA Principles.*
- 8.5.3.3 *When 8e.2 has been agreed, developed and implemented, firms which fail to adhere to the two stage complaints process will not be authorised by the ECA, and those found to be falling below ECA standards will be subject to sanctions as per Function 8d.*
- 8.5.3.4 *The ECA will mandate firms to record 'expressions of dissatisfaction', so that all complaints are appropriately addressed.*
- 8.5.3.5 *The ECA will require individual enforcement agents to self-report EAC2 complaints made against them and the outcome of the complaint.*
- 8.5.3.6 *Firms will be required by the ECA to report and submit data on complaints and complaints processes. This will include (but is not limited to):*
 - 8.5.3.7 *complaint volume;*
 - 8.5.3.8 *complaint type;*
 - 8.5.3.9 *complaint outcomes;*
 - 8.5.3.10 *annual complaints received, dismissed, and resolved. The ECA will seek the powers to request additional information and conduct investigations on enforcement agencies as per Function 8c.*
- 8.5.4 *The ECA will work closely with all bodies which currently have oversight on complaints relating to enforcement agents which will fall under its remit – such as industry trade bodies and the Local Governance and Social Care Ombudsman (LGSCO) – to determine the most effective transitional framework for bringing oversight on complaints under its purview.*



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