COLLECTING DUST

A path forward for government debt collection

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CSJ The Centre for Social Justice

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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 2020 and beyond, we will continue to advance the cause of social justice so that more people can continue to fulfil their potential.

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Acknowledgements

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The author, Joe Shalam (Head of Financial Inclusion and Housing), gives thanks for the time and expertise given so generously by members of the CSJ Financial Inclusion policy unit advisory board, Joanna Finlay (Virgin Money), Chris Quince (Barclays), John Pears (Lowell), Richard Lane (StepChange), Peter Cox (Contis), Duncan Parker (Fredericks Foundation), Ricky Wright (Vineyard Compassion), as well as to Rachel Gregory, Grace Brownfield, Jason Clarke, members of the CSJ team and many others who gave their time in support.

Special thanks, finally, to the inspiring CSJ Alliance charities we spoke to and visited in Oldham, Corby, Leicester, Melton Mowbray, Cardiff, Coleraine, Harlow and Bradford – many of whom are quoted in this report – for hosting us for focus groups and depth interviews between September 2019 and February 2020.

We would like to thank the sponsors of this report.

Errors remain the author’s and please note that recommendations made in this report do not necessarily reflect the views of those mentioned above.

Vineyard Compassion experiences first-hand the impact and cost of problem debt on individuals and their families.

Personally, I am delighted to recommend the proposals in this report, that would help ease the burden on families and also assist them in their journey out of debt.

Ricky Wright, Vineyard Compassion, Coleraine

We welcome these recommendations and any measures designed to reduce the pressure on individuals, and particularly families, who are living with debt and its severe consequences for family life.

Maggie Mackay, Home Start, Corby

We entirely endorse the findings of this CSJ report. Only a government level response can address the spiralling personal debt crisis across the UK. This report must be taken very seriously, and appropriate action taken promptly.

John Franks, Community Money Advice, Shrewsbury

Families are just about getting their sh*t together and then a 10-year-old debt is revealed to them without explaining what it is or why it is there.

It’s not fair. There’s no sense of “look, we know this is old and we made the mistake – let’s see what we can do”.

It’s all just “right, you owe £1,000s and we expect it in days”.

It sends families into turmoil.

Family worker, CSJ Alliance charity, Corby

Foreword

The full human cost of problem debt is often shrouded from view. But in my constituency surgeries, and during my time both as Education Secretary and Employment Minister, I have witnessed first-hand the immense strain it places on individuals and whole families.

The stress felt by parents which filters down to their children and hinders learning. The damage done to relationships, and to employment prospects. The way it can be both cause and consequence of alcohol and other substance abuse. The evidence is clear: problem debt is one of the key pathways to poverty, and it blocks pathways out.

Yet, as the Centre for Social Justice show in this important report, the nature of problem debt has mutated – and we must adapt our policy response accordingly.

I was a co-sponsor of the High Cost Credit Bill and supported the cross-party payday charter that followed it in 2013. This called for measures requiring the then £7.5bn payday loan and home credit sector to treat consumers more fairly and stop high-cost lenders from taking advantage of those in financial trouble. The Government (and FCA) responded to this with tougher rules that have been successful in clamping down on exploitative practices.

Though high-cost borrowing no doubt remains an issue, today we are seeing far fewer people caught in the recurring payday loan trap. But what we *are* seeing, as illustrated compellingly here by the CSJ, is that a much larger number (and indeed higher proportion) of problems reported to charities and support services are now in relation to debts owed to government authorities, rather than for consumer credit cards or loans.

I have been impressed by the improvements made to debt collection in much of the commercial sector, where it is now commonplace to see vulnerability and financial circumstances taken into account. Regrettably, these advances have not yet been mirrored by debt collectors in the public arena. There is a missed opportunity here. A pragmatic and sensible approach to debt collection can actually improve the rate of recovery, on the basis this may need more time and appropriate adjustment along the way.

One of the CSJ's findings strikes me as particularly concerning: it is local authorities who are the nation's largest commissioner of bailiffs, on whom councils remain reliant to collect debt. Meanwhile, the rules governing council debt collection mean that families struggling to pay the bills have their debts rapidly inflated by further fees and charges. Even so, there is more for central government departments across Whitehall to be doing to bring debt collection practices up to par. Tragically too often, the current approach can actually *worsen* the initial debt issue rather than offer a sustainable path forward. This must change.

There will be much public policy focus in the months ahead on the size of national debt as we fuel our economy in response to the global COVID-19 pandemic. But we must also be conscious of how we deal with the £13.5bn mound of personal debt owed to government so that people in already challenging circumstances are supported, while fairness for the taxpayer is maintained.

The CSJ's intervention is thus both significant and timely. With the nine million people in problem debt sadly set to grow, the Government should seek to provide more people with a route out as part of its noble mission to spread opportunity and level up the UK. Usefully, the proposals to overhaul public sector debt collection through a Government Debt Management Bill outlined herein offer both an ambitious and credible path forward.

Rt Hon Damian Hinds, MP for East Hampshire
Secretary of State for Education, 2018–19
Minister of State for Employment, 2016–18

Executive summary

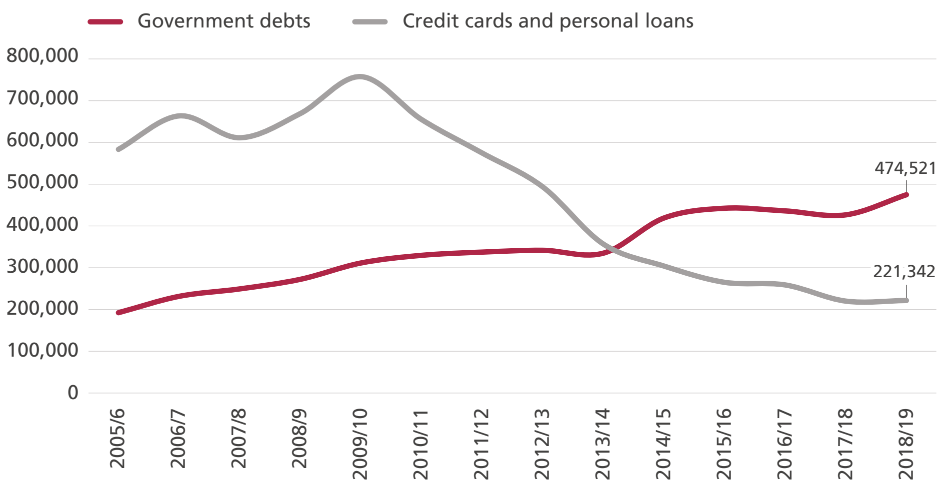
Problem debt ruins lives. Yet thousands of people today remain caught in its grip. Nine million people in the UK are estimated to be 'over-indebted', defined by the Money and Pensions Service as missing either debt repayments or domestic bills in any three of the past six months.[1] Some 3.3m people are mired in even more 'severe' forms of problem debt.[2]

Yet in recent years we have seen a remarkable rise in the number of people presenting to charities and support services with problematic debts owed to government authorities (rather than consumer debts for, say, credit cards or personal loans). This quickly became apparent in recent focus group sessions we ran with the clients and staff of grassroot charities across the UK.[3] As one debt advisor told us:

> We've had quite a major shift in the client base and the types of debts they had. Council tax arrears are virtually on every client we have … Previously they would have been things like doorstep lenders and payday loans.
>
> **Debt advisor, CSJ Alliance charity, Leicester**

To gain a better understanding of the changing prominence of different types of problem debt, we conducted a new analysis of Citizens Advice data. The findings are stark. Our analysis reveals that in 2018–19 there were a total of 474,500 government debt issues reported,[4] compared to 221,300 issues relating to credit cards and loans (see Figure ES1).

Figure ES1: Debt issues reported to Citizens Advice



Source: CSJ analysis of Citizens Advice data

Footnotes 1–4 can be found on p. 8

Indeed, around 42 per cent of debt problems reported to Citizens Advice in 2018–19 related to debts owed to the government or other public bodies.[5] This has doubled from 21 per cent in 2010–11. By comparison, issues relating to consumer credit debts fell from 57 per cent to 32 per cent over the same period.

At a more granular level, the national debt charity StepChange found that council tax arrears were the single most common debt for the 635,000 new clients who contacted them in 2019.[6] An estimated 2.2m households are estimated to be in council tax arrears today.[7] And callers to National Debtline with benefit and tax credit overpayment issues (another key type of government debt) rose from three per cent of callers in 2010 to 16 per cent in 2018.[8]

Though the Government has clearly made significant progress in clamping down on exploitative high-cost lending, unsecured borrowing remains a serious issue in the UK. Yet the rising prominence of problematic government debts is of particular concern because the consequences for those unable to pay are much more severe. In debt advice language these are therefore categorised as 'priority debt'. A new CSJ analysis of departmental accounts finds the total outstanding personal debt owed to government authorities (including council tax and rent arrears, magistrates' court fines and benefit overpayments) to be as much as £13.5bn.[9]

Meanwhile, evidence gathered in this report demonstrates that government debt collection continues to lag significantly behind that of the private and regulated sector. Advances in private sector debt collection show that proportionate and individually tailored repayment plans can both provide a sustainable 'route out' for those in debt while maintaining rates of recovery (albeit over a longer period). Yet, as we shall see, many government authorities continue to pursue debt using outmoded methods which not only represent poor value for money but actually *worsen* existing debt issues.

This must change – for the impact of unmanageable debt can be devastating. Analysis of the national Adult Psychiatric Morbidity Survey suggests that 100,000 people in problem debt attempt suicide each year.[10] Fundamental aspects of life are harmed, such as healthy

1 Money and Pensions Service (MaPS), Over-Indebtedness, 2018. Note: this is before we have accurate data to capture the fallout of the COVID-19 pandemic. See Box ES1 on p. 9.

2 The national debt charity StepChange define 'severe problem debt' as people exhibiting three or more signs of financial difficulty, including: making minimum repayments on credit commitments for three months or more; falling behind on essential bills, using credit to pay essential bills; using credit to keep up with credit commitments; using credit to make it through to payday; getting hit with overdraft or late payment charges on a regular basis.

3 Between September 2019 and February 2020 we visited CSJ Alliance charities (including family, health, homelessness and debt organisations) in Oldham, Corby, Leicester, Melton Mowbray, Cardiff, Coleraine (Northern Ireland), Harlow, Bradford, and Peckham.

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

5 Hereby referred to as 'government debts'.

6 StepChange, *Statistics Yearbook,* 2020

7 Citizens Advice, *Council tax debt collection isn't efficient or effective*, 2019

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

9 CSJ analysis of DWP Accounts 2018–19, HMRC Accounts 2018–19, MHCLG Collection rates and receipts of council tax 2018–19, MHCLG Local authority housing statistics 2018–19, MoJ Criminal court statistics quarterly (most recent). Note that this analysis does not capture welfare debts for which there is not public data and excludes debts owed to HMRC relating to self-assessed income taxes, which relate primarily to business activity rather than personal debts.

10 Money and Mental Health Policy Institute (MMHPI), *A Silent Killer*, 2018

family relationships and employment prospects.[11] And yet the impact of unmanageable debt touches all of society, its fallout accumulating social and economic costs of £8.3bn in lost jobs, reduced productivity, and homelessness.[12]

In this report, we argue that the Government should take the opportunity of a number of ongoing cross-departmental reviews and planned legislative changes to fundamentally overhaul its practices through a Government Debt Management Bill. This would bring government debt collection up to speed with the private sector and provide many more of those drowning in problem debt with a sustainable route out.

Box ES1: A note on COVID-19[13]

The outbreak of COVID-19 has brought the UK – and indeed the world – into uncharted territory. We have not yet seen the full scale of the pandemic, nor can we know the long-lasting consequences for our collective health, economy and society. But sadly the UK is already experiencing job losses on a scale not seen since the financial crisis, particularly among workers in the sectors hit hardest by the ongoing economic shock.

This has profound implications for individual and household debt. For the five million employees and 1.2m self-employed workers in pubs, hotels, restaurants and shops (as well as cleaners, airlines and hairdressers), pay is already £170 less per week than the average worker.[14] While an alarming 39 per cent of all working-age households in employment have no savings, workers in these sectors are 25 per cent more likely to have no money to fall back on.[15] Low levels of financial resilience mean that many will fall into (or indeed further into) arrears, and will seek to borrow more money to soften the financial blow of the crisis.

It is critical, perhaps now more than ever, for the collection of debt to be carried out in a way which does not exacerbate either the ongoing economic crisis or the social damage caused by the outbreak. The CSJ warmly welcomes the Government's rapid response, which includes temporary debt relief measures in both the welfare system and across local government.[16]

But over the medium-term it must go further. In this report, we propose a package of reforms which the Government should adopt once the temporary measures introduced during the crisis have lapsed.

Government debt collection lags behind advances in the private sector

Despite the increasing numbers of people presenting with problematic government debts, the public sector has failed to keep pace with the range of advances made in private sector debt collection. Evidence submitted to the CSJ from debt organisations

11 Citizens Advice, *A Debt Effect?*, 2016
12 StepChange, *Cutting the Cost of Problem Debt*, 2014
13 Correct at time of publication.
14 Office for National Statistics (ONS), Average Weekly Earnings, 2020
15 CSJ analysis of DWP, HBAI, 2020 ; Resolution Foundation, *Doing What it Takes*, 2020
16 Debt repayments in Universal Credit have been suspended temporarily and local government has suspended all bailiff activity in line with the social distancing guidelines, though there remain reports of improper bailiff activity continuing or taking alternative forms. See: 'Council tax bailiffs carried on visits despite coronavirus distancing rules', *The Times*, 30 Mar 2020

and charities suggests that collection practices in the private sector (including financial services, utility companies and debt collection agencies) look very different today than they did ten years ago.

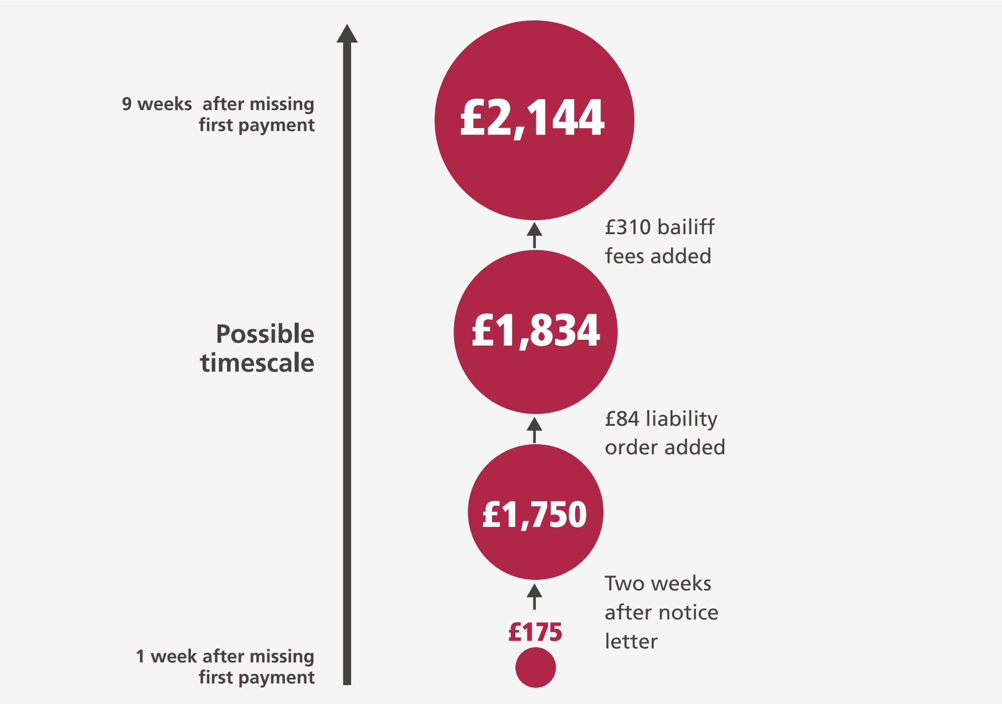
As one respondent put it, 'debt collection practices in the commercial sector have changed dramatically … [f]rom engagement with the money advice sector, to how they communicate with customers, attitudes towards people in vulnerable circumstances, and affordability assessments for repayment plans,' debt collection methods have become more sophisticated, with reform galvanised by the establishment of the Financial Conduct Authority (FCA) and its Treating Customers Fairly guidelines.[17] But it has also been shown by the advances made that taking a pragmatic and sensitive approach to low-income and vulnerable debtors need not reduce the rates of recovery, on the understanding that in some cases debts may need longer to be repaid. Indeed, consumer credit companies *save* an estimated £82 million annually by setting affordable repayment plans which require fewer interventions and offering wider support to debtors.[18]

Multiple governments have redoubled efforts to collect debt, directing close attention to both their methods and outcomes. While a number of organisations and official investigations have examined the government's approach, the findings are rarely complimentary. In 2014 the National Audit Office (NAO) criticised government for failing to have 'published an overall debt strategy that clearly states its objectives, performance measures and targets for debt management.'[19] More recently, the Treasury Committee judged government debt collection to be 'uncompromising' compared to private sector practice.[20] The NAO later concluded in 2018 that 'Government lags behind'.[21]

Yet the findings presented in this report reveal that this sadly remains the case. Take two key examples. Council tax debts, as mentioned, represent one of the most common issues seen by debt advisors, with outstanding council tax arrears standing at £3.2bn.[22] Councils widely use measures in the Council Tax (Administration and Enforcement) Regulations 1992, which entitle them to rapidly escalate one missed council tax payment into an annual bill.[23] Within nine weeks, households struggling to meet the average Band D payment of £175 can therefore become liable for a £1,750 payment, before being subject to a range of additional and punitive charges which serve to exacerbate the initial debt issue.[24]

17 Citizens Advice, in evidence to the CSJ
18 Baker Tilly, *Social Impact Evaluation*, 2014
19 NAO, *Managing debt owed to central government*, 2014
20 House of Commons Treasury Committee, *Household finances: income, saving and debt*, 2018
21 NAO, *Tacking Problem Debt*, 2018
22 Ministry of Housing, Communities and Local Government (MHCLG), Collection rates and receipts of council tax, 2019
23 The Council Tax (Administration and Enforcement) Regulations 1992
24 PayPlan, *Keeping Court for the Last Resort*, 2019

Figure ES2: Possible escalation of council tax debt



Note: Circles are not proportional.

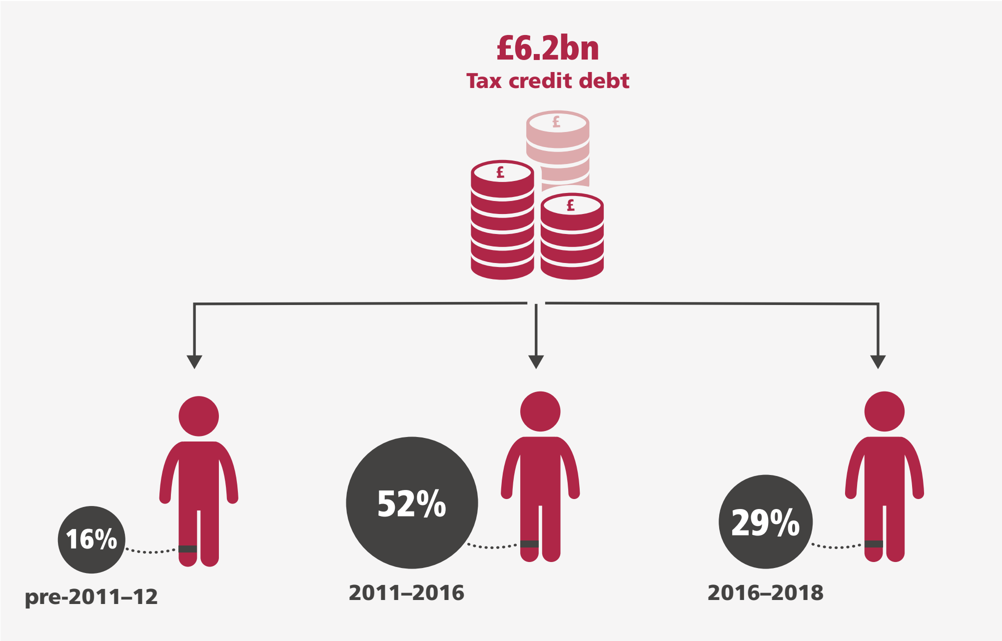
Councils' growing reliance on bailiffs to enforce debts has made them the largest user of bailiffs in the country today (referring on 2.6m debts in 2018–19).[25] Yet this remains an ineffective and costly approach. For every £1 of debt referred only 27p is returned.[26] Meanwhile, this activity puts downward fiscal pressure on a wide range of support services due to the proven negative effects of enforcement, not least the stress and anxiety it causes those already in vulnerable or financially difficult circumstances.[27]

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

As has been noted recently by the former Work and Pensions Secretary Sir Iain Duncan Smith, this is old debt that should never have been arranged for transfer – 61 per cent of it is more than three years old, and as much as 12 per cent is older than 2011.[28] Yet significant deductions will continue to be made to new claimants' awards without these being subject to affordability assessments or attempts to understand the personal circumstances of the debtor (in stark contrast to standard practice in the private sector).

25 MAT, *Stop the Knock*, 2019
26 Citizens Advice, *Council tax debt collection isn't efficient or effective*, 2019
27 The National Audit Office found that additional charges (such as the liability orders or bailiff fees) made it 15 to 29 per cent 'more likely to make debts harder to manage', increasing levels of depression and anxiety in the process. See: NAO, *Tacking Problem Debt*, 2018
28 APPG on Universal Credit, *What needs to change in Universal Credit?*, 2019

Figure ES3: The burden of historical tax credit debt



The Government has made excellent progress – but this remains piecemeal

Despite the clear and ongoing disparity between the advances made in private sector debt collection and the public sector, we should recognise the progress that has been made in a number of areas.

The Cabinet Office's Fairness Group has moved the issue of government debt collection up the political agenda and established a set of Fairness Principles based largely on the FCA's Treating Customers Fairly guidelines (see Appendix). A handful of councils have since abandoned the collection methods of the past, while the Ministry for Housing, Communities and Local Government (MHCLG) is reviewing local government debt collection nationally. Similarly, a (long-awaited) consultation response is being drawn up by the Ministry of Justice (MoJ) to build on reforms for bailiffs that were introduced in 2014.

At the Department for Work and Pensions (DWP) the rate at which benefit deductions can be applied has been reduced: first from 40 per cent of a 'standard allowance' to 30 per cent and, as announced in the Budget, to 25 per cent from 2021. Finally, the Government has committed to introducing statutory 'Breathing Space', as proposed by the CSJ in 2017 – a substantial legal measure giving relief to people in problem debt while they receive debt advice and address the issue.

These are all extremely positive signs, yet meaningful change and good practice remains all too reliant on the whim of individual departments, debt teams, specific debt drives or indeed individuals. Reform where it *has* occurred has been piecemeal, inconsistent and very rarely embedded in legislation (though often held back by it).[29]

Even so, these pockets of progress can provide the foundations for reform. Indeed, we argue that the ongoing reviews, suspensions to both local government and welfare debt recovery, as well as the pencilled-in parliamentary time for statutory Breathing Space, should be used to overhaul cross-government debt collection and bring it rapidly up to speed.

Recommendations: a path forward for government debt collection

To achieve this, we propose a Government Debt Management Bill.

The Bill would put the Fairness Principles on a statutory footing, embed an updated approach to debt collection across government and amend the existing legislation that has inhibited reform. A Government Debt Management Bill should be introduced which adopts the following measures:

Recommendation 1: Embed fairness across all of government debt collection

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

Following a short consultation, update the new Fairness Principles with the most recent advances in debt collection best practice, including novel methods of communication and engagement while ensuring that the regulation is 'future-proofed' to allow for advances in managing the debt of vulnerable customers. The consultation should adopt the FCA's Treating Customers Fairly guidelines as a baseline to build on, and draw from the Credit Services Association's Code of Practice.

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

- When a department or public body learns that a debtor owes multiple government debts, they should be referred to the Cabinet Office debt aggregator, whose Debt Management Function (DMF) should then collect the appropriate information from the debtor using the Standard Financial Statement (SFS). The Cabinet Office DMF should then broker an agreement between all departments involved to establish a sustainable repayment plan given the debtor's circumstances, while maximising the their potential income (including through benefit take-up and a referral to wider support where appropriate).[30] Independent debt advice may still be needed to factor in private sector debts (see below).

29 See below, p. 39, for the argument made by some councils that the Council Tax Regulations 1992 actually *mandate* the rapid escalation of debts.

30 This would be complemented by the expansion of Universal Support. See a forthcoming CSJ report.

- The new Fairness Principles and vulnerability policies required of each department and government body should incentivise individual debt teams to 'refer up' complex cases and multiple debts to the centralised debt aggregator as these become known.

Adopt the Standard Financial Statement across all government departments and bodies as an objective means of assessing the affordability of debt repayments. The inclusion of government debts will mean that the Standard Financial Statement will need to be updated by the Money and Pensions Service accordingly, in order to reach an agreement on the proportion of available disposable income going to government bodies vs. private creditors.

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

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

Recommendation 2: Transform local government debt collection

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

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

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

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

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

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

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

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

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

Recommendation 4: Transform debt collection in the welfare system

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

- The remaining portion of the tax credit debt should be retained by HMRC, and its recovery should be modelled on the student debt system where individuals only begin to pay it back in installments when their earning reach a specific threshold. At the end of the temporary suspension of welfare debt repayments, the Government should review how high it wishes to set this threshold, given the trade-off between reduced work-incentives and the recovery of old debt. Writing off old tax credit debt could, after all, have a profoundly positive impact on the rollout of Universal Credit and prevent hundreds of thousands of families having 25+ per cent of their standard allowance deducted due to debts resulting from issues with the legacy benefits system.

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

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

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

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

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

Introduction

The Centre for Social Justice (CSJ) has long held that serious personal debt represents one of the key pathways to poverty. We have published extensively on the need to address exploitative lending practices and improve financial capability, resilience and inclusion across the UK.[31] Our 2017 report, *Creating a Society Free of Serious Personal Debt*, led to the adoption of statutory 'Breathing Space' as (soon to be introduced) government policy.[32] And in 2019, the CSJ established a permanent Financial Inclusion Policy Unit to reinvigorate the fight against problem debt and the most pernicious forms of exclusion which hold people back.

For the nature of problem debt has changed – and is *changing*. As we show in this report, recent years have seen a remarkable rise in the number of people presenting to charities and support services with problematic debts owed to government authorities (rather than, say, consumer debts for credit cards or personal loans). Issues with the repayment of council tax arrears, benefit (and historical tax credit) overpayments – and, increasingly, parking fines – are a fact of life for millions of people caught in problem debt. Yet critically these debts are made much worse by the outmoded and ineffective debt collection practices still widely used by the range of government authorities collecting debt today.

This stands in sharp contrast to debt collection practices in the private sector which, as we have learned from a range of debt charities and advice organisations, have changed dramatically over the last decade. Advances made in affordability and engagement – galvanised by regulations installed by the Financial Conduct Authority – show that taking a pragmatic and sensitive approach to low-income and vulnerable debtors need not reduce the rates of recovery, on the understanding that debts may need longer to be repaid.

The appearance of problem debt may well be changing, but its impact is no less potent. Whether it is mental health, personal relationships or employment prospects, unmanageable debt causes untold harm to individuals and families, with wider economic costs to society. Given the growing prominence of problematic 'priority debts' owed to the government, it is vital that lessons are learned from the private sector and the Government tackles this issues head on its mission to level up the UK.

In this report we explore these issues and offer a comprehensive path forward. First, we present a new analysis of the changing prominence of different types of problem debts, as well as the range of government debts involved. Second, we look at the various improvements made in private sector debt collection and investigate the methods used by the main government debt collectors. Finally, we argue that the Government should

31 See, for example, CSJ, *Maxed Out,* 2013 and *Future Finance*, 2015
32 See below, p. 59–60

expand the scope of several ongoing departmental reviews and planned legislative changes to fundamentally overhaul government debt collection through a Government Debt Management Bill. This would bring government debt collection in line with the private sector and provide many more of those drowning in problem debt with a sustainable route out.

chapter one

A growing problem: debts owed to government

1.1 Problem debt in the UK

Problem debt ruins lives. Yet thousands of people today are caught in its grip. Well before the onset of the COVID-19 pandemic, nine million people in the UK were estimated to be 'over-indebted' – defined by the Money and Pensions Service as missing either debt repayments or domestic bills in any three of the past six months.[33] And some 3.3m people were estimated to be mired in even more 'severe' forms of problem debt.[34]

Much of this is debt is drawn from consumer credit – for example, debts accumulated through the use of credit cards or personal loans. The latest Bank of England figures show total outstanding consumer credit debt amounting to £225.1bn, with £71.9bn of this on credit cards.[35] Revealingly, it is low-income households who have seen the fastest rise in the use of consumer credit since the financial crisis.[36]

Box 1: A note on COVID-19

The Coronavirus outbreak has brought the UK – and indeed the world – into uncharted territory. We have not yet seen the full scale of the pandemic, nor can we know the long-lasting consequences for our collective health, economy and society. But sadly the UK is already experiencing job losses on a scale not seen since the financial crisis, particularly among workers in the sectors hit hardest by the ongoing economic shock.

33 Money and Pensions Service (MaPS), *Over-Indebtedness*, 2018
34 The national debt charity StepChange define 'severe problem debt' as people exhibiting three or more signs of financial difficulty, including: making minimum repayments on credit commitments for three months or more; falling behind on essential bills, using credit to pay essential bills; using credit to keep up with credit commitments; using credit to make it through to payday; getting hit with overdraft or late payment charges on a regular basis.
35 Bank of England (BoE), Table A5.6, 2020
36 Resolution Foundation, *An Outstanding Balance?*, 2020

This has profound implications for individual and household debt. For the five million employees and 1.2m self-employed workers in pubs, hotels, restaurants and shops (as well as cleaners, airlines and hairdressers), pay is already £170 less per week than the average worker.[37] While an alarming 39 per cent of all working-age households in employment have no savings, workers in these sectors are 25 per cent more likely to have no money to fall back on.[38] Low levels of financial resilience mean that many will fall into (or indeed further into) arrears and seek to borrow more money to soften the financial blow of the crisis.

Of course, debt is not intrinsically problematic. Used well it can be transformative for individuals and families – a mortgage on a home being an obvious example of borrowing to invest in a stable future. But when consumer debts spiral out of control, they can have profoundly harmful consequences for households, including poor mental health, relationship breakdown and unemployment (as well as long-term legal and financial ramifications).[39] This is despite consumer debt being, on the whole, 'unsecured'.

Secured debt is a loan secured on an asset which serves as collateral. This means that if the person borrowing the money cannot repay it, the creditor will then be able to take possession of the asset. The most obvious example of secured lending is mortgages.

Unsecured debt is lending provided to individuals that is not secured on an asset. Credit card lending is the most prominent example. Personal loans, student loans and loans from payday lenders also come under this category.

However, while high-cost borrowing remains a serious issue in the UK, a concerning development in the ecosystem of problem debt in recent years has been the rise in the number of people struggling with debts owed to government authorities. Naturally, problematic consumer and government debts are often interlinked. As respondents to the CSJ's call for evidence emphasised, when households are 'maxed out' on consumer credit, their ability to borrow to pay for household bills (e.g. council tax) is reduced, which can mean going into arrears or struggling to afford ongoing benefit repayments. But the rising prominence of problematic government debts is of particular concern because the consequences for those unable to pay are much more severe. In debt advice language these are therefore categorised as 'priority debts'.

Priority debt is given the name by debt advisers because the consequences of not paying them are more serious and immediate. 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.

Secondary debt has fewer immediate consequences if it is not possible to pay, though these are still serious. Secondary 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.

37 Office for National Statistics (ONS), Average Weekly Earnings, 2020
38 CSJ analysis of DWP, HBAI, 2020; Resolution Foundation, *Doing What it Takes,* 2020
39 See, for example, Financial Conduct Authority (FCA), *Consumer credit and consumers in vulnerable circumstances*, 2014

In this chapter we trace the increasing number of problematic debts owed to government authorities in recent years, exploring the range of authorities and main types of debt involved.

1.2 The rise of problem debts to government authorities

There are a range of different types of debts owed to government authorities, including arrears on bills as well as in the form of fines and benefit repayments. These are spread across many departments and public bodies. In a drive to increase debt recovery, the Coalition Government found there to be as many as 17 central government departments with debts owed to them; however, there are as many as 500 different public entities with debts owed to them.[40] Table 1 shows the key types of government debts and the department or public body to which they are owed.

Table 1: Key types of personal debt owed to government authorities

Type of debt	Government authority
Council rent arrears	Local authority
Housing benefit and council tax benefit overpayments	Local authority
Council tax arrears	Local authority
Parking fines	Local authority
Benefit overpayments (including overpayments of working and child tax credits; of income support, job seekers allowance, and employment support allowance; of universal credit; and of other benefits)	Department for Work and Pensions, HM Revenue and Customs
Social fund debts	Department for Work and Pensions
Arrear of income tax, VAT or NI contributions[41]	HM Revenue and Customs
Maintenance and child maintenance arrears	Child Maintenance Service
Magistrates court fines and compensation orders	Magistrates' court

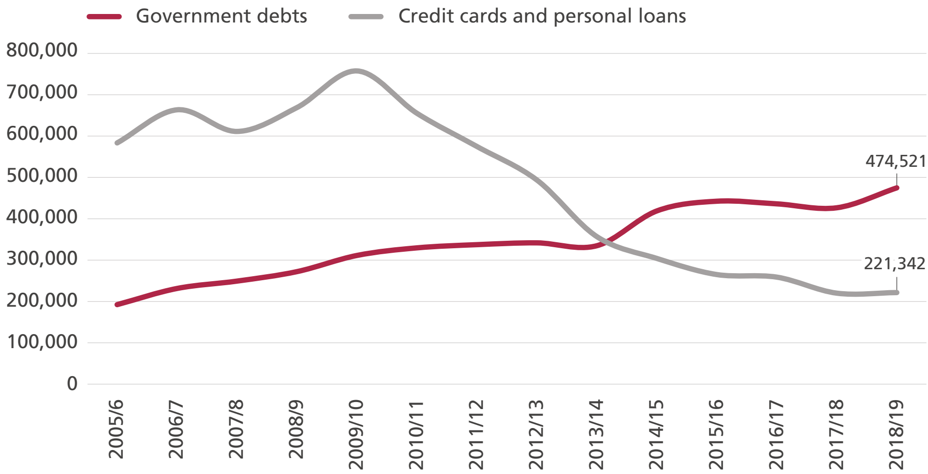
Despite (and perhaps due to) this complexity, there is no official measure that captures and combines the overall level of debt owed to government authorities. This is unlike consumer debt, which is collated and measured by the Bank of England. However, the growing prominence of problematic government debts is strongly suggested in the evidence gathered by debt charities, helplines and advice services. This evidence also gives a sense of the specific government debts people are most commonly struggling with.

The CSJ conducted a new analysis of Citizens Advice data to explore the changing prominence of different types of debt issues reported by service users. We found that issues relating to government debts have risen dramatically, while those relating to consumer credit issues (such as personal loans and credit cards) have fallen since their

40 According to the Government Debt Management Function, CSJ roundtable meeting, March 2020
41 These are included here for reference even though they relate primarily to business debts.

peak following the financial crisis. Our analysis shows that in 2018–19 there were a total of 475,000 government debt issues reported,[42] compared to 221,000 issues relating to credit cards and loans.[43]

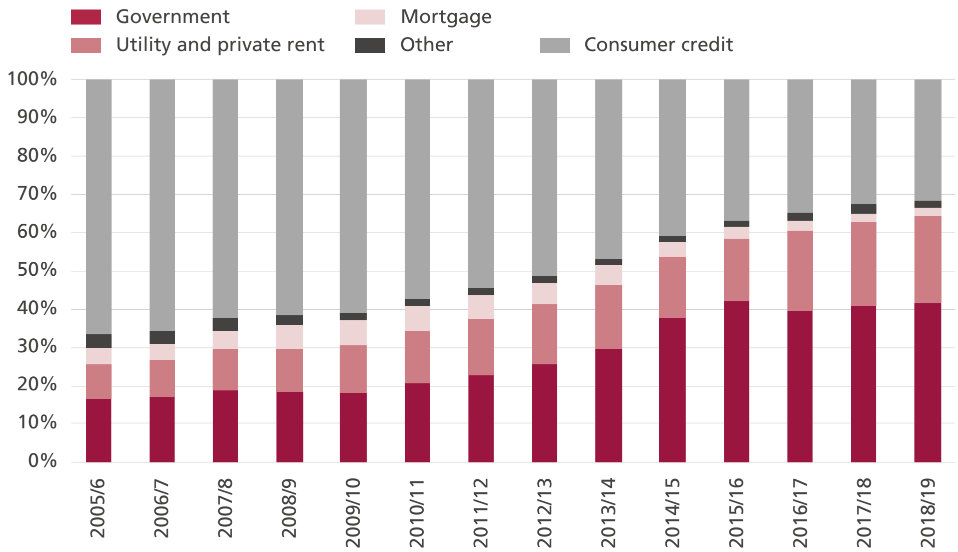
Figure 1: Debt issues reported to Citizens Advice



Source: CSJ analysis of Citizens Advice data

Indeed, around 42 per cent of debt problems reported to Citizens Advice in 2018–19 related to debts owed to government, having doubled from 21 per cent in 2010–11. By comparison, issues relating to consumer credit debts fell from 57 per cent in 2010–11 to 32 per cent in 2018–19.

Figure 2: Proportion of debt issues reported (%)



Source: CSJ analysis of Citizens Advice data

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

43 CSJ analysis of Citizens Advice, Advice Trends data, debt issues, England and Wales. With thanks to Citizens Advice for supplying the dataset.

Table 2: Proportion of debt issues reported (%)

Debt issue reported	2010–11	2018–19
Government	21	42
Utility and private rent	14	23
Mortgage	6	2
Other	2	2
Consumer credit	57	32

Source: CSJ analysis of Citizens Advice data

The data also reveals changes in the number of reports made about government debt issues at a more granular level. Those relating to council tax arrears and benefit overpayments, the two most problematic types of government debts, have risen significantly (see Table 3).

Table 3: Government debt issues reported

Debt issue reported	2010–11	2018–19
Council tax arrears	169,000	245,000
Benefit and tax credit overpayments	58,800	80,100
Parking fine debt	14,800	32,000
Magistrates fines	29,000	36,000

Source: CSJ analysis of Citizens Advice data

Similarly, National Debtline, run by the Money Advice Trust, and which last year helped 199,000 people over the phone and webchat with debt issues, report a significant shift from people predominantly struggling with repaying borrowing on consumer credit, towards people struggling with a broader range of debts to government and household bills.

Callers with loan, credit card or overdraft issues fell from a peak of 71 per cent peak (during the height of the financial crisis in 2009) to 31 per cent in 2018.[44] Meanwhile, the proportion of callers with council tax arrears doubled from 15 per cent to 30 per cent in the same period.[45]

Over the past decade, the debt charity Christians Against Poverty (CAP) has, according to evidence submitted to the CSJ, seen a threefold increase in the average amount of 'priority debt' owed by clients seeking debt help (increasing between 2007 and 2018 from nine per cent to 38 per cent of average debt owed when seeking help). Multiple government debts are common among the highly vulnerable and low-income client base

44 MAT, *A Decade in Debt*, 2018
45 Ibid

CAP work with.[46] As many as one in two (49 per cent) of CAP clients now owe a debt to HMRC, DWP or their local authority, with over a quarter (26 per cent) owing more than two types of debt to government authorities.[47]

The StepChange debt charity found that council tax was the single most common debt for the 635,000 new clients who contacted them in 2019 (see Table 4).[48] Indeed, this has been the case for new clients since 2015. While 30 per cent of clients had arrears on their council tax bills in 2019, just 10 per cent did in 2010.[49]

Table 4: Arrears reported to StepChange

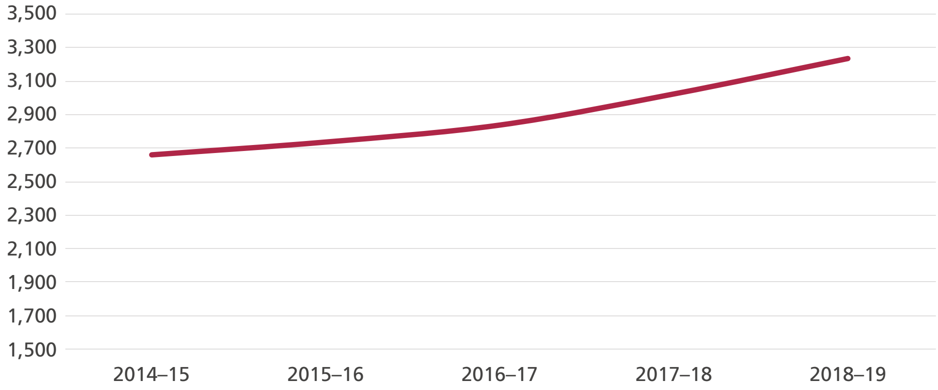
Household bill type	% of clients in arrears	Number in arrears	Average arrears amount
Council tax	30	66,302	£1,146
Water	24	48,961	£804
Rent	21	44,386	£1,084
Hire purchase	23	13,179	£990
Electricity	17	42,392	£825
Mortgage	17	7,810	£2,977
Secured loan	18	1,274	£3,154
County Court Judgements	18	55,93	£1,951
Gas	13	23,109	£611
TV license	8	16,569	£103

Source: StepChange, 2020

The late 2000s saw the emergence of 'payday lenders' which offered high-cost short-term credit (HCSTC) after many banks exited the subprime lending market following the financial crisis. Individual issues with high-interest lenders peaked in 2013, according to National Debtline, when 13 per cent of callers had at least one payday loan they were struggling to repay.[50] Since the Financial Conduct Authority's (FCA) clampdown on high-cost lending, through the introduction of a range of regulatory changes in 2015, the volume of calls from people reporting payday loan issues has reduced (although it remained at eight per cent of National Debtline callers in 2018).[51]

46 On average, CAP clients' household income is £1,030 a month.
47 CAP in evidence to the CSJ
48 StepChange, *Statistics Yearbook*, 2020
49 StepChange, *Council Tax Debt*, 2015
50 MAT, *A Decade in Debt*, 2018
51 Ibid

Figure 3: Total outstanding council tax arrears (£million)



Source: Ministry of Housing, Communities and Local Government, 2019

Meanwhile, debt charities, advice services, and CSJ Alliance grassroots organisations have all given evidence to the CSJ highlighting the profound growth of council tax debt issues among the low-income client bases they work with. Indeed, total outstanding arrears on council tax have grown significantly since 2014–15. The total amount of council tax still outstanding amounted to £3.2bn in March 2019, including arrears stretching back to the tax's introduction in 1993.[52] This represents an increase of £213m on 2017–18 (see Figure 3).[53] An estimated 2.2m households are behind on their council tax today.[54]

> Payday lenders are closing down rapidly, but there is a lot more rent arrears and eviction threats – and council tax arrears. The council tax system is completely broken.
>
> Money and debt advisor, CSJ Alliance charity, Peckham

> In recent years Community Money Advice has become increasingly concerned that the nature of our clients' debts has been changing. Ten years ago, arrears on credit cards and other unsecured loans were the primary causes of personal indebtedness; today, this has shifted heavily towards 'priority debts' such as rental and indebtedness to government (council tax being predominant).
>
> Community Money Advice, submitted in evidence to the CSJ

While the proportion of people contacting debt advice organisations about consumer credit debts has fallen, credit debts continue to be significantly larger than household arrears such as for rent and council tax. In 2017 callers to National Debtline owed on average £6,367 in personal loans, compared to an average of £832 for council tax. According to the charity, this development is in keeping with a key trends of the last decade which has seen debts become 'smaller, but trickier' – trickier because they are 'priority debts' with more immediate material consequences for failing to repay, as well as the debt collection practices explored in Chapter two.[55]

52 MHCGL, Collection rates and receipts of council tax and non-domestic rates in England 2018–19, 2020
53 Ibid
54 Citizens Advice, *The Costs of Collection*, 2019
55 MAT, *A Decade in Debt*, 2018

Benefit overpayment debt came up regularly in submissions taken by the CSJ and during our focus groups with the low-income clients and staff members of several grassroots charities in Corby, Leicester and Oldham.[56] A benefit overpayment is when a claimant receives an award for a larger amount than they should have received. Benefit overpayments occur for a range of reasons. This could be an error on the part of either the government authority issuing the award or the claimant; typically, overpayments have occurred due to changes in household circumstances (such as income, working hours or childcare costs) not being recorded or accounted for correctly in the system.[57]

Callers to National Debtline with benefit and tax credit overpayments rose from three per cent of callers in 2010 to 16 per cent in 2018.[58] The CSJ was informed that, second to council tax arrears, benefit or tax credit overpayments and Social Fund loans are the most common forms of government debt seen by Christians Against Poverty.[59]

Benefit overpayments have long been a feature of the welfare system. Indeed, they have accounted for roughly two per cent of all welfare expenditure for a decade. Overpayments have, nevertheless, increased significantly from £2.9bn in 2008–09 to £4.1bn in 2017–18, the joint highest recorded rate.[60]

With the recovery for tax credit overpayment debt transferring from HMRC to the DWP as people transition from Working Tax Credit (WTC) to Universal Credit (UC), the department's debt portfolio is expected to grow substantially in the years ahead. By the end of September 2018, £571m of tax credit debt had already transferred.[61] By 31 March 2019, this had risen to £1.0bn. DWP's 2018–19 accounts estimate that a total of £6.8bn of tax credit debt will have been transferred to the department by 2023.[62] Simultaneously, more people will experience significant deductions from their UC awards to repay historic tax credit overpayments (that is, the key source of overpayment issues).

At a household level, the most recent DWP data available indicates that there were 570,000 claimants repaying tax credit overpayments through deductions to their Universal Credit award in April 2019. The mean and median amount of tax credit debt outstanding for these claimants is £1,560 and £610 respectively, although there are many cases of claimants finding out they owe much larger sums often dating back over long periods.[63] Tax credit repayments have placed 'unacceptable' burdens of debt on people already suffering hardship, according to the Public Accounts Committee.[64] We return to these issues in detail in Chapter two.

A new CSJ analysis of the total personal debt owed to government authorities as a result of arrears or overpayments reached an estimated £13.545 billion in 2018–19 (see Table 5).

56 CSJ fieldwork. Focus groups and depth interviews with staff and clients at debt, family and health charities in Oldham, Corby, Leicester, Melton Mowbray, Cardiff, Coleraine, Harlow and Bradford between September 2019 and February 2020.

57 See: HMRC, Personal Tax Credits Statistics: Child and Working Tax Credits Error and Fraud Statistics 2017–18, 2019 and ONS, Fraud and error in the benefit system, 2019

58 MAT, *Stop the Knock*, 2019

59 Evidence submitted to the CSJ

60 DWP, Fraud and Error in the Benefits System, 2018/19 Estimates, 2019

61 House of Commons, Universal Credit: Written question 180797, 2018

62 DWP*, Annual Reports and Accounts 2018–19*, 2019

63 DWP, Volumes of Universal Credit claimants with tax credit overpayments, 2019

64 NAO, *Managing Debt Owed to Central Government,* 2014

Table 5: Outstanding personal debt owed to government authorities in 2018–19

Government debts	Estimated total (£m)
Council tax arrears	3,236
Benefit overpayments and advances (includes Social Fund)	2,500
Rent arrears to local authorities	398
Magistrates' court fines	1,208
Tax credit overpayments	6,203
Grand total	13,545

Source: CSJ analysis of DWP Accounts 2018–19, HMRC Accounts 2018–19, MHCLG Collection rates and receipts of council tax 2018–19, MHCLG Local authority housing statistics 2018–19, MoJ Criminal court statistics quarterly (most recent). Note that this analysis excludes debts owed to HMRC relating to self-assessed income taxes, which relate primarily to business activity rather than personal debts.

This is undeniably a significant amount of money. But behind the statistics lie real people's lives: individuals and families, many struggling to get by on low incomes and facing other forms of social disadvantage.[65] Collecting debt owed to the taxpayer is an important part of our social contract. Yet it is vital that this is carried out appropriately and effectively. Not least so that money is recovered in a sustainable and cost-effective way, but because the consequences of failing to provide people with a route out of problem debt can be devastating.

1.3 The need to provide a sustainable route out of problem debt

The drivers of problem debt are multiple and complex. Submissions to the CSJ made over the course of this research identified a range of factors, while emphasising that the complexity involved and the range of government debts 'make it difficult to draw causal links.'[66] Low wage growth over a prolonged period, rising housing costs, low levels of financial resilience, changing lending practices and employment patterns, welfare reform and limited budgeting skills were all advanced as reasons why people today are struggling with government debts. Increasingly, Coronavirus related job losses are likely to join these categories.

Evaluating the full range of factors which have driven people into the many different types of government debt lies beyond the scope of this report. Here, we aim to ensure that those struggling with government debts are provided with a route out, and that their situation is not exacerbated by outmoded debt collection practices – while recognising the need for fairness to the creditor which, with all government expenditure, means the taxpayer. For the alternative is poor mental health, strained relationships, reduced productivity and an increasing burden to our economy.

65 See, for example, the disposable income of debt clients seen by Citizens Advice in *The Costs of Collection*, 2019
66 MAT, Consultation Response: Centre for Social Justice Call for Evidence on government debt collection, January 2020

We should bear in mind the tragic case of Jerome Rogers. In a case which has been widely reported,[67] Jerome took his own life after two £65 fines for traffic offences escalated to more than £1,000 once bailiff fees had been added. The link between poor mental health and problem debt has been increasingly established by recent research. Using the Understanding Society dataset, one study found that people with unmanageable debt are 24 per cent more likely to have a mental health score in the bottom quarter of the population.[68] The 'two-way causation' involved positions poor mental health and unmanageable debt as dual parts of a vicious cycle. People with below-average mental health scores are over a fifth more likely to have debts, twice as likely to be behind on a household bill and nearly two thirds more likely to be behind on their council tax.[69]

People with problem debt are twice as likely to develop major depression as those not in financial difficulty.[70] Analysis of the national Adult Psychiatric Morbidity Survey by the Money and Mental Health Policy Institute suggests that 100,000 people in problem debt attempt suicide each year. As many as 420,000 are estimated to consider it.[71] These numbers are serious and require a proportionate reaction from policymakers, especially given the escalating numbers of people presenting with problematic government debts.

> People perceive government authorities as being there to support them and they are therefore surprised by the heavy-handed approach taken to recover money owed to them. The impacts for the debtor can also be profound, with much stress caused by collection efforts. CAP clients who owe money to government authorities are 41 per cent more likely to have considered suicide as a way out of debt, in comparison to those that do not owe this type of debt.
>
> Christians Against Poverty, submitted in evidence to the CSJ

> The Royal College of Psychiatrists says one in four people have mental health issues, and of those, one in four are in debt. So, you overlay that against the UK population, you come up with about 3.5m people with debt and mental health issues. The cost to the NHS of dealing with a non-complex mental health issue is £1,508. So that comes out to £5.3bn a year in costs to the NHS. And it's a £1,500 cost to the wider economy in terms of lost employment. So, we're looking at about £40 billion pounds there.
>
> CSJ roundtable participant on the economic costs of problem debt

Mental health is not the only area of life affected. The lack of a route out of problem debt can pose serious barriers to personal flourishing. Individuals in problem debt are less likely to start a business, to study or retrain, to move location or change jobs.[72]

Yet problem debt goes well beyond the individual. Family stability is also hit. More than half of respondents to a survey run by the Money and Pensions Service indicated that personal debt had had a negative impact on their family life.[73] Problem debt often remains a taboo which can undermine trust in a relationship. Some 47 per cent of StepChange

67 'Bullying bailiffs contributed to my son's suicide – we need to protect our most vulnerable', *ITV News*, 2018
68 Citizens Advice, *A Debt Effect?*, 2016
69 Ibid
70 Skapinakis P, Weich S, Lewis G, et al. 'Socio-economic position and common mental disorders: Longitudinal study in the general population in the UK', *British Journal of Psychiatry,* 2006
71 Ibid
72 Citizens Advice, *A Debt Effect?*, 2016
73 MaPS, *Indebted lives: the complexities of life in debt*, 2013

clients had a hidden debt from a partner.[74] It is not uncommon to hear from debt advice organisations that they have had clients 'where bailiffs arriving at the door was the first time they were aware of their partner's debts.'[75]

Naturally, the impact on individuals, families and communities flow outwards into wider society. A conservative estimate of the fallout of problem debt found that it leads to social and economic costs reaching £8.3bn annually in lost jobs, reduced productivity, the costs of people losing their homes and people relying more on support services.[76]

These social, economic and human costs should be intolerable to any government, and particularly one interested in social justice. As part of the Conservative Government's agenda to 'level up' and spread opportunity, those who are most struggling should be provided with a route out of problem debt and equipped with the tools needed to turn their situation around. A central part of this must be to ensure that debt collection is conducted fairly, effectively, and in a way which helps people to regain control.

Given the rising prominence of problematic government debts, the Government faces the unenviable task of ensuring that collection is proportionate and supportive of the debtors involved, while balancing the need to recover money owed to the taxpayer. Advances in the private sector show that this is eminently achievable. However, evidence explored in Chapter two suggests that in the public sector context this remains far from being realised.

74 Relate, *In Too Deep*, 2017

75 Ibid

76 According to social impact analysis conducted by Baker Tilly and commissioned by StepChange, *Cutting the cost of problem debt*, 2017

chapter two

Government debt collection is stuck in the past

> There was a time, quite a while ago now, when debt collection was all about cash collected and not much else. I don't mean it was about baseball bats and leather jackets, but the focus was very much on the numbers … However, attitudes have changed a lot over the years … it is now the norm with both the ethical and business case being recognised. We're in a different world.
>
> Peter Wallwork, Chief Executive of the Credit Services Association

> … I'm pushing forward work to make the Council Tax collection system fairer and more efficient – so people are treated with compassion while services get the funds they need.
>
> Rt Hon Rishi Sunak MP, then Local Government Minister

> The public sector should be leading by example in their treatment of the most financially vulnerable; but the current approach risks driving them further into difficulty
>
> House of Commons Treasury Committee

2.1 The need to collect debt

Improving the collection of outstanding debts owed to the government has been an aim of multiple administrations. Pointing towards some £20bn worth of debt then owed, in 2012 the Coalition Government launched a significant programme of debt recovery. Announcing the Fraud, Error and Debt Taskforce, the Minister for the Cabinet Office outlined a partnership with the Behavioural Insights Team to 'encourage greater compliance' and put debt collection firmly 'on the agenda', in contrast to what was perceived as a more relaxed attitude under the previous Labour Government.[77] In 2016 the Cabinet Office updated this approach with a new cross-government debt management strategy, including a revised vision, set of aims and principles for debt teams across Whitehall.

77 Cabinet Office, 'Tackling debt owed to Government – speech', 2012

Multiple governments' efforts to collect debt have attracted close attention to both their methods and outcomes. A number of organisations and official investigations have examined the government's approach. The findings are rarely complimentary. In 2014 the National Audit Office (NAO) criticised government for failing to have 'published an overall debt strategy that clearly states its objectives, performance measures and targets for debt management.'[78] More recently, the Treasury Committee judged government debt collection to be 'worst in class', compared to private sector practice.[79] The NAO later concluded in 2018 that 'Government lags behind'.[80]

But it is important to consider the balance government must strike between collecting debts in the name of fairness for the taxpayer (and as a deterrent to non-payment), while also recognising the vulnerability of some of our poorest individuals and families. As we shall see, these do not have to be mutually exclusive: debt collection in a regulated context has repeatedly shown that not only it is possible to effectively collect debt while accounting for debtors' vulnerabilities and personal circumstances, but that the latter serves the former.

In this chapter we examine government debt collection comparatively, finding that all too often it remains stuck in the past – neither learning from recent advances in private debt collection nor providing individuals and families in problem debt with a route out.

2.2 Lessons from the private sector: the rise of 'ethical' debt collection

After the 2008 financial crisis, the retail banking and financial services sector came under heavy scrutiny for irresponsible lending and consumer debt management practices. The Financial Conduct Authority (FCA) was subsequently introduced in 2013 to regulate the financial services industry. As part of this, the FCA absorbed the Office of Fair Trading (OFT) and was given bolstered powers to both supervise and regulate the collection of consumer and retail debts.[81]

The FCA sets out how customers in debt must be treated by authorised debt collection firms in the in the *Arrears, Default and Recovery* section of the Consumer Credit Sourcebook (CONC 7).[82] This guidance applies to both lenders of consumer credit and firms collecting debt, and sits within the overarching context of Principle 6 of the FCA handbook – 'a firm must pay due regard to the interests of its customers and treat them fairly'.[83]

Regulated firms are required to 'establish and implement policies and procedures for the fair and appropriate treatment of particularly vulnerable customers.'[84] This includes proactively engaging debtors using clear and transparent communications and ensuring affordable and sustainable repayment plans are agreed. Firms are also required to be proportionate in their use of recovery tools. This means, for example, prioritising home

78 NAO, *Managing debt owed to central government*, 2014
79 HoC Treasury Committee, *Household finances: income, saving and debt*, 2018
80 NAO, *Tacking Problem Debt*, 2018
81 The FCA does not, however, regulate the collection of utility debts, such as energy bill arrears, or telecom provider debts, which are covered by Ofgem and Ofcom respectively.
82 FCA, CONC 7, 2020
83 FCA, Handbook PRIN 2.1
84 FCA, CONC 7.10.4, 2020

visits as a means to 'reconnect' with a customer and only using litigation where it is suitable for the nature of the debt and customer, avoiding disproportionate fees and costs. Firms 'must not threaten to commence court action … in order to pressurise a customer in default or arrears difficulties to pay more than they can reasonably afford'.[85]

Regulations require firms to ensure that outcomes are based on debtor's individual circumstances, tailoring repayment plans, taking into account referral for advice, the application of 'breathing space' (that is, a pause to recovery while debt advice is received), and referring customers to specific vulnerability teams if necessary. According to the regulations, '[a] firm must not pressurise a customer':

- to pay a debt in one single or very few repayments or in unreasonably large amounts, when to do so would have an adverse impact on the customer's financial circumstances;
- to pay a debt within an unreasonably short period of time; or
- to raise funds to repay the debt by selling their property, borrowing money or increasing existing borrowing.[86]

Litigation remains an acceptable option where it is proportionate and appropriate in the circumstances. It is important to distinguish between certificated enforcement agents (or 'bailiffs') and private debt collectors. Unlike enforcement agents, private debt collectors and other firms seeking repayment do not have the certification required to 'enforce' a debt such as through taking goods.[87]

It has been widely commented on – by the Treasury Committee, Cabinet Office and many in the debt charity space – that private debt collection has significantly improved in its approach to customers experiencing vulnerability or financial difficulty, at least in part due to the FCA regulations above.

> Over the past 10 years, debt collection practices in the commercial sector have changed dramatically. From engagement with the money advice sector, to how they communicate with customers, attitudes towards people in vulnerable circumstances, and affordability assessments for repayment plans…
>
> Financial Conduct Authority regulation of commercial creditors drove and influenced much of the positive change we have seen. However, it also made the industry look at itself and start to innovate. The commercial sector is by no means perfect but it has made major improvements. Government debt collection practices are far behind in comparison.
>
> Citizens Advice, submitted in evidence to the CSJ

> When it comes to fairness, we can learn from an 'unlikely hero': the private sector debt collection industry, which has been hugely improved by FCA guidelines.
>
> Steven Coppard, Deputy Director, Cross-Government Debt Policy & Strategy, Cabinet Office

85 FCA, CONC 7.3.18, 2020
86 FCA, CONC 7.3.10, 2020
87 The effectiveness of 'enforcement' and councils' reliance on bailiffs is explored in chapter 2.3.1 and 3.1.3.

The private sector has since largely moved away from in-year collection targets – indeed, 'debt collection targets based on cash collected have disappeared.'[88] According to the Credit Services Association, it is now recognised widely that cash targets are flawed in that they do not take into account the financial situation of individual debtors. For example, if someone is struggling to pay their bills, adding further charges does not increase their capacity to do so. Arriving at a more sophisticated understanding of a client's financial situation allows debt collectors to establish realistic repayment programmes which, ultimately, secure better returns (though over a longer period) and a reduction in defaults. Indeed, consumer credit companies *save* an estimated £82 million annually setting affordable repayment plans that require fewer costly interventions.[89]

> As a start point, we have to consider the best way to collect debts. The old approach of disregarding the customer's available resources or wider circumstances and simply trying to extract the most money out of every call or contact cannot, and indeed does not, work – hence it rarely appears in most regulated markets.
>
> Firms or creditors need to take the time to understand the customer's financial position, to form a holistic view, and to contemplate a range of possible approaches from signposting sources of advice to agreeing affordable and sustainable repayment plans.
>
> Credit Services Association, submitted in evidence to the CSJ

Firms now generally put more energy into to engaging with customers and working with them to set up affordable repayment plans. This includes working more closely with independent debt advice organisations (see the British Gas case study below). According to Arum credit management, 'more money is being collected as a result of plans that have a much higher propensity to keep [in place].' Moreover, 'instances of treating customers unfairly are reducing', citing the example that 'typical credit card holders who say they were treated unfairly is at 21 per cent vs. 52 per cent for bailiffs and 35 per cent for local authorities.'[90]

Case study: British Gas

In 2016, British Gas commissioned research to provide an insight into whether or not consumers are aided to better manage their arrears when supported with independent debt advice. The research analysed the impact on the payment performance of British Gas customers who were also StepChange clients versus British Gas customers with a similar risk profile over a six-month period.

The research showed that independent debt advice helped British Gas customers to better manage their arrears:

- The debt recovery rate improved by 22 per cent for those clients advised by StepChange.
- 97 per cent of StepChange clients remained up to date after seeking advice.
- Customers with a relationship with StepChange were less likely to go into arrears on their British Gas account and, when they did, they owed less.
- British Gas customers were more likely to recover after entering arrears and catch up with their payments if they had a relationship with StepChange.

88 Arum, *Using private sector methods to address the public sector's problem debt crisis*, 2018
89 Baker Tilly, *Social Impact Evaluation*, 2014
90 Arum, *Using private sector methods to address the public sector's problem debt crisis*, 2018

- Of those that did fall into arrears, fewer severely deteriorated if they were supported by StepChange.

The research findings validated the importance of British Gas's relationship with StepChange and the more supportive approach to debt collection from a commercial perspective as well as the need to help those experiencing financial difficulties.

Source: Christians Against Poverty

Key to this has been a shift in culture around customer engagement. Indeed, some firms continue to push the boundaries of how to engage effectively with customers. New technologies are being put to good use: for example, artificial intelligence-powered chat-bots, text services and online portals have expanded and improved the ways debtors are engaged. This technology can also help more quickly identify where further support is required. For example, recent advances in 'speech analytics technology can flag mentions of words such as 'cancer' or 'hospital' and ensure the person is directed to teams that can help if they are struggling'.[91] Other speech analytics identify raised voices during a call which marks the customer as requiring further support.[92]

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

Significant activity has been undertaken to reform the communications of private debt collectors and firms to achieve this approach with vulnerable clients. A study in 2019 found that the overwhelming majority of the debt collection agency sector 'have professional, user-friendly, consumer-facing websites with content and digital tools designed to reassure and support customers … Some have also embraced social media very successfully to open compliant and engaging dialogue with audiences.'[93] Advances have been made in line with the wider shift towards working with individual customers, using data and behavioural economics to identify preferred modes of contact, which has further improved levels of engagement.[94]

Case study: Virgin Money

Virgin Money has taken a purpose-led approach to debt management, which centres on a supportive relationship with customers, strengthened through their partnerships with specialist organisations. Drawing from its ethos, 'making you happier about money', Virgin Money's approach to customers experiencing financial difficulty starts with understanding their circumstances fully, including any vulnerabilities, and establishing 'win-win' solutions for the repayment of debt.

91 See this useful summary: 'Ethical collections for councils – not a 'soft' option', Credit Connect, 2019
92 Intrum in evidence to the CSJ
93 'How the debt collection sector is taking the 'fear' out of financial difficulty with improved online consumer and stakeholder engagement', Engage Comms, 2019
94 Intrum in evidence to the CSJ

Since 2018 Virgin Money have had a ring-fenced team supporting credit card customers with vulnerabilities – both to avoid and manage any financial difficulty. This team exists to 'provide a bespoke service, delivered with confidence by colleagues who really want provide the right outcome and make customers love us.'

The team received four weeks' intensive training on how to have effective conversations with vulnerable customers. This was developed with support from the Money Advice Trust and guidance from Royal College of Psychiatrists, with modules from Samaritans, Dementia Friends and StepChange. A toolkit of options was developed so that colleagues can flex their approach to a customers' circumstances, going further than offering a blanket 'breathing space' pause.

Making investments in the knowledge base and soft skills of its support team has significantly improved engagements with vulnerable customers in debt. One revealing example illustrates Virgin Money's approach:

> Mr H had defaulted on his credit card repayments. The bank could have passed this to a debt collection agency, but in conversation with the customer a member of the specialist team identified that Mr H was suffering with severe illness, mental health problems and social isolation. Thanks to their training, the colleague picked up that the customer had signs of dementia too, and knew that supporting him was his primary aim.
>
> Mr H explained that his wife had passed away and he was confused about how to pay his credit card bills (as the card had belonged to his late wife). He had no mobile or internet and no one to help him, relying on a neighbour to lend him a phone. Taking a human approach, the colleague offered him 1:1 support, applied 'breathing space' to the repayments and explained his options for repaying the debt going forwards. Going the extra mile, Virgin Money sent the customer a pay-as-you-go mobile with some credit, so Mr H could keep in touch.

In 2016 Citizens Advice researched debtors' customer experiences with their creditors, revealing that, in general, private sector lenders had implemented what Citizens Advice considered to be more appropriate debt management practices.[95] The FCA remains a force for ongoing improvement. A recent review by the authority carried out found that the 'identification and treatment of vulnerable customers has improved' among debt management firms since 2014–15. However, it also found that two-thirds of firms could still make 'significant improvements' to their vulnerability policies.[96]

In conclusion, though they are not yet universal, the improvements made to collections across the retail banking and debt management sector since the establishment of the FCA are compelling, particularly with regards to vulnerable and low-income customers. The key lesson from the sector is that tailoring communications around vulnerability, understanding the realities of debtors' individual circumstances and applying discretion and pragmatism, results in more effective collection over the longer-term.

2.3 Government debt collection lags behind

Government debt collection often sits in sharp contrast to that in the regulated context. But before examining the debt collection practices of the government authorities with the most personal debt on their books, it is worth noting how ministerial responsibility for it is structured at the top level.

95 Citizens Advice, *The State of Debt Collection,* 2016

96 FCA, *Debt management sector thematic review*, 2019

2.3.1 Government debt collection is inconsistent

As we have seen, there are many government departments and bodies involved in debt collection. HMRC, HM Treasury (HMT), the DWP, the MoJ and many other departments have ministers holding official responsibilities for debt collection in their areas. While HMT maintains responsibility for private debt collection in its remit overseeing the Financial Conduct Authority (FCA) and Money and Pensions Service (MaPS), it currently lacks executive powers to influence departmental debt collection practice.

Rather, it is the Cabinet Office that has ministerial oversight for practice across government (now jointly with HMT), balancing both the need for effective recovery and the appropriate treatment of debtors. Evidence submitted to the CSJ during this research suggests that the system as it stands allows for significant inconsistency between the methods adopted by different departments.

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

> There is a lack of consistency or accountability with the collection of government debt. This is because there is no standard regulator or rule book. Departments often work to procedural timescales when dealing with debt. This is an issue that the forthcoming Breathing Space and statutory debt management plan may address, but at present the collection of local and central government debt is arbitrary. Affordability of repayments for the customer concerned isn't usually the main factor that determines a repayment schedule.
>
> Citizens Advice, submitted in evidence to the CSJ

> The private sector has seen and embraced considerable change through the introduction of the FCA's approach to Treating Customers Fairly, alongside the Lending Standards Board and Trade Bodies codes of conduct for managing households in debt. Unfortunately the public sector has not yet implemented the same level of change as an industry. Often continuing to work in silos, they are attempting to address the needs of the families and balance those with their own internal target thresholds.
>
> Policy in Practice, submitted in evidence to the CSJ

For example, some departments have used private debt collection firms to assist with the collection of government debts. HMRC, for example, has made a commitment not to use private sector bailiffs, while increasing its spending on private debt collection firms from £6.2m in 2014 to £26.3m in 2018.[97] A key recent partnership has been with Indesser, a third-party debt collection agency whose 'commitment to treating customers fairly', they argue, 'goes beyond FCA regulation as responsibility is built into our business'. As Indesser

97 'HMRC ramping up spending on private debt collectors, new analysis shows', *City A.M.*, 2019

is a private company it sits within the remit of the FCA's regulations outlined above. In its annual accounts the Cabinet Office argues that 'debt collection has been significantly enhanced across government' as a result and the partnership has been commended in evidence submitted to the CSJ.[98]

But while Indesser has worked sporadically in partnerships with more than 15 government departments and agencies, including HMRC, DVLA and DWP, this approach is not applied equally across government. Moreover, where government authorities decide not to commission private collection through Indesser – making use of the fact that departments themselves are unbound by many of the regulations in the private sector – a two-tier system has emerged even more starkly.

There is also inconsistency between how some government bodies themselves collected debt. There is strong variance in the practices adopted by local authorities across the country. For example, while some councils have adopted the Standard Financial Statement (SFS) since its introduction, take-up remains patchy (at just 23 per cent of local authorities at the latest count).[99] This is particularly the case for central government, where '[t]here has been a reluctance to adopt the SFS as a standard affordability measure across departments'.[100] Ignoring the clear lessons from the debt advice sector (see the box below) about the utility of a shared income and expenditure process means that government is missing an obvious way to improve and standardise practice. It also makes a cross-government approach to debt collection more difficult. But compounding the issue further, evidence submitted to the CSJ highlighted the fact that practices even vary *within* a local council – from one debt to another or between council departments.[101]

Lessons from the debt advice sector

The debt advice sector has changed significantly in recent years, with many lessons for cross-government debt collection. Debt advisors have long used tools to consolidate and prioritise debts, commonly using income and expenditure (I/E) forms to calculate the affordability of debt repayments. Historically, a range of affordability assessments have been used, although the Common Financial Statement (CFS) and StepChange guidelines were generally considered to be best practice. Yet the introduction of the Standard Financial Statement (SFS) in 2017 established a near-universally used measure of household income and guidelines for discretionary household expenditure.

This initiative was led by the Money Advice Service and developed in partnership with debt advice providers, creditors, trade associations and charities. It is generally accepted that since its introduction there is greater consistency to the debt advice process, and a smoother transition through the experience for households and individuals in debt, debt advisers and (in the instances they use it) local authority revenue professionals.

The SFS is now used and recognised by many types of FCA regulated consumer credit lenders, but also by some public sector, utilities, and creditor suppliers such as enforcement agents or

98 Cabinet Office, Annual Report and Accounts 2017–18, 2018
99 MAT, *Stop the Knock*, 2019
100 According to Citizens Advice in evidence to CSJ
101 Also see: Citizens Advice, *The State of Debt Collection,* 2016

legal service providers (LSPs). The SFS is also used by the Insolvency Service for debt relief orders (DRO) and bankruptcy applications and has also been adopted by Her Majesties Court and Tribunal Service (HMTCS) as part of the Pre-Action Protocol for Debt Claims.

Source: Money and Pensions Service

The Cabinet Office should be recognised for undertaking significant work in recent years to improve debt management across government. This is explored in detail in Chapter three. However, as noted by the National Audit Office, the Cabinet Office (like HMT) does not have executive powers to see through the recommendations it makes for cross-governmental improvements, leaving ultimate responsibility with individual departments, bodies and authorities themselves. This is important to bear in mind when taking when examining the debt collection practices below for the main types of problematic government debts.

2.4 Council debt collection

2.4.1 Context: local authority budgets and Council Tax Support

As shown in Chapter one, council tax arrears have represented an area of profound growth: both in terms of the total arrears (which rose from £2.8bn to £3.2bn between 2018–19 alone) as well as the numbers of households presenting with council tax debt issues. This should be placed in a wider context. Reductions in council funding from central government amounting to 49.1 per cent since 2010, according to the National Audit Office,[102] have seen local authorities taking steps to maximise alternative sources of income in order to maintain their budgets for services.

Many local authorities are now more reliant on council tax, business rates and other sources of localised funds (such as parking charges) to meet demand. While it is hard to draw direct causal links, these changes have added a greater ‘urgency’ to recover council tax that is unpaid. Respondents to the CSJ’s call for evidence also highlighted the localisation of Council Tax Benefit in 2014 into Council Tax Support as a factor which has led to local authorities experiencing more pressure to maximise their council tax take, as low-income families paying tax through steadily rising ‘minimum payments’ (but increasingly failing to do so) have driven up levels of council tax debt.[103] This fiscal backdrop provides a useful context to the pressures on budgets many councils now face and sense of urgency they may have to recover debt.[104] This alone, however, cannot explain away the methods many councils use to pursue it. For as we shall see, some local authorities have *increased* rates of recovery while adopting practices closer to those expected of the regulated sector, though as yet these remain overwhelmingly in the minority.

102 NAO, *Financial Sustainability of Local Authorities*, 2018

103 Policy in Practice, in evidence to the CSJ: ‘A local authority we are currently working with estimated non-collection of council tax at 35% of the additional charge since 2012’. The Institute for Fiscal Studies (IFS) estimates that about a quarter of the additional council tax liability arising from cuts in support is not collected in the year it is due. This is around 10 times higher than the typical rate of non-collection of council tax. IFS, The impacts of localised Council Tax Reduction Schemes, 2019

104 This issue is explored in more detail in CSJ, *Road to Recovery,* 2019

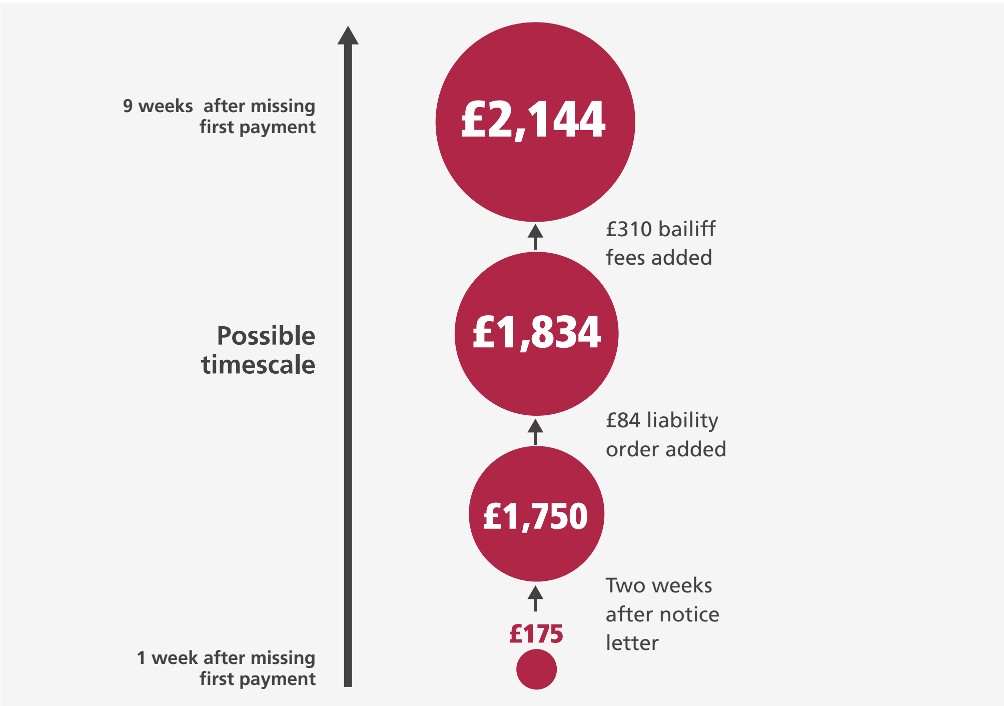
2.4.2 Council debt collection is not providing a route out for people in problem debt

Councils run essential local services. As such it is appropriate that these are sufficiently funded, and that means ensuring that council taxes are paid. But the current approach to debt collection adopted by many local authorities serves not only to exacerbate the situation of people in problem debt (let alone provide a route out), it also misses an opportunity to engage debtors using the more effective and ethical debt collection practices adopted by many private firms.

Current regulations mean that councils are entitled, and (as some occasionally argue) mandated,[105] to adopt forms of debt collection which escalate the initial problem debt. Despite being legal, this has been described in a statement by Ministry for Housing, Communities and Local Government as 'aggressive debt enforcement tactics', and by the then local government minister Rishi Sunak as the 'unfair treatment of vulnerable people'.[106]

The Council Tax (Administration and Enforcement) Regulations 1992 state that if a single monthly council tax payment is missed, people will first be sent a reminder notice, but if payment is not made within two weeks they can then become liable for their entire annual bill.[107] Households struggling to meet the average band D payment of £175 can, therefore, become liable for a payment up to £1,750 within nine weeks (see Figure 4).

Figure 4: Possible escalation of council tax debt



Note: Circles are not proportional.

105 The CSJ has heard of many cases where council collection teams argue that they are simply following the rules of escalation, despite the central government guidance to the contrary.
106 MHCLG, 'Government pledges to improve the way Council Tax debt is recovered', 2019
107 The Council Tax (Administration and Enforcement) Regulation 1992

On top of the bill being expanded to the whole year, once court action is initiated a range of fees are charged to the client which escalate the situation further. Council tax debt collection typically adds two types of fee: liability orders and bailiff fees. ‘Liability orders’ are court orders issued when a household does not pay their annual bill or fails to contact the council to arrangement a payment. Often automated, the order represents the first step a council will take to enforce the collection, adding a charge of, on average, £84 to the debtor on top the annual bill – although this charge can be as much as £120.[108]

This is despite central government guidance published in 2013 which clearly states that a ‘Local Authority should take all reasonable steps to exhaust other options available to them prior to obtaining a Liability Order’.[109] This guidance remains widely ignored. Freedom of Information Request data showed that, in 2018–19, councils issued an estimated 2.3 million liability orders to escalate the recovery of council tax debts.[110] Some councils have become so dependent on this process that many cases exist where the cost of the liability order is more than the initial debt, ‘pursuing court action for debts as low as £50 or £60 … In one extreme case, a Liability Order had been pursued for a debt of £3.95.’[111] One study estimated that court summons and liability orders contributed a further £265m to people’s existing council tax arrears every year.[112]

> Arrears to local authorities are growing. These debts are often pursued overzealously, and with routine recourse to bailiffs. In addition to local government, the Committee has heard reports that central government can take an uncompromising approach to debt collection. The public sector should be leading by example in their treatment of the most financially vulnerable; but the current approach risks driving them into further difficulty.
>
> House of Commons Treasury Committee, 2017

2.4.3 Councils are the country’s largest user of bailiffs

The increase in the initial debt in the processes described above can act as an incentive for local authorities to further escalate the situation, leading to the referral of the debt to enforcement agents – commonly referred to as bailiffs. There has been a significant rise in the number of debts passed onto bailiffs by local authorities in England and Wales in recent years. Research carried out as part of the Money Advice Trust’s Stop the Knock campaign showed that, in 2018–19, local authorities passed a total of 2.6m debts to bailiffs (see Figure 5 and Table 6).[113]

108 Citizens Advice, *The Costs of Collection*, 2019
109 DCLG, Council Tax Guidance to local councils on good practice in the collection of Council Tax arrears, 2013
110 Citizens Advice, *The Wrong Side of the Tax,* 2020
111 ‘Councils ‘too quick to use tax bailiffs’, charity says’, BBC News, 2016
112 Citizens Advice, *The Costs of Collection*, 2019
113 MAT, *Stop the Knock*, 2019

Figure 5: Debts referred by councils to bailiffs (thousands)

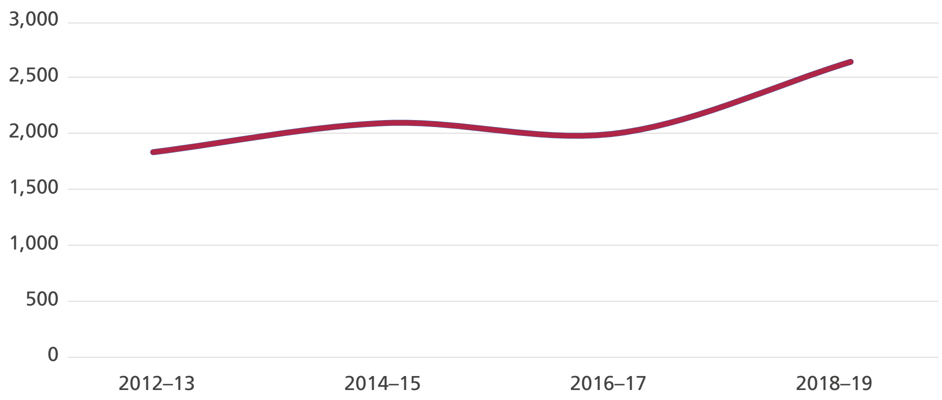


Table 6: Debts referred by councils to bailiffs

Debts referred to bailiffs	2018–19	% of total
Council tax arrears	1,417,736	54
Parking offences	1,079,119	41
Housing benefit overpayments	39,470	1
Business rates	79,899	3
Other	30,186	1
Total	2,646,410	

Source: Money Advice Trust, various

As shown in Table 6, council tax arrears accounted for around 1.4m referrals in 2018–19.[114] Nearly half (49 per cent) of councils in England and Wales increased their use of bailiffs to collect council tax debt between 2016–17 and 2018–19.[115] Today, councils are now the largest commissioner of bailiffs in the UK.[116]

When enforcement action is initiated, further charges are added to the existing debt in the form of bailiff fees. In 2016–17 these added an estimated £300 million to people's council tax arrears.[117]

> Councils don't seem to come under FCA rules so tend to query Standard Financial Statements and spending guidelines as they don't have to adhere to them. The use of bailiffs makes things worse as they tend to not adhere to anything at all apart from impossible payment plans! Councils using bailiffs to chase debts also means that those in debt are punished further by being charged bailiff fees.

114 Ibid
115 Ibid
116 Taking Control Coalition, *Taking Control*, 2017
117 Ibid

> In 14 years of working in debt advice I have never seen a bailiff company accept a payment plan from a debt advisor. I have seen them ask for £1,400 a month from a client getting less than £600 a month in benefits. When phoning them to ask them to acknowledge the ridiculousness of this request, all I got was, well the debt needs clearing in 12 months so it has to be that amount!
>
> Most bailiff companies I believe, have self-employed bailiffs so there is an incentive for them to do visits to earn money. There has been much campaigning in recent years to ask for change as the use of bailiffs tends to not help those struggling with debt. The threat of losing your car, which stops you getting to work, or losing your goods as a punishment seems archaic in today's market. We need better systems of councils working with people to deal with debts, maybe working with local debt advisors instead of bailiff companies.
>
> Money and debt advisor, CSJ Alliance charity, Leicestershire

While bailiffs will perhaps always be an appropriate measure for those actively avoiding any kind of repayment, they are an extremely costly mechanism to collect debt: in 2018–19, the estimated total costs to councils was £196m.[118] And there is strong evidence to suggest that they are not always effective at recovering significant proportions of the money owed: one investigation in Bristol showed that just 30 per cent of the council tax debts passed to bailiffs are eventually collected.

Nationally the picture is worse. A 2019 Freedom of Information request revealed that, for every £1 of debt referred to bailiffs by councils, only 27p is ever returned to them.[119] Nonetheless, because of the way bailiffs are paid on commission, the council incurs little *upfront* cost in using bailiffs as the fees are, in theory, passed onto the debtor. This can be attractive to local authorities, even if it is expensive for the taxpayer for the reasons we outline below.

Evidence submitted to the CSJ suggests that this approach is not cost-effective as the harm it caused debtors generates real (though hard to quantify) spill-over costs and the activity itself makes the recovery of the of the debt more difficult. The National Audit Office found that additional charges (such as the liability orders or bailiff fees) made it 15 to 29 per cent 'more likely to make debts harder to manage', increasing levels of depression and anxiety in the process.[120]

In contrast, establishing an affordable repayment plan (per examples in retail debt collection and standard debt advice practice) prevents bailiff costs from mounting exponentially, and can 'generate a predictable long-term revenue stream for the council'.[121] Meanwhile, councils using bailiffs inappropriately and profligately has significant social and economic costs, including to family life and employment. In a recent StepChange client survey:

- 93 per cent said bailiff action had increased their levels of stress or anxiety;
- 63 per cent said it had put their family under strain;

118 Citizens Advice, *Council tax debt collection isn't efficient or effective*, 2019
119 Citizens Advice, *The Wrong Side of the Tax,* 2020
120 NAO, *Tacking Problem Debt*, 2018
121 Intrum, Leading the way in Local Authority Ethical Collections, 2019

- 50 per cent said it affected their concentration at work; and
- 39 per cent said it affected their ability to focus on getting a new or better paid job.[122]

This is not helped by bailiffs often breaking the rules. More than one in three people contacted by bailiffs in the last two years had been subject to harmful behaviour such as threats to break into their homes, according to a YouGov poll published in 2018.

> The consequences of poor debt collection practices adversely affect public sector budgets. Costs of temporary accommodation, increased demand on temporary housing, health, education and social services resulting from poor debt management put a strain on the public purse.
>
> Intrum, a credit management service currently in partnership with six local authorities

At the very sharpest end, around 100 people every year are jailed for non-payment of council tax debt. This is carried out via Regulation 47 of the Local Government Finance Act 1992, which gives councils the option to apply to the magistrate court for a warrant to commit someone to prison in very specific circumstances. A revealing report by Chris Daw QC shows how those jailed are predominantly poor, vulnerable and include women fleeing domestic abuse.[123] Yet he notes that, because custodial sentences imposed for non-payment of council tax are a matter of civil rather than criminal law, defendants do not have the right to a jury trial – nor to legal aid.[124]

Some will argue that the threat of imprisonment is a deterrent and not widely used. To a certain extent this is true, in that only 10 per cent of those committed between 2011–2017 ended up in prison.[125] Yet despite so few people actually being jailed, the threat is often used in the very first correspondence with someone who has fallen behind on their council tax. This fails to take on board the lessons from private sector experience, that increasing anxiety can make a debt issue worse and even less likely to be paid.[126] In a survey of clients conducted by Citizens Advice in 2016, 54 per cent stated that the council's collection activities had made it harder for them to repay their debt.[127]

> Twice as many government debt issues are related to collections, specifically, compared to credit debt. Predominantly, when somebody needs help with a credit debt, it's that they have just realised they can't afford it. The trigger might be a sort of letter saying, you've fallen behind. But the issue they're dealing with isn't, "I'm being harassed", or "I don't know what to do because of the collections activity". It's the affordability.
>
> CSJ roundtable participant

122 StepChange, *Council Tax Debts*, 2015
123 Social Market Foundation, *Unfair, ineffective and unjustifiable*, 2019
124 Ibid
125 Ibid
126 See NAO, *Tacking Problem Debt*, 2018. Debt collection agencies submitting evidence to the CSJ cited the Consumer Credit Act (1974) as sometimes holding back improvements in engagement and communications with debtors. The Act it makes requirements for specific forms of contact by letter, including the exact wording which to some can be intimidating. As a piece of legislation long predating the email (let al.ne WhatsApp) it should perhaps be revisited, though this is not the focus of this report.
127 Citizens Advice, *The Costs of Collection*, 2019

As noted, it is not the case that all local authorities are carrying out antiquated and ineffective forms of debt collection. Recent examples of councils adopting more up-to-date and sophisticated approaches to debt collection have been highlighted by both the Ministry of Housing, Communities and Local Government as well as the Money and Pension Service.

Case study: H&F Ethical Collections and Intrum local authority partnerships

Hammersmith and Fulham Council (H&F) was the first council to adopt an updated approach in 2017 when it entered a joint venture with private sector firm Intrum UK to create H&F Ethical Collections. The joint venture aims ro change local government collections processes, with the council ending the use of bailiffs for council tax.

The partnership means that the council transfers its debts to Intrum's offices for collection, where a team of specialists use private-sector techniques to engage with the borough's residents and work with them to set up arrangements to pay. Under the arrangement, Intrum take on the collection of historic debts across a range of services including council tax, business rates, sundry debts, former tenant arrears and housing benefit overpayments.

Critically, Intrum work *with* residents to establish their financial circumstances and agree on payment plans they can afford. The venture actively and openly aims to end the two-tier treatment of customers in debt by applying the Financial Conduct Authority's (FCA) standards to all debts, not only those in the private sector.

Through a combination of early intervention with residents, different methods of contact, working closely with the advice sector, ensuring correct council tax support is claimed and using all other enforcement options available, the council have managed to not only maintain its collection rate, but actually to increase the debt recovered. Moreover, by working constructively with families who are struggling to pay before they amass significant debts, the council was able to avoid the negative impact of using bailiffs.

At the end of the first year since H&F Council stopped using bailiffs to enforce council tax debts, the council collected 96.8 per cent of all the council tax owed, an increase on the year before the partnership with Intrum was initiated. Intrum has now launched partnerships with six other local authorities in England.

Case study: St Albans District Council

St Albans District Council is forging stronger connections with the debt advice sector to create a more consistent approach to determining residents' ability to pay.

Staff proactively refer vulnerable residents to debt advice services. They hold off from applying to the courts for Liability Orders – which give councils powers to collect debt – unless payments run beyond 12 months or multiple payment arrangements are broken. The council also requires enforcement agents who collect debts to sign up to the council's new affordability approach.

The council has, according to MHCLG, been able to maintain a high collection rate (98.9 per cent in 2017 to 2018, compared to a 97.1 per cent average across England) while treating residents fairly, proportionately and consistently.

Source: MHCLG

Case study: North Warwickshire Borough Council

North Warwickshire Borough Council has adopted a holistic approach to supporting vulnerable households. It does this through its Financial Inclusion Partnership, which is committed to helping residents access the right information and services according to their needs.

By putting assessments of what people in financial difficulty can afford at the heart of their processes, they have been able to better support residents in debt towards financial recovery while continuing to reduce historic arrears.

They are also building innovative partnerships with advice agencies and charities to engage hard-to-reach people, for example by providing debt advice through a food parcel scheme.

Their new approach contributes to their 98.6 per cent collection rate in 2017 to 2018 and has also led to less reliance on enforcement agents, with 60 per cent fewer cases referred to bailiffs in 2017 to 2018 compared to the same period in the previous year.

Source: MHCLG

Sadly these examples are rare and are not underpinned by legislation. Moreover, as described earlier, in-year collection rates are still used systematically to assess council tax collection performance, contrasting with their almost complete disappearance in the private sector. Any council attempting multi-year repayment plans are pushing against the grain of a system which instead 'focuses on how much of the current year's bills have been collected in that year'.[128] In Chapter three we make recommendations as part of wider reforms to government collection in order to bring council tax collection up to speed.

2.5 Debt collection in the welfare system

> Families are just about getting their shit together … and then a 10 year old debt is revealed to them without explaining what it is or why it is there. It's not fair. There's no sense of 'look, we know this is old and we made the mistake – let's see what we can do' – it's all just 'right, you owe 1000s and expect it in days'. It sends families into turmoil.
>
> CSJ Alliance family charity, Corby

> The overall level of financial support in terms of the level of the Universal Credit reward and the level of reward for some kind of work under the old system was designed to be the same … subject to one proviso: the issue of how debt was being handled.
>
> Dr Stephen Brien in evidence to the Lords Economic Affairs Committee

2.5.1 Context: Universal Credit can recover debt automatically

Ensuring that households receive the correct benefit payments suited to their circumstances has long been a challenge for policymakers. It is, after all, fair to both households in need and the taxpayers funding the welfare system that appropriate levels of support are provided according to household circumstances. Defining 'appropriate' in this context is

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

subject to fierce and ongoing debate. It is generally accepted, however, that families with children will need more. Individuals in work should need less. People with disabilities will require additional support to cover complex needs. Yet circumstances change. An effective benefit system should be responsive to these changes – to reduce overpayments and underpayments, ensure that households receive the right level of support as they need it, and establish fairness in the social contract which underpins the welfare state.

The tax credit system introduced in 2003 and administered by HMRC was (and remains) notoriously bad at this.[129] Assessments of household circumstances (such as income) were made annually and then left to be corrected retroactively by the claimant, in practice leaving millions of households with overpayment debts they were later unable to afford. This was particularly the case for low-income employees with frequently changing work patterns or employed on zero-hours contracts.

While there have been varying forms of disregards to act as a buffer on this over the years – indeed at one stage incomes could rise by as much as £25,000 before the overpayment debt became 'real'[130] – it was noted by one chair of the Public Accounts Committee that '[a]n element of overpayment to claimants was an inherent part of the design of the tax credits system'.[131] Meanwhile, HMRC was rarely responsive enough to account for circumstance changes correctly and this complexity compounded the work penalties that already existed within the benefits system.[132]

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

Through monthly assessment periods, the design of Universal Credit (UC) sought to address these issues. With monthly awards designed to flex according to reflect real-time changes in circumstances (such as income through PAYE), the idea was to both help remove work penalties as well as the elements of the tax credit system which created large cumulative debts.

Unfortunately, as we have seen, benefit overpayments remain an expensive reality of the welfare system. But a critical change in the design of UC is that the government – via the Department for Work and Pensions – is equipped with a much more effective mechanism through which to recoup debt as deductions can be made more quickly and easily to the monthly award claimants receive.[133] While this may work smoothly for small overpayments, it has serious implications for the significant amounts of tax credit debt making their way through the system and into claimants' accounts as they transfer onto UC.

129 See, for example, the Parliamentary and Health Ombudsman, *Tax Credits: Getting it wrong?*, 2007
130 The income disregard rose dramatically from £2,500 in 2003–06 to 25,000 in 2006–07, before being limited to £5,000 in 2012 and then back to £2,500 from 2016.
131 Public Accounts Committee, 'Press Notice No. 37 of Session 2005–06', 2006
132 CSJ, Dynamic Benefits, 2009
133 Although these have undergone significant changes since UC's introduction. See Chapter 3.1.4.

2.5.2 Many claimants are experiencing large benefit deductions, mainly due to tax credit overpayments

As shown in Chapter one, £6.2bn worth of outstanding debt incurred through tax credits is currently in the process of being transferred from HMRC over to DWP with the absorption of tax credits into Universal Credit. We remain at a relatively early stage in the 'managed migration' of tax credit claimants to Universal Credit (there are 3.8m families claiming either Child or Working Tax Credit who are yet to transfer).[134] As this accelerates, however, the government and DWP can expect to receive increasing levels of scrutiny, due to the reduced incomes many families will experience through deductions incurred by tax credit debt.

UC claimants repay welfare debts via deductions to their monthly award. At present an estimated 1.68m people are currently repaying debt out of their monthly UC allowances.[135] This equates to 60 per cent of all UC current claimants.[136] Of this proportion, half are making repayments for the advances they received of their first award, equating (under current regulations) to a deduction of roughly eight per cent of a monthly standard UC award.[137] 'Third-party deductions' for debts such as rent arrears, utility bills or council tax debt are also made to around 35 per cent of Job Seekers Allowance claimants, although the Department does not publish data on these with respect to Universal Credit claimants.[138]

The most recent official statistics available showed that around a third of those on UC (some 570,000 claimants) were repaying tax credit debt, with 410,000 UC claimants having paid a deduction in the previous 30 days.[139] Critically, tax credit debts are typically much larger than advances and third-party deductions (which are capped at five per cent each). The mean tax credit overpayment per households was £1,550 in 2017–18, though some 874,000 families received overpayments of over £1,000 in the last year alone (321,000 were overpaid by more than £5,000).[140] The maximum advance a family with children on UC can receive (of £812) pales in comparison to the typical tax credit debts, and this is before we factor in the cumulative tax credit debts built over several years, which often reach the £10,000s.[141]

In order to repay welfare debts, many families are expected to live on a substantially reduced UC rate, as current regulations permit 30 per cent of UC's 'standard allowance' to be deducted for this purpose. This was reduced from 40 per cent in 2019, with announcements made in 2020 Budget to lower this to 25 per cent.

In contrast to practice in the private sector, deductions are only rarely made with any recourse to what is considered 'affordable' for the claiming household and the maximum deduction possible for what is owed is applied routinely (though there has been some progress here, explored in Chapter three). Indeed, almost a fifth of all UC claimants prior to the Coronavirus surge in applicants were currently having 30 per cent or more of their

134 HMRC, Child and Working Tax Credits statistics: Finalised awards, 2017–2018, 2019
135 See Institute for Government (IfG), *Universal Credit*, 2020
136 Ibid
137 Ibid
138 Joseph Rowntree Foundation (JRF), *Destitution in the UK*, 2018
139 DWP, Volumes of Universal Credit claimants with tax credit overpayments, 2019
140 DWP, Child and Working Tax Credit statistics: Supplement on payments 2017–2018, 2019
141 Ibid

standard allowance deducted (equating to 470,000 households).[142] Some 12 per cent of claimants are still receiving deductions of between 30 and 40 per cent because the reduction in the rate of deductions was not backdated.[143] And an estimated 1.2m households yet to move onto Universal Credit will have deductions greater than 20 per cent.[144]

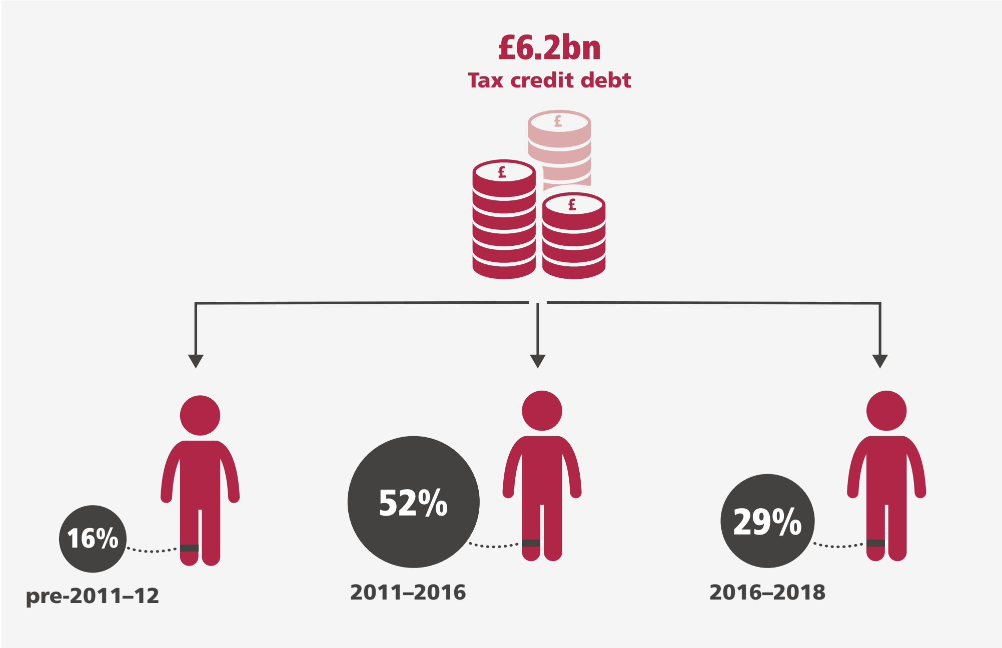
2.5.3 The recovery of historical overpayments is unfair and inconsistent with the private sector

While deductions are made without recourse to affordability assessments, many continue to be made due to old debt. Only 29 per cent of the total £6.2bn tax credit debt is from debt incurred from 2016–17 onwards, according to figures quoted by the APPG on Universal Credit.[145] Over half (52 per cent) is drawn from debt incurred between 2011–12 and 2015–16 as the legacy system continued to operate with unrecoverable overpayments hardwired in.[146] As much as 16 per cent (constituting £1.1bn) of the outstanding debt is even older (see Figure 6).[147]

A number of commentators have argued that this particular government debt should be treated as irrecoverable due to systemic failings in the design of the tax credit system administered by HMRC. Indeed, the HMRC itself stated in its 'Older inactive debts' strategy that it was to remit all inactive tax credit debts over three years old.[148] Equally, it has been argued compellingly by the Institute for Government that writing off this debt should be treated as an investment in the success and reputation of the UC system.[149] The former Work and Pensions Secretary and architect of UC, Sir Iain Duncan Smith, has recently talked of the 'pressure' he and the DWP were put under to accept the 'debt HMRC was unable to get back', and said the 'number one thing I would do is get rid of the debt that is coming across unnecessarily from tax credits.'[150]

142 IfG, *Universal Credit*, 2020. Note that this has been paused temporarily between April and July 2020.
143 Ibid
144 Policy in Practice (PiP), *Universal Credit and Financial Resilience*, 2019
145 APPG on Universal Credit, *What needs to change in Universal Credit?,* 2019
146 Ibid
147 Ibid
148 HMRC, *Annual Report and Accounts 2011–12*, 2012
149 IfG, *Universal Credit*, 2020
150 House of Lords Committee on Economic Affairs, 'Oral evidence session: the Economics of Universal Credit', 2020

Figure 6: The burden of historical tax credit debt



As the managed migration of Working Tax Credit claimants to UC has slowed in line with the 'test and learn' approach to rollout, the issues with tax credit debt collection have perhaps not yet been able to rise to the fore. But this is unlikely to last forever, particularly given the rise of unemployment caused by the Coronavirus crisis and (at the time of writing) the only temporary basis of the suspension of deductions and lifted benefit rates.

Many overpayments are recognised to have been made due to 'error and fraud' the system (including both errors made by HMRC as well as erroneous and fraudulent claims). The total stands around 5.5 per cent per year translating to £1.41bn, but historically as high as 8.4 per cent of all tax credit spending.[151] Compounding the sense of injustice, as indicated by the CSJ Alliance charity quoted above, is that many people may not have even been aware of these erroneous overpayments being made at the time, yet there are now few accessible opportunities to challenge them.[152] The government has also enabled overpayments to be recovered through the use of Direct Earnings Attachment which require employers to make deductions from their employees' earnings without the need for court action. This is all despite the FCA saying consumer credit firms like banks and payday lenders cannot make demands for payments without providing evidence a dispute is not valid.

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

151 HMRC, Personal Tax Credits Statistics: Child and Working Tax Credits: Error and Fraud Statistics 2016–17 (Updated), 2019
152 See Chapter 3, 3.1.4

is inconsistent with protections covering consumer credit debts which become statute barred after six years and are non-enforceable if action to collect them is not taken.[153] In other private contexts, such as for utility companies covered by Ofgem, suppliers are unable to 'backbill' for money they may owe if the debtor has not been notified of this in 12 months after the bill was due.[154] But with benefit overpayments, as in so many other areas, the government simply operates on a separate code.

> When an individual moves onto UC there is no clear understanding of the debts that are being carried across. Advances are given out with a brief discussion on the impact of future payments but because the systems are not joined up it is often not until the second payment is received that the full picture of the required debt repayments are seen. For anyone this creates a barrier for planning and budgeting; but for those living chaotic lives it can be catastrophic, leading them into spiralling debt with little help of relief.
>
> Support worker, CSJ Alliance charity, Loughborough

2.5.4 Temporary relief for welfare debt deductions acknowledges that they are causing claimants difficulty

As part of an unprecedented £330bn intervention to protect jobs and the economy in response to the Coronavirus crisis, the Chancellor has already put the structures within UC to good use in order to 'strengthen the safety net'.[155] Measures worth £7bn have been rapidly formulated, including at their core a twelve month increase to UC's standard allowance of £1,040 per household.[156] Moreover, Local Housing Allowance rates have been lifted substantially (to the 30th percentile of market rents) and support for the self-employed widened. This package will undoubtedly help those already struggling and many others sadly likely to face job losses due to the economic impact of the virus and restrictions on activity.

In order to maximise the effectiveness of this support package for new claimants (some 1.5m new UC claimants signed up between 1 March and 21 April 2020) as well as the 2.3 million already claiming UC, the Government announced in April 2020 that it would suspend welfare debt deductions for a three month period.[157] This is extremely welcome and will help provide a financial cushion for the some of the most vulnerable households in Britain.

It also reveals a tacit recognition of the strain put on the finances of households already living on low incomes via large welfare debt deductions. Yet, once the temporary suspension to deductions has been lifted, this will affect thousands more claiming families and individuals, many still unaware of the historical debts lingering within the system. Recommendations to improve debt collection in the welfare system, while also investing in the long-term success of Universal Credit, are made in Chapter three.

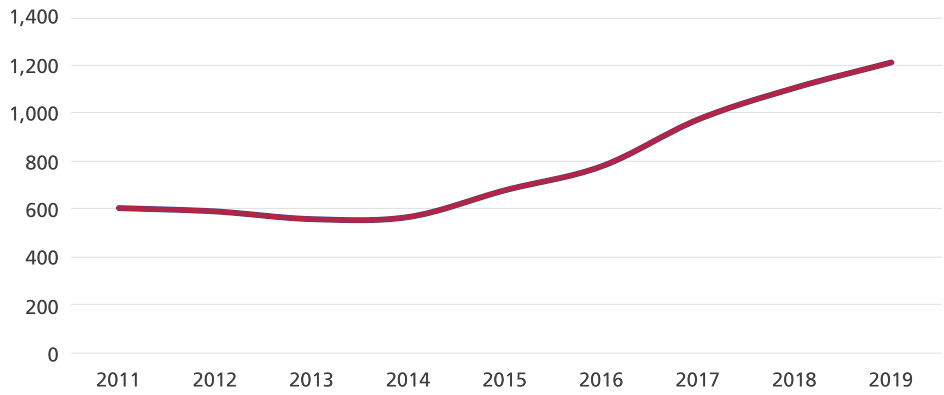
153 CAP, *Unlocking a New Start*, 2019 https://capuk.org/fileserver/downloads/general/Unlocking_a_new_start__insolvency_briefing.pdf
154 OfGem, 'Energy backbilling: A guide to your rights', visited 2020
155 HM Treasury, 'The Chancellor Rishi Sunak provides an updated statement on coronavirus', 2020
156 This increase has been mirrored in Working Tax Credit.
157 This does not appear to include advance payments of the initial UC award. DWP, 'Guidance: Benefit overpayment recovery: staff guide', 2020 (correct at time of publication)

2.5 Further government debts: magistrates' courts, parking fines, and the NHS

Sundry other personal debts are scattered across departments, bodies, and agencies. Perhaps the most significant constituent is money owed for fines issued by magistrates' courts. The magistrates' court deal with most criminal cases in England and Wales, and regularly issue fines as punishment for traffic offences, failing to pay a fixed penalty notice or own a television licence, public order offences or antisocial behaviour, and indeed many other crimes.

For a range of reasons, many of these fines go unpaid. In response, the Ministry of Justice (MoJ) has introduced several debt collecting initiatives in recent years, including putting magistrates' court fine collection out to tender to private debt collection agencies. These drives, though ostensibly focusing on 'knowing the debtor' as per private sector practice, have not yet reached the level of understanding required of banks and private debt collectors regulated by the FCA. There remain a total £1.21 billion magistrates' courts fines outstanding in England and Wales (see Figure 7).[158]

Figure 7: Outstanding court fines, England and Wales (£millions)



Source: CSJ analysis of MoJ, Criminal court statistics

There is perhaps particular imperative to collect debt from individuals owing money due to having committed offences (especially when these are multiple). The collection of unpaid fines are typically carried out through an attachments of earnings (at a fixed percentage of earnings based on how much the debtor earns, ranging from 3 to 17 per cent) or a through benefit deductions. Unlike other debts examined in this report, some assessment is given to ascertain the level of fine (and subsequently a debt) it is appropriate for a particular individual or household to pay.[159]

However, once a warrant of control has been issued to escalate the recovery of a court fine, the magistrates' court has little power to postpone or delay bailiff action or to make an order to allow the charge to be paid in affordable instalments – even where there is clear evidence that this would be preferable. This is in contrast to County Court

158 Ministry of Justice (MoJ), Criminal court statistics quarterly, England and Wales, October to December 2019, 2020
159 See: Sentencing Council Guidelines, Fines and Financial Orders, 2020

Judgements, which have to be transferred to the High Court for enforcement (as might happen for private utility debts such as water, for example). For these debts, there is a specific process which allows people to apply to the court to suspend warrants and offer affordable payments to their creditors, yet in practice these are less accessible for magistrates' court warrants due to the complexity involved.[160] Again, this suggest that there are inconsistencies in the methods and repayments options for different government debts, as well as disparities with the regulated sector.

While we have so far focused on local government debt collection for council tax arrears, as the largest constituent of the debt owed to councils, parking fines were raised in submissions to the CSJ as an area of significant growth. Parking penalties are not treated as criminal offences but are enforced under the Traffic Management Act 2004 and through 'penalty charge notices' (PCNs). They are enforced through a county court warrant and typically through private bailiffs. Unlike the usual county court process for private debts, however, it is not possible to ask the court to suspend the warrant or to make an order to allow the charge to be paid in affordable instalments. Meanwhile, Money Advice Trust research shows how council referrals of parking debt to bailiffs is rapidly rising and in 2018/19 accounted for 1.1m of all council referrals.[161] Indeed, the seven per cent overall increase in council referrals to bailiffs on the previous year has largely been driven by the 21 per cent increase parking debts referred on.[162]

Concerns have similarly been raised with the CSJ over the pursuit of personal debts owed to the NHS. Anecdotally, members of NHS debt collection teams who collect unpaid prescription charges have described an issue where people have wrongly claimed free prescriptions or dental treatment due to misunderstandings around which benefits give entitlement.[163] These are either collected in house by the NHS Business Services Authority (routinely via Penalty Charge Notices), or passed onto debt collection agencies without the situation being explained to the debtor, who are often in difficult financial circumstances. A recent investigation revealed that only £1.5m of the £21m of debt referred by the NHS to private firms during over three years has been recouped, representing just seven per cent.[164] Department of Health guidance says that trusts can write off debts as not worth pursuing 'where it is clear that a person is destitute or genuinely without access to any funds', yet this is apparently not happening widely in practice.[165] Even so, this is a very low standard and does not consider the availability of disposable funds for debt repayments.

There are, of course, many other debts owed to government bodies in relation to business. These are primarily tax debts (such as for business rates, business VAT, or income tax); as these relate mainly to business they fall outside of the scope of this report. Even so, the evident multiplicity of government debts and the extent to which low-income and vulnerable debtors have multiple debts (for clients of Christians Against Poverty this is 49 per cent), necessitates a cross-government view of debt. This is particularly the case

160 According to evidence submitted by the Money Advice Trust and Christians Against Poverty
161 MAT, *Stop the Knock*, 2019
162 Ibid
163 Per anonymous evidence submitted to the CSJ
164 'NHS trusts call in the bailiffs to chase ineligible patients' debts', *Guardian*, 2019
165 Ibid

if we seek to better connect government departments and bodies, as we propose in the following chapter, to negotiate and realise a sustainable route out for those caught most deeply in the mire of problem debt.

chapter three

A path forward for government debt collection

> … we also inherited a different sort of debt – a vast amount of uncollected debt which was owed to the government. Quite simply this has never been on the agenda.
>
> Minister for the Cabinet Office, 2012

> 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.
>
> Cabinet Office Fairness Group, Joint Public Statement, 2019

> We have come a long way, we have a long way to go. In between we are somewhere.
>
> Kim Stanley Robinson

3.1 Pockets of progress

Despite the clear and ongoing disparity between the advances made in private sector debt collection and the public sector, we should recognise the progress that has been made in a number of areas. From the Cabinet Office's drive for 'fairness', to recent reforms of bailiffs, from reviews into council debt collection and changing official guidance, there have been pockets of progress across central and local government. These provide the foundations on which to lay a path forward.

In this chapter, we assess the reforms made across different government departments and for individual debt drives. We show that meaningful change and good practice is sadly too often reliant on the whim of individual departments, debt teams, specific debt drives or indeed individuals – limiting reform to piecemeal.

In the second half of the chapter we propose measures which build upon the positive but disjointed progress that has been made, drawing government debt collection into a consolidated approach that brings it up to speed with the new learning and advances made in the private sector. We believe that this will profoundly increase the opportunities for a 'route out' of problem debt – particularly for vulnerable families – while maintaining the government's duty to recover debt owed to the taxpayer.

3.1.1 A renewed 'fairness agenda' in government debt collection

In 2016 an important shift in the government's approach was marked by the introduction of the Cabinet Office's cross-government debt management strategy. Following criticism from the National Audit Office in 2014 that stated the government lacked a coherent approach, the new strategy set out the vision, aims and principles for debt teams in government, including providing access to private sector debt management services through the Debt Market Integrator.

A new forum, the Fairness Group, was established hoping to bring together debt management teams across government as well as third party experts including debt advice organisations and private collections firms to investigate current practices and formulate recommendations. The group developed a set of Fairness Principles, which were adopted in the Code of Practice to the Digital Economy Act 2017 (DEA) – a piece of legislation designed to support information sharing across government. The Principles were inserted in the Code as a set of 'best practice guidelines' in order to 'encourage a consistent approach', although they were critically limited insofar as they recognised that individual public bodies would continue to have their own debt collection policies and that these principles only applied for those seeking to use the powers contained in the DEA.[166]

The principles themselves are sound and borrow wisely from private sector practice. Echoing the Treating Customers Fairly guidelines, they set out that the aim of debt collection 'is to ensure any repayment plans are affordable and sustainable … [and] should balance the need to maximise collections, while taking affordability into account.'[167] The principles encourage the use of affordability assessments which measure incomes versus expenditure, as well as the benefits of identifying vulnerability and taking personal circumstances into account – all of which are already established as mandatory in the private sector by the FCA.[168] Helpfully, moreover, they also differentiate between someone who:

- cannot pay their debt because of vulnerability or hardship, so that they can be offered advice and guidance, or be signposted to non-fee paying advice and support;
- is in a position to pay their debt – some of whom may need additional support;
- has the means to pay their debt, but chooses not to, so public authorities can assess what action to take.[169]

Following the publication of the *Tackling Problem Debt* (2018) report in which the NAO strongly criticised public sector debt collection, the Fairness Group issued a new joint statement and renewed efforts to improve fairness across government – now with new representation from local government. This included a commitment to collaborate

166 Cabinet Office, The Digital Economy Act 2017: Code of Practice, 2018
167 Ibid
168 The full set of Fairness Principles in the Digital Economy Act's Code of Practice can be found in the Appendix.
169 Ibid

continually to improve how government interacts with people in debt, widening the adoption of the Fairness Principles, and particularly refining approaches taken towards people in vulnerable circumstances and those experiencing financial hardship.

Evidence submitted to the CSJ, as well as the findings of the Treasury Committee,[170] suggests that the Cabinet Office, via the Fairness Group, has made progress in improving the cross-government coordination of debt management.

However, it remains that the Fairness Principles are buried deep within a Code of Practice for an Act relating to data sharing. The Cabinet Office's fairness agenda, for all its intentions to bring cross-governmental practice up to speed, is hampered by low levels of executive or legislative power and a reliance on the (occasionally lacking) willingness of external parties across Whitehall.[171]

3.1.2 Increased engagement from local government and MHCLG review

In 2013 the Government published guidance to councils recommending good enforcement practices.[172] The guidance said that councils should be 'willing' to negotiate payments at any point in the enforcement process, take account of individuals' circumstances, and agree affordable and sustainable payment plans to ensure debts are paid off in a reasonable time. But as we have seen, inconsistent, ineffective and outmoded debt collection practices have remained the norm and are underpinned by the regulations.

A range of campaigns (such as Stop the Knock led by the Money Advice Trust) have since aimed to exert pressure on councils to reform practices (as well as provide the support to do so). In November 2018, the Money Advice Service, now the Money and Pensions Service, published its *Supportive Council Tax Recovery Toolkit* – developed in conjunction with debt advice charities and several individual local authorities – in the hope of spreading the good practice that does exist. The CSJ has heard that many local authorities have been increasingly receptive to updating their approaches: notable examples of good practice mentioned and at a roundtable hosted by the CSJ included Barking and Dagenham, Birmingham, Bristol, Croydon and Newcastle-Upon-Tyne, as well as the case studies cited in Chapter two. They were given particular commendation for the work they have done to reform collections processes so that they escalate to enforcement less quickly and for introducing more support for vulnerable individuals.[173]

> There has been a welcome trend towards increased engagement with the debt advice sector on the part of local authorities in recent years, including as a response to continued criticism of councils' collection practices…
>
> [W]e periodically contact council Leaders and Chief Executives with tailored recommendations on how their authority's collection practices could be improved. Thirty-eight local authorities (10 per cent of the total in England and Wales) have committed to implementing at least one of the campaign's 'six steps'. The pace of change, however, is too slow.
>
> Money Advice Trust, submitted in evidence to the CSJ

170 HoC Treasury Committee, *Household finances: income, saving and debt*, 2018
171 According to various officials surveyed during the course of this research.
172 DCLG, Council Tax Guidance to local councils on good practice in the collection of Council Tax arrears, 2013
173 'Government commits to fair treatment for vulnerable customers', QUALCO, 2019

In recent years, central government has become increasingly alive to the persisting issues in local government debt collection. In April 2019 the Ministry for Housing Communities and Local Government (MHCLG) announced a review into practices, especially in the context of vulnerable residents. Given recent (and sadly ineffective) attempts to bring about change through central government guidance, MHCLG has been urged in consultation responses to ensure that the review considers not only changes to guidance, but also the 1992 Council Tax (Administration and Enforcement) Regulations which we examined above.

The Government accepts that this is an area ripe for reform. But as with many other areas of government policy, the Coronavirus outbreak has contributed (understandably) to delay. This need not reduce the scope of the review in the medium term (though immediate measures are clearly needed to cushion the impact of the Coronavirus crisis).[174] Indeed, both ongoing nature of the review and the additional time expected for the Government to respond provides an extremely strong foundation for the adoption of recommendations outlined later in this chapter.

3.1.3 Recent reforms to bailiffs and MoJ review

The government has introduced a range of reforms for enforcement agents (that is, bailiffs) in recent years.[175] A significant package of measures were brought through via multiple pieces of regulation in 2014 seeking to 'deliver protection against bailiffs using aggressive methods, whilst ensuring debts could still be recovered effectively'.[176] The 2014 reforms focused on a range of areas but at are their core were rules clarifying the role and position of bailiffs, establishing a new fee structure and updating the (non-legally binding) National Standards on Enforcement.

While the reforms introduced in 2014 were broadly welcomed, they have since failed to establish meaningful and widespread changes in bailiff activity.[177] The CSJ has heard new evidence from frontline debt organisations that '[s]ystemic problems in the market mean bailiffs and bailiff firms are regularly breaking the new rules and revised National Standards introduced in 2014'.[178] Strikingly, since 2014, many of the issues reported about bailiff behaviour (such as being threatening, applying fees or seizing goods inappropriately, failing to adhere to rights of entry or treating vulnerable clients appropriately) were found to have remained static in a 2018 report by the Taking Control campaign.[179] Debt advisers surveyed by StepChange were more likely to say bailiff behaviour had *worsened* since the reforms were introduced.[180]

This is not to say there are no exceptions. The CSJ has heard positive examples of some bailiffs working with local authorities who have adapted their approach to be in line with the advances made more widely in the private sector (see the case study below).

174 See above, Box 1.
175 Please note that there are three main types of bailiff – Civil Enforcement Agents, High Court Enforcement Officers, and County or Magistrates Court bailiffs. County or Magistrates Court bailiffs are employed directly by HM Court and tribunals service. The largest group is Civil Enforcement Agents who are normally private agencies or self-employed and used for debts such as: council tax arrears; parking fines; traffic fixed-penalty notices; and child support payments.
176 House of Commons Library, *Enforcement officers (formerly known as bailiffs)*, 2019
177 See, for example, Citizens Advice, *A Law Unto Themselves,* 2018
178 Citizens Advice in evidence to the CSJ
179 StepChange, Review of the enforcement agent reforms, 2019
180 Ibid

Case study: Phoenix Commercial Collections

Phoenix is a national company specialising in the ethical collection and enforcement of local authority debts. Their aim is to create successful partnerships and delivering the highest collection rates while providing exemplary standards of customer service. Phoenix recognise that collaboration with debt advice agencies and other partners forms an integral part of their collections strategy.

Phoenix have a 'welfare team' that handles emails and calls with offers of payment. Vulnerable customers are flagged on systems for individual attention and may be referred for support to Christians Against Poverty or organisations such as Samaritans. Some vulnerable customers are referred to the local authority as enforcement action may not be appropriate.

When a longer-term repayment plan is required the team will e-mail or text the customer a link to a 'benefit calculator' tool, produced by Policy in Practice, which includes the ability to complete an income and expenditure form based on the Standard Financial Statement (SFS). The Phoenix online tool is supported by a live webchat helpdesk and Phoenix's dedicated welfare team are on hand to offer guidance or specialist referrals where necessary. Phoenix will accept repayment offers where household spending falls within the spending guidelines.

Source: MaPS local authority guidance

However, after continuing concerns over the impact of bailiff action on people in debt, in November 2018 the Ministry of Justice (MoJ) launched a call for evidence on the impact of bailiff action. In response, calls have been made for an independent regulator to license, supervise, and sanction bailiffs that break the rules, as well as for changes to the fee structure so that punitive debt collection is limited to those actively evading debts that they can afford to pay.[181]

In early 2019 the Justice Select Committee endorsed the call for independent regulation and an independent complaints mechanism. The government's call for evidence closed in February 2019, yet no substantive response to either the call for evidence or the Justice Select Committee's recommendations have been issued. Here, too, the forthcoming response provides a clear opportunity to adopt the recommendations for bailiff reform (outlined below) while coordinating these with a wider overhaul of government debt collection.

3.1.4 Statutory Breathing Space to be introduced, including for government debts

In 2017 the CSJ called for the introduction of statutory 'breathing space' for people in serious problem debt – that is, a mandated pause in debt collection activity so that a debtor can receive regulated debt advice and establish an affordable repayment plan. This was subsequently adopted by all main parties in their manifestos and in the Government has pledged to take the scheme forward.

181 Money Advice Trust in evidence to the CSJ

What is Breathing Space?

The Government is introducing a 60-day breathing space period which will see enforcement action from creditors halted and interest frozen for people with problem debt. Moreover, creditors will be unable to initiate any new court claims against a debtor because they had not made debt repayments. During this period, individuals will receive professional debt advice to find a long-term solution to their financial difficulties.

In June 2019 HM Treasury confirmed the inclusion of nearly all public sector debt in its new statutory Breathing Space scheme set to launch in 2021, which will provide 60 days of statutory protection from creditor action for people struggling with problem debt. The Government reconfirmed in February 2020 that the scheme would include 'a wide range of government debts', as well as credit cards and loans.[182] However, it remains the case that due to IT and administrative issues, Universal Credit deductions – including both for advance repayments as well as for third party debts – will be 'phased in' at a later stage.[183]

It remains to be seen whether a version of Breathing Space will be introduced at an earlier (or indeed later stage) in light of the upheaval caused by the Coronavirus. However, the adoption of the policy marks a seismic intervention from government to support people in problem debt and its introduction (which will require parliamentary time and legislative change) help to pave the way for further reform.

3.1.5 The reduction of maximum benefit deductions

As shown in Chapter two, benefit deductions remain a significant issue for people on low-incomes and a stark example of where government debt collection has failed to keep up to speed with advances in the private sector. This is particularly the case for large tax credit debts born out of design flaws in the legacy welfare system.

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

The CSJ has heard evidence from frontline debt charities that the DWP has both improved the clarity of information about deductions in claimants' Universal Credit journal and better signposted claimants to debt advice via Jobcentre work coaches.[184] These moves are extremely welcome, and the Government should be commended for boldly taking measures to address these issues. Yet there is still much more than can be done.

182 HM Treasury, 'Breathing Space to help millions in debt', 2020
183 HM Treasury, *Breathing space scheme: response to policy proposal*, 2019
184 Christians Against Poverty in evidence to the CSJ

It has been put on record by multiple governments that a key aim of Universal Credit is to work flexibly with the needs and circumstances of claiming families. Yet the regulations continue to permit a blanket 30 per cent maximum approach to deductions without any recourse to household finances.[185] While guidance states that 'if a claimant is experiencing financial hardship they can ask for a financial hardship decision to reduce the amount of welfare debt they are currently repaying', this is a discretionary process which is applied only at the request of a claimant.[186] Focus group and written evidence gathered by the CSJ during the course of this research suggests that many third-party debt organisations and charities have difficulty securing debt relief due to financial hardship, for reasons including having to have the claimant in question on the phone during the negotiation and procedural hold-ups which frustrate the process.

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

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

3.2 The path forward: A Government Debt Management Bill

This report has identified serious shortcomings in the government's approach to debt collection, as well as a clear need to bring it up to speed with the private sector. Reform, where it has occurred, has been piecemeal, inconsistent and rarely embedded in legislation (with the important exception of the forthcoming statutory Breathing Space scheme).

Yet there remain pocket of progress, which provide a platform for further reform. The ongoing reviews, suspensions to both local government and Universal Credit debt recovery, as well as the pencilled-in parliamentary time for statutory Breathing Space, should be used to transform cross-government debt collection and bring it up to speed.

185 DWP, Guidance: Universal Credit: debt and deductions that can be taken from payments, visited 2020
186 DWP, *Benefit Overpayment Recovery Guide*, v.2.40, 2019

3.2.1 This would be best achieved through a Government Debt Management Bill

The Government Debt Management Bill we propose would put the Fairness Principles on a statutory footing, embed an updated approach across government and amend the current legislation that has held back progress. We outline the full range of proposed measures below.

A Government Debt Management Bill should be laid which adopts the following measures:

Recommendation 1: Embed fairness across all of government debt collection

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

Following a short consultation, update the new Fairness Principles with the most recent advances in debt collection best practice, including novel methods of communication and engagement while ensuring that the regulation is 'future-proofed' to allow for advances in managing the debt of vulnerable customers. The consultation should adopt the FCA's Treating Customers Fairly guidelines as a baseline to build on, and draw from the Credit Services Association's Code of Practice.

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

- When a department or public body learns that a debtor owes multiple government debts, they should be referred to the Cabinet Office debt aggregator, whose Debt Management Function (DMF) should then collect the appropriate information from the debtor using the Standard Financial Statement (SFS). The Cabinet Office DMF should then broker an agreement between all departments involved to establish a sustainable repayment plan given the debtor's circumstances, while maximising the their potential income (including through benefit take-up and a referral to wider support where appropriate).[187] Independent debt advice may still be needed to factor in private sector debts (see below).
- The new Fairness Principles and vulnerability policies required of each department and government body should incentivise individual debt teams to 'refer up' complex cases and multiple debts to the centralised debt aggregator as these become known.

Adopt the Standard Financial Statement across all government departments and bodies as an objective means of assessing the affordability of debt repayments. The inclusion of government debts will mean that the Standard Financial Statement will need to be updated by the Money and Pensions Service accordingly, in order to reach an agreement on the proportion of available disposable income going to government bodies vs. private creditors.

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

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

187 This would be complemented by the expansion of Universal Support. See a forthcoming CSJ report.

Recommendation 2: Transform local government debt collection

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

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

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

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

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

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

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

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

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

Recommendation 4: Transform debt collection in the welfare system

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

- The remaining portion of the tax credit debt should be retained by HMRC, and its recovery should be modelled on the student debt system where individuals only begin to pay it back in installments when their earning reach a specific threshold. At the end of the temporary suspension of welfare debt repayments, the Government should review how high it wishes to set this threshold, given the trade-off between reduced work-incentives and the recovery of old debt. Writing off old tax credit debt could, after all, have a profoundly positive impact on the rollout of Universal Credit and prevent hundreds of thousands of families having 25+ per cent of their standard allowance deducted due to debts resulting from issues with the legacy benefits system.
- For ongoing benefit overpayments, claimants must be informed of any outstanding overpayment within a year and given an as explanation as to why they received it. Overpayments revealed more than 13 months afterwards should be waived, as per comparable practice in the private sector (such as the 'backbilling' rules set out by Ofgem which prevent energy suppliers from charging retrospective bills outside of a 12-month timeframe).
- Tax credit debts should also be treated differently within insolvency timeframes, as currently they are not covered by a debt relief order (DRO) when they reappear at a later stage (often lying dormant on the HMRC system until activated). Households with a DRO (and likely to be in acute problem debt) are therefore still encumbered by historical tax credit debt, yet remain unable to receive another DRO for six years; the alternative is to file for bankruptcy which is, perhaps ironically, unaffordable for many in need as it costs £600.

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

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

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

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

Appendix

1. The Fairness Principles in the Digital Economy Act 2017 Code of Practice

The Fairness Principles for data sharing under the debt power

69. Fairness is a key consideration in respect of the operation of the debt data sharing power. Public authorities will continue to have their own fairness policies and practice in how they manage debt. These Principles provide a set of best practice guidelines to help ensure a common approach to fairness is considered when sharing information under the power. These Principles aim to align with existing public authority practices, and aim to encourage a consistent approach to fairness across the debt data sharing pilots. The Principles only apply to debt data sharing pilot activity to be carried out under this Act, and only in accordance with any legal obligations to which public authorities are subject.

70. Pilots operating under the debt power should aim to use relevant data to help differentiate between:

    - a customer who cannot pay their debt because of vulnerability or hardship – so that individuals can, for example, be offered advice and guidance about the debt owed (where appropriate), or be signposted to non-fee-paying debt advice and support, with the aim of minimising the build-up of further debt
    - a customer who is in a position to pay their debt – some of whom may need additional support
    - a customer who has the means to pay their debt, but chooses not to pay – so public authorities, and private bodies acting on their behalf, can assess which interventions could best be used to recover the debt

71. The use of wider data sharing for this purpose will help enhance cross-government debt management capability, and will help to enable a more informed view of a customer's individual circumstances and their ability to pay.

72. Pilots should be conscious of the impact debt collection practices have on vulnerable customers and customers in hardship. Statistical and anecdotal evidence from debt advice agencies shows that in a substantial amount of cases, a non-fee-paying customer who has an outstanding debt will owe money to more than one creditor. The aim is to ensure any repayment plans are affordable and sustainable. This should balance the need to maximise collections, while taking affordability into account.

    This may be achieved by:

    - Using relevant sources of data and information to make informed decisions about a customer's individual circumstances and their ability to pay.

    This process could include:

- an assessment of income versus expenditure to create a tailored and affordable repayment plan based on in work and out of work vconsiderations, including the ability to take irregular income into account
- consideration of the need for a 'breathing space' to seek advice, or forbearance, in cases of vulnerability and hardship
- where a vulnerable customer is identified, they should be given appropriate advice and support, which may include signposting to non-fee-paying debt advice agencies
- government should liaise with non-fee-paying debt advice agencies who are helping customers in debt
- communication should clearly set out relevant information to enable the customer to take action, and encourage them to engage with the government
- any pilot that uses a third party (such as a debt collection agency or shared services) must also treat people fairly, in line with these Principles and relevant regulatory rules
- pilots should undertake regular engagement with stakeholders to encourage regular feedback about how fairly the pilots are working in practice

2. Credit Services Association Code of Practice

Key requirements

[…]

x. Cooperate with customers and their authorised third parties in line with regulatory guidance, and not act in a manner intended to publicly embarrass or cause them distress.

y. Treat customers fairly and not subject customers (or their authorised representatives) to aggressive practices, or conduct which is deceitful, oppressive, unfair or improper, whether lawful or not.

z. Exercise forbearance and consideration of a customer's circumstances, of which they are aware – in particular, in relation to those who are particularly vulnerable or experiencing severe financial hardship.

aa. Take into account a customer's circumstances and ability to pay when seeking to recover debts

[…]

Dealing with customers in vulnerable circumstances and financial difficulties

Members must have in place a robust mechanism to identify customers in vulnerable circumstances and/or financial difficulties. Where these customers are identified, or the member has reason to believe the customer is in a vulnerable situation, members must consider appropriate outcomes for those customers. In addition to the above, members shall:

a. Ensure their staff are trained to be empathetic with customers experiencing financial difficulties or who find themselves in a vulnerable situation.

b. Take into consideration the special circumstances of those customers in a vulnerable situation and/or financial difficulties, and consider the customer's ability to pay.

c. Accept all reasonable offers by customers to pay by instalments provided such customers have supplied (i) evidence of inability to pay in full, and (ii) income and expenditure information demonstrating the maximum amount they can afford to pay. Repayment plans should be affordable and sustainable.

d. Apply forbearance where it is clear this is the most appropriate approach for a customer's current situation.

e. Allow a customer to apportion income to the payment of priority debts such as mortgage or rent, when assessing a customer's ability to repay.

f. Suspend any debt collection where a customer demonstrates they are seeking financial assistance and provide the customer breathing space of at least 30 days. Additional forbearance should be considered where appropriate.

g. Be prepared to accept a token offer made by a customer or their representative, when evidence has been provided that they cannot afford to pay more.

h. Consider reducing or stopping interest, charges or fees being applied to an account if a customer has demonstrated financial difficulties.

i. Encourage a customer to engage or offer appropriate signposting to free and impartial money advice organisations who can assist. Further details of those organisations who may be able to help can be found at the back of this Code under Helpful Information.

j. Obtain and use sensitive personal data only in accordance with data protection regulations and any guidance published by the Information Commissioner's Office. In most cases, this will only be where a customer has provided explicit consent for processing the sensitive personal data.

k. When requesting evidence of mental health problems, seek appropriate and proportionate information including, where necessary, the completion of the Debt and Mental Health Evidence Form, or similar, from an appropriate/authorised person.

l. In instances where a customer is in a vulnerable situation, only initiate court action if it is reasonable and proportionate to do so.

m. Ensure information in relation to a customer's vulnerable situation, including any mental health problems, is passed on to the instructing client or any third party agent subsequently instructed, to ensure a better customer journey.

The Centre for Social Justice

The Centre for Social Justice
Kings Buildings,
16 Smith Square,
Westminster, SW1P 3HQ

www.centreforsocialjustice.org.uk
@csjthinktank