

# Unfair, ineffective and unjustifiable: the case for ending imprisonment for Council Tax arrears in England

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## ABOUT THE AUTHOR

### Chris Daw QC

Chris Daw QC is a practising barrister, writer and broadcaster on legal issues. Chris Daw QC practises in the fields of criminal law, serious fraud, business regulation and professional discipline. Ranked as a Leading Silk in The Legal 500 and Chambers and Partners, Chris appears in many high profile cases. He also advises companies and leading individuals in the worlds of sport, entertainment and business. He tweets at [@crimlawuk](https://twitter.com/crimlawuk)

Chris is currently filming a 5-part documentary series on the criminal justice system for BBC1, “Justice on Trial”, and has been commissioned to write a book, proposing radical reform of crime and punishment policy, due for publication in the summer of 2020.

## AUTHOR'S FOREWORD

I do not think about paying my council tax bill. Payment is taken automatically by direct debit, together with the rest of the household expenses. Along with most other people, and certainly those with lucrative professional careers, the risk of my going into arrears on my council tax bill is slim to none. For many others though, the situation is very different. Faced with rising housing, energy, travel and food costs, millions are falling into higher and higher levels of arrears on household bills. This is a source of considerable stress, misery and in some cases mental health symptoms. All of that is bad enough, but imagine facing the additional possibility, not only of threatening letters, bailiffs and County Court judgments, but even of a stretch in prison, alongside murderers and other violent criminals.

My confession is this: I did not know this power to imprison Council Tax debtors existed until a few months ago, when I read a news story about Melanie Woolcock, whose shocking story caused the Welsh Government to scrap the power of imprisonment for council tax debts, bringing Wales into line with Scotland and Northern Ireland. I have been a criminal defence lawyer for over 25 years and not much shocks me. This did. As a result I launched a petition and have been supported by thousands, up and down the country, who agree that this law must change in England too.

It is precisely because this issue is unlikely to have an impact on me personally - while others less fortunate suffer from an unjust law - that I feel so strongly that this must change. I question how the poor and vulnerable can have confidence and trust in the legal system, when a law like this operates to target only them, leaving all those with even moderate means untouched. And in the end, this is to no benefit - morality aside, the threat and use of imprisonment is a costly and ineffective method of debt collection.

I am grateful to the Social Market Foundation for publishing this paper and I hope that we will soon see the end of Victorian debtors' prisons in England, once and for all.

Chris Daw QC

July 2019

## EXECUTIVE SUMMARY

English law allows people to be sent to prison for non-payment of council tax. This power of imprisonment for a local tax debt, unique under UK and almost certainly European law, is outdated and unfair and is routinely applied to the unjustifiable detriment of some of the most vulnerable members of society. Imprisoning council tax debtors delivers no benefit to the State or wider public and visits unfairness on those subject to such punishment. Laws allowing imprisonment for council tax debt could and should be revoked by ministerial order.

## THE LAW

Citizens of England can be sent to prison in 2019 for only one form of civil debt – Council Tax.

This power is a hangover from the deeply unpopular and short-lived Community Charge or “poll tax”, introduced under the Thatcher government in 1990, only to be scrapped by John Major three years later.

The power derives from a single Regulation and could be revoked by the stroke of a minister’s pen –

*Regulation 47 of the Council Tax Regulations 1992*

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

The maximum period of commitment to prison is 3 months.

England is now the only UK nation, which retains this draconian enforcement power in relation to Council Tax.

In fact, I have been unable to identify a single country in Europe, which sends people to prison for a civil debt, imposed by the state in the form of a local tax.

It is also the only civil debt in the UK which can result in imprisonment – the law does not apply to electricity, gas, water rates, - only Council Tax. Those other bills are purely civil debts, for which imprisonment could never be imposed.

Note that this is not a “prison sentence”, which can only be imposed for a criminal offence, but not a civil debt. As such, unless something changes, the commitment power will be unaffected by the proposed change in the law to abolish short prison sentences, announced by the previous Justice Secretary, David Gauke, even if the policy is enacted by whichever party is in power in the future.

So it may turn out that criminals are better off than civil debtors, when they come before the magistrates’ court.

## CONTEXT

Imprisonment for Council Tax debt arises from laws passed in a very different financial context. When the Council Tax Regulations were passed, 27 years ago, the UK did not have a major household debt problem. Today 58% of those in poverty live in a working household (>50% increase since 1995).

Today, household financial resilience in the UK is low:

- 22% of adults have less than £100 savings<sup>1</sup>
- The unsecured debt to household income ratio has been rising since 2014<sup>2</sup>
- In 2017, household outgoings surpassed income for the first time in nearly 30 years<sup>3</sup>

In September 2018, the National Audit Office estimated that 8.3m people in the UK are unable to pay their debts and household bills.<sup>4</sup>

A more recent change in the law has compounded the problem of council tax debt. In 2014, the Tribunals, Courts & Enforcement Act (the legislation that governs bailiffs) was redrafted. Bailiff costs were transferred from the local authority to the person in debt, compounding the financial pressures on those struggling to pay their bills.

The issue of severe Council Tax enforcement is likely to increase, given the growing problems for local authorities in funding their services and collecting the increased sums, required to pay for it, from local residents:

- Council Tax debts are at record levels – almost £1 billion, up 40% in 6 years.<sup>5</sup>
- Universal Credit means less support for poor households with Council Tax.
- Many very low-income households are now required to pay Council Tax, for the first time, leading to more payment default, more quickly than ever.

Much of the arrears / debt collection legislation that public bodies rely on assumes that people *won't* pay, rather than that they genuinely *can't* pay. Public bodies are incentivised to use bailiffs as the cost is now passed on to the indebted person.

THE REALITY

The number of people imprisoned following non-payment of council tax in England and Wales								
National	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	
Number of Committals to Prison	111	116	98	110	86	65	106	
Number of Suspended Committal Orders	1,087	1,283	1,120	1,212	1,182	1,089	1,017	
Number of Suspended Committal Orders further Suspended	607	566	357	457	357	319	299	

Source: HMCTS management information  
 PQ: 113171

- In legal terms, these people have committed no crime – this is a civil process called a “commitment order”.
- Unlike for criminal tax fraud, they do not have the right to a jury trial or legal aid, except for a duty solicitor at court on the day, for a few minutes, if they are lucky.
- 5000 people a year are taken to court and threatened with prison – red letters / warnings arrive from an early stage of the enforcement process – “Do not ignore this letter – you may be committed to prison”.
- The great majority do pay, under this form of extreme threat, even if it means going without food or getting behind on other bills for essential services.
- Just imagine the mental health impact of being threatened with prison because you cannot pay your bills.
- Council tax enforcement is a postcode lottery – 180 out of 279 English local authorities did not take action, which could lead to imprisonment, at all <sup>6</sup>– latest figures from FOI (16/17).
- In 16/17, one Council (Bradford Metropolitan) was responsible for around 1 in 5 of all prison enforcement processes and prison commitment orders for the whole of England.
- A handful of councils were responsible for most of the use of this power. The great majority recognise, both for economic reasons (imprisonment does not raise more council tax than the alternatives) and for reasons of sound public policy, that sending vulnerable debtors to prison is not appropriate in 2019.
- Added enforcement costs can increase the amount owed through the roof – in one case a £700 bill had become £2100 due to fees and charges.
- In 2018, the High Court heard that, in some parts of the country, up to one in 5 commitment orders were being made unlawfully, because the magistrates did not apply the law properly (see below).
- Many orders are made “in absentia” without the person even being present in court.
- Council Tax enforcement has a disproportionate impact on women, including those who may need to flee their home, and enter a refuge, to escape from domestic

abuse. This is because women are more likely to have bills in their own names and even moving to a refuge does not remove the legal obligation to pay Council Tax on the home left behind.

## CASE STUDIES

The case of Melanie Woolcock led to the power to imprison for council tax debt being scrapped in Wales, in 2018, to leave England as the sole UK nation to retain the power.<sup>7</sup>

Other examples include a woman in her 40s from Kent, who asked to remain anonymous. She was committed to a closed women's prison for 90 days for a council tax debt of £2,684.28.<sup>8</sup>

She said:

*"They kept moving me from cell to cell, from one house block to another. I was scared every night in case I got stabbed."*

*"I'm still suffering to this day ... It makes you always look over your shoulder."*

## CRITICISMS

The High Court quashed Melanie's prison commitment order because it was made unlawfully, without a proper investigation of her finances and with no evidence that her non-payment was wilful. She did not have the means to pay, was suffering from mental health problems and was too ill to work. It would have taken her a decade or more to pay off the debts.<sup>9</sup>

The High Court's scathing conclusion was set out in this public judgment on the case:

## CONCLUSIONS

*38. The orders of 20 October 2015 requiring the Claimant to pay amounts of unpaid council tax in respect of properties at 1 Seagull Close and Precinct Rest Bay Porthcawl and fixing periods of imprisonment of 35 days and 50 days respectively in default of payment are unlawful. The magistrates' court failed to carry out a proper and adequate means inquiry as required by regulation 47 of the Regulations and were not in a position to determine if non-payment was the result of culpable neglect nor whether the orders were appropriate mechanisms for enforcing the debt. Further, the period of suspension was manifestly excessive and disproportionate. The committal to prison on 18 July 2016 was also unlawful as it was based upon non-compliance with the invalid orders of the 20 October 2015 and there was no evidential basis on which the magistrates' court could conclude that there had been culpable neglect in non-payment.*

Both the National Audit Office<sup>10</sup> and the Treasury Select Committee<sup>11</sup> have concluded that government lags behind private sector best practice, with TSC going further to call out local authorities' quick jump to use bailiffs.

## GOVERNMENT RESPONSE TO DATE

In April 2019, Rishi Sunak, the then Local Government Minister, announced changes to the guidance to councils on how they collect council tax debt, cautioning against the “unfair treatment of vulnerable people.”<sup>12</sup>

Such unfair conduct, the minister said, might include the use of bailiffs. Yet the minister made no mention of imprisonment. This raises a question: if it is unfair to use bailiffs to collect council tax debt, can it be fair to use the threat (and reality) of imprisonment to do so?

In May 2019, the Cabinet Office Fairness Group issued a public statement on public debt.<sup>13</sup> It said:

*People owe debt to government for a variety of reasons. Government takes seriously its responsibility to ensure that those people who can pay, do so on time, whilst providing proportionate support to vulnerable people and those in financial hardship.*

It also set out principles for the recovery of government debt. They include:

- *applying Fairness Principles to government debt management, in line with sector best practice*
- *balancing the statutory and societal obligations of government to collect debts and ongoing liabilities, and prevent fraudulent activity, with the need to ensure fairness*

This raises another question: how can imprisoning vulnerable people for council tax debt be consistent with those principles?

In June 2019, Mel Stride, the then Leader of the House of Commons, promised that the Government would consider changing the law<sup>14</sup> but the official position still remains that the power should continue to be available, with decisions on enforcement to be exercised by local authorities (letter from Rishi Sunak MP, then Minister for Local Government, to the author via his MP – June 2019):

The administration and enforcement of Council Tax is the responsibility of local councils and there are well established processes in place to assist them in the recovery of arrears. Councils will issue a final reminder, and the final notices for non-payment before seeking a liability order from the magistrates' court. This enables the council to arrange for money to be deducted directly from wages or benefits, or to arrange for bailiffs to take control of goods. Only once those avenues have been explored can a council consider whether to apply a magistrates' court to issue a warrant committing the debtor to prison.

Your constituent's petition refers specifically to the use of imprisonment. This should only ever be the last resort for non-payment of Council Tax. It is for magistrates' courts to decide whether a custodial sentence should be imposed, taking account of the particular circumstances in each case. Crucially, as you note, the courts can only send someone to prison if the court is satisfied that the reason for non-payment is due to the wilful refusal, or culpable neglect, of the individual. The number of people imprisoned for non-payment remains a tiny percentage of the number of Council Tax bills issues each year.

The Government recognises that at times residents, particularly those on low incomes, may face difficulties paying Council Tax, and would expect councils to act appropriately and proportionately towards those facing genuine hardship. The Government has issued guidance to councils on good practice, which can be found at:

[assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/210478/Guidance\\_on\\_enforcement\\_of\\_CT\\_arrears.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/210478/Guidance_on_enforcement_of_CT_arrears.pdf). I also recently announced plans to work with the sector to update this guidance and to make Council Tax collection fairer and more efficient, so that people are treated with compassion while services get the funds they need.

Some observations:

- The minister erroneously refers to a “custodial sentence”, implying that he believes council tax debt to be a criminal offence. It is not.
- The administration and enforcement of Council Tax may well be the responsibility of local authorities, but the regulations are given force of law through the Local Government Finance Act – legislation “owned” by the Ministry of Housing, Communities & Local Government.
- If MHCLG can see that a power, created under secondary legislation, is being utilised by local authorities in an arbitrary, unfair and oppressive manner, the minister must reconsider the propriety of that power remaining available at all.
- Issuing reminders and final notices fails to take into account the fact that someone in a vulnerable situation can have far bigger problems to deal with on an hour-by-hour basis, such as serious illness, childcare, the motivation to get up in the morning, get dressed, brush their teeth, deal with the heartbreak of losing a loved one or the stress of losing a job, or actually spend hours just trying to pluck up the courage to open the front door and go to the local shop.
- Liability Orders come after a court summons and add around £130 to the existing debt. The NAO found that intimidating actions and additional charges make debts 15% - 29% *harder* to collect. Companies in the commercial consumer credit market save an estimated £82 million a year by setting affordable repayment plans that break less frequently and therefore require fewer interventions
- The minister fails to acknowledge that many of the cases, dealt with by the courts, are not handled lawfully and result in the unlawful imprisonment of vulnerable people like Melanie Woolcock.
- The fact is that MHCLG guidance is just that – guidance. It can be and is being ignored routinely up and down the country. Only revocation of Paragraph 47 would ensure an end to this practice.

## CONCLUSION

1. *Regulation 47 of the Council Tax Regulations 1992* is secondary legislation and it is therefore within the discretion and power of a minister to revoke it, without the need for primary legislation.
2. This is an anachronistic, unfair, uneconomic and inhumane law and it must be revoked, to prevent further injustice to the poor and the vulnerable.

## ENDNOTES

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<sup>1</sup> Page 5, para 2, [NAO Tackling Problem Debt Report](#)

<sup>2</sup> Page 5, para 2, [NAO Tackling Problem Debt Report](#)

<sup>3</sup> ONS - [Making Ends Meet](#)

<sup>4</sup> Page 5, para 1, [NAO Tackling Problem Debt Report](#)

<sup>5</sup> <https://www.theguardian.com/money/2019/apr/12/council-tax-debts-soar-in-six-years-charities-warning-arrears>

<sup>6</sup> Institute of Money Advisers: <https://www.i-m-a.org.uk/other-services/social-policy/ima-payplan-council-tax-imprisonment-campaign/>

<sup>7</sup> <https://www.bbc.co.uk/news/uk-wales-politics-46061303>

<sup>8</sup> <https://www.theguardian.com/money/2019/apr/12/woman-jailed-council-tax-bill-she-could-not-pay>

<sup>9</sup> The full judgment can be found at - [https://www.bailii.org/cgi-](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2017/34.html&query=(melanie)+AND+(woolcock))

[bin/format.cgi?doc=/ew/cases/EWHC/Admin/2017/34.html&query=\(melanie\)+AND+\(woolcock\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2017/34.html&query=(melanie)+AND+(woolcock))

<sup>10</sup> Page 9, para 14, [NAO Tackling Problem Debt Report](#)

<sup>11</sup> Page 18, para 50, Treasury Select Committee, [Household Finances: Income, Saving & Debt](#)

<sup>12</sup> <https://www.gov.uk/government/news/government-pledges-to-improve-the-way-council-tax-debt-is-recovered>

<sup>13</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/799335/FairnessGroupJointPublicStatement\\_20190502.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/799335/FairnessGroupJointPublicStatement_20190502.pdf)

<sup>14</sup> Hansard HC Deb, 13 June 2019, c844