

In Practice: Exploring Council Debt Collection

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Executive Summary

- > Citizens Advice Scotland (CAS) has long had an interest in individual council debt issues including council tax, rent and water (and sewerage) arrears. These debt issues have increased in the last decade: mainly because of wages failing to keep up with costs, the austerity imposed after the financial crash in 2008, welfare reform, the introduction of universal credit, the benefit cap and changes in work. This report seeks to look at all council debt collection and enforcement, and also what happens when people owe multiple debts to the council at the same time.
- > CAS are committed to improving good practice in council debt collection not least because council tax has become the most common debt issue reported to us by people seeking debt advice from our network. However this is not the only evidence of increasing pressure from councils on people in debt; there has also been a significant increase in diligence, also known as enforcement, used by councils in the last year. The context of this is a reduction in the use of diligence by other types of creditor, which makes the growth in local authority use of debt enforcement even more significant. Whilst maximising council income is in the best interests of all tax payers there clearly need to be protections in place for the most vulnerable.
- > Council tax has a fast track to enforcement, generally quickly outpacing the means people have to catch up once they fall into arrears. Enforcement costs can be added once the debt is passed to sheriff officers and this only increases indebtedness. Yet this speed to enforce must be contrasted with the length of time that councils have to enforce their debts, which is significantly longer than other creditors.
- > The means of enforcement can also be harsh with arrestments freezing money in bank current accounts or taking money from wages. Worryingly people who were previously immune from this type of action under legacy benefits now find themselves at risk through either a bank account arrestment or having the money taken in large deductions from Universal Credit. We are also concerned by the growth in numbers of Exceptional Attachments that allow sheriff officers inside people's homes to seize non-essential goods.
- > Previous CAS research¹, and that done by social landlords shows a higher rate of rent arrears among social housing tenants claiming Universal Credit. Despite the issue being about money or lack of it, councils resort to the law and pursue evictions for non-payment. The legal process of eviction is complex and leaves the tenant subject to the uncertainties of the court system. Unsurprisingly few tenants engage with it rendering the process meaningless and expensive to maintain for little gain. Council rent arrears can also drive people to bankruptcy as this is the only way to avoid eviction if the rent owed becomes too large to practically repay in a short period of time.
- > In 2015 CAS wrote a report highlighting issues with water and sewerage charges and the issues caused by communications not clearly defining liability. Water and sewerage charges are collected with council tax by each local authority. 5 years later the issues have not changed, with many people being unaware that they are liable to pay at least 75% of their water and sewerage, even if they get a full council tax reduction. A recent development, Water Direct, which enables councils to recover water and sewerage debt from

¹ https://www.cas.org.uk/system/files/publications/learning_from_testing_times_uc_report.pdf and <https://www.cas.org.uk/publications/rent-arrears>

benefit payments, as well as an amount for current charges, is worrying because the level of deduction can put financially vulnerable people into more difficulty.

- > Multiple debt owed to the same council has increasingly become an issue as people's finances have become more constrained. Many councils collect debts in different departments across the council, but don't necessarily have an overview of the impact that all the debt payments taken together have on the individual. This lack of oversight can leave people destitute as different departments carry out enforcement without a co-ordinated approach which takes account of the limited means of the person in debt. Those impacted tend to be the most vulnerable.
- > In Scotland, councils' debt collection practices have remained static for decades, however local authorities outside of Scotland and UK government departments have been making changes to balance debt recovery with fairness to the individual. Meanwhile in the world of consumer credit "treating customers fairly" has become a mantra. Councils in Scotland are being left behind in their approach to debt recovery and their methods can cause financial harm to people in debt.

- > Through research we have explored debt recovery with a number of bureaux and local authorities and identified what works well in two local authority areas where there is good collaboration between council and advice sector. We have also explored what doesn't work in a 3rd local authority to help understand ways things can be done better.
- > Our research also looks at one of the main touchpoints for many people: council websites. Our analysis shows that there is some good information available but this is not universal. Some councils make their debt policies publicly available and some of these are encouragingly progressive, having not only an approach to multiple debt but accepting debt industry standards for calculating affordable repayments to debt.
- > From our work, we have produced a Charter that reflects what we think are the actions local authorities need to take to help people in council debt or to prevent people getting into council debt in the first place.
- > As this report goes to print, the outbreak of COVID-19 has led to councils applying forbearance in a way which would not have been thought possible a year ago. We take this as a positive development and call upon councils to build on this through adopting as many of the actions as possible contained in the Charter.



Council debt collection charter

Citizens Advice Scotland calls upon Scottish councils to commit to:

- 1 Publishing a corporate debt policy and measuring its success in terms of how it helps citizens sustainably pay debt owed to the council
- 2 Publishing a vulnerability policy and using it to prevent hardship
- 3 Taking a pragmatic approach to writing off old debts which cannot be collected or would cause hardship to collect
- 4 Building professional relationships of trust with partners in the Third Sector to establish a common approach and best practice for helping people with council debt
- 5 Establishing referral processes, working groups, training events and dedicated points of contact within council and advice agencies to facilitate closer working
- 6 Adopting a “never too late to help” policy whenever citizens choose to engage with their debts and debt advice
- 7 Giving front line council staff discretion to proactively help citizens to come to affordable arrangements to manage their debts using established tools like the Accountant in Bankruptcy’s Common Financial Tool
- 8 Working together with Third Sector partners to mitigate the impact of welfare reform

Council tax

- 9 Adopting the “Collaborative Council Tax Collection” standards
- 10 Doing more to collect council tax in-house to prevent enforcement costs building up
- 11 Prioritising recovery against people who won’t pay, rather than can’t pay

- 12 Allowing breathing space for people in arrears to work with an advice provider to make a proposal for repayment
- 13 Allowing people to pay arrears beyond the current financial year within council collection teams
- 14 Prioritising payment for ongoing liability over payment to arrears – including arrears being collected by sheriff officers
- 15 Using sheriff officer led enforcement as a last resort and setting a threshold for enforcement of £250
- 16 Ensuring that sheriff officers proactively release funds where benefits have been arrested in a bank account
- 17 Ensuring that sheriff officers follow council policies on vulnerability and work collaboratively with third parties like the CAB network.
- 18 Ceasing to use Exceptional Attachments as a recovery method

Rent arrears

- 19 Proactively intervening early to ensure that rent arrears do not build to the point where eviction is inevitable
- 20 Ensuring that tenants are not penalised unfairly for Universal Credit administration problems
- 21 Extending to Universal Credit the pre-action protocol process of not taking recovery action where a housing benefit claim is pending
- 22 Avoiding using court or tribunal procedures to recover rent arrears wherever possible
- 23 Ceasing the eviction process at whatever stage it has reached where a tenant engages with advice and seeks to develop a plan for payment

Water debt

- 24 Developing specific communications to inform people of ongoing liability for water and sewerage payments when they are in receipt of Council Tax Reduction
- 25 Ensuring that deductions for Water Direct will not cause financial hardship by carrying out pre action assessments of affordability

Multiple debt

- 26 Checking whether there are other debts owed to the council and other repayment arrangements in force when individuals make contact about specific debt issues

- 27 Taking a person-centred approach to enforcement taking into account all the debts owed to the council, including those being enforced by sheriff officers
- 28 Allowing people to make one affordable payment to all their council debts, with the council distributing the payments by priority to the relevant teams
- 29 Having sheriff officers desist from enforcement for council tax that will impact on other debt repayments agreed with the council
- 30 Acknowledging that people may have other debts, including priority debts, outside of the council and that these need to be paid too



Introduction

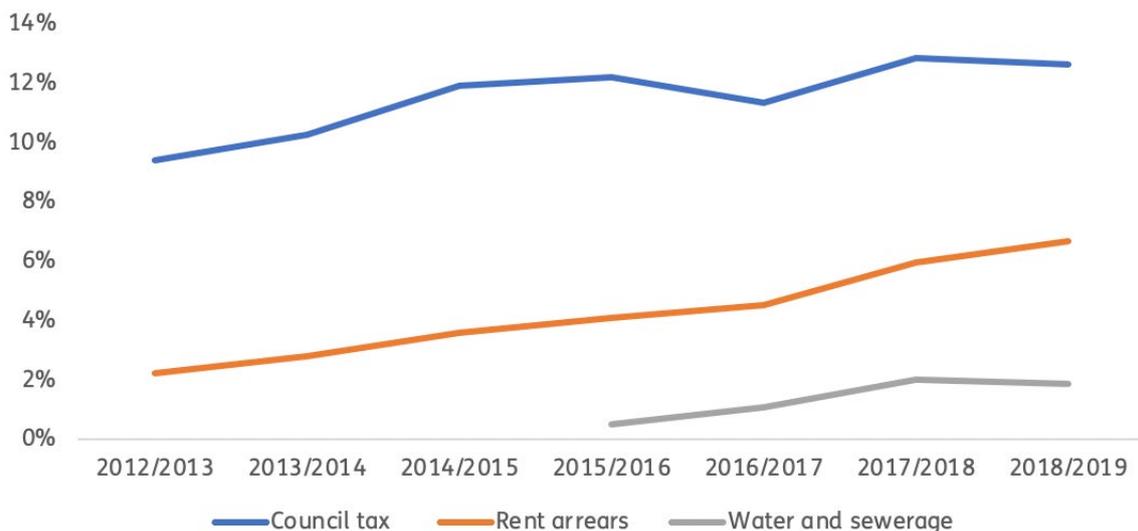
Scotland’s Citizens Advice Network empowers people in every corner of Scotland through our local bureaux and national services by providing free, confidential, and independent advice. We use people’s real life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.

- > *In 2018-19, the Citizens Advice Service network helped over 270,000 clients in Scotland and dealt with almost 750,000 advice issues. With support from the network, clients had financial gains of over £131 million and our self-help website Advice in Scotland received approximately 3.7 million page views.*

- > *The CAS network dealt with 110,439 debt issues and gave advice regarding Council Tax debt on 14,009 occasions, local authority rent arrears on 7,386 occasions and water and sewerage billing issues 2,060 times.*

Council tax is the number one debt issue that people seek advice about from our network and since 2012 there has been an increase in advice sought across all local authority debts.

Demand for advice on council debts as a % of all debt advice given by the CAB network



This wasn’t always the case. Prior to 2013/14 the highest issue was credit and store cards.

What also cannot be ignored is the sheer amount of enforcement taking place with 239,537 actions relating to council tax alone in 2018-19. The long term trend is that since 2011-12, diligences (enforcement actions) executed in respect of council tax debts have increased by 27.8%. However last year’s statistics show a startling

15.6% increase in the use of council tax related diligence on the year before and this can be contrasted with a 42.1% decrease in the use of these same powers by consumer creditors (“non summary warrant” related diligence in the table below)².

We suspect this is because consumer creditors under the Financial Conduct Authority regulatory regime are required to show forbearance and

² <https://www.aib.gov.uk/scottish-diligence-statistics-2018-19>

**Diligences executed by warrant procedures (all diligence processes):
Scotland, 2017-18 and 2018-19, annual data**

Warrant procedure	2017-18	2018-19	Annual Percentage Change
Summary Warrant (council tax)	207,211	239,537	15.6%
Other Summary Warrant	8,341	6,314	-24.3%
Non-Summary Warrant	46,367	26,841	-42.1%
Total diligences executed	261,919	272,692	4.1%

Source: Officers of court³

treat customers fairly. However there are no such obligations in the council tax regime. This lack of protection is made worse by the speed of action, with it being possible for council tax to proceed from missed payment to summary warrant for enforcement in little over a month. **We believe there needs to be more debtor protections built into council debt enforcement because of the increasing use of harsher enforcement methods and the speed with which they are being applied.** In this respect local authorities should take account of learnings from the HMRC (which like local authorities also collects taxation) and FCA regulated firms, who have both moderated their collection practices.

Another argument for change is that there have been positive developments in council debt collection in other parts of the UK, with Wales stopping the imprisonment of people for council tax arrears, the publishing of Money Advice Service recommendations on the collection of council tax⁴, a new code of practice for bailiffs and a fairness group being established by the Cabinet Office⁵. The Treasury has also included councils in its “breathing space” proposals, which will allow people in debt in England and Wales time to get advice free from the pressure of enforcement, interest and charges.

Scotland has shown the way before in terms of measures that ease the burden on people in financial difficulty, pioneering the Debt Arrangement Scheme, which allows people to pay back their debts free from interest and charges and legal enforcement. This scheme enhances the dignity of Scottish people in debt by giving them the chance to pay back their debt free from enforcement by their creditors, including councils. However the scheme is not for everyone and, to protect more people, new approaches to council debt recovery policy need to be developed.

Interestingly this report was written as the COVID-19 outbreak was developing. Given the unprecedented economic impact on many people, councils have had to respond with forbearance measures including delaying the start of payments for the 2020 council tax year and deferring enforcement. Council forbearance has been a welcome development in this crisis and shows a way of working for the future that is more sensitive to hardship.

In this report we will look at the state of council debt collection (pre COVID-19), highlighting areas of concern, sharing our research on good practice and developing a charter that covers all areas of council debt collection.

³ Ibid

⁴ https://masassets.blob.core.windows.net/cms/files/000/001/115/original/Supportive_Council_Tax_Recovery.pdf

⁵ The aim of the group is to continually improve how government interacts with people in debt, particularly those in vulnerable circumstances and/or experiencing financial hardship by:

- > understanding the impact that debt collection practices can have and how to improve them
- > implementing a joint programme of work to further examine practices in central and local government debt management which support vulnerable people, and make evidence based recommendations for change
- > applying Fairness Principles to government debt management, in line with sector best practice
- > balancing the statutory and societal obligations of government to collect debts and ongoing liabilities, and prevent fraudulent activity, with the need to ensure fairness.

What is CAS doing?

CAS has previously reported on council tax (2005⁶ and 2010⁷), rent arrears (2018⁸) and water debt (2015⁹ and 2018¹⁰) and made recommendations (see appendix 2 and 3). We have submitted parliamentary evidence on issues including the impact on rent arrears of Universal Credit and the Benefit Cap, and the time limitations on debt collection for council tax arrears in the Prescription Bill 2018. We also have a role as the recognised consumer representative body for the water industry in Scotland since 2014. This report builds on the previous work and we look specifically at current practice in council debt collection and how it can be improved.

The CAB network continues to see issues relating to council tax, rent arrears and water debt increasing. With council tax being the number one debt issue that people seek advice about, it is almost inevitable that Citizens Advice Scotland has an ongoing work plan commitment to identify good practice in council debt collection, increase the number of local authorities adopting good debt recovery practices, and to help councils develop more transparent bills and communications. Given the size of the task and numbers of local authorities involved this will likely be a multi-year exercise.



So far progress towards these ambitious goals has been:

- > Jointly issuing a set of good practice guidelines for Council Tax Collection in collaboration with the Improvement Service, StepChange, Money Advice Scotland, Citizens Advice and Rights Fife, the Institute of Revenues Ratings and Valuers Scotland and the Money and Pensions Service¹¹.
- > Engaging with the City of Edinburgh council as they redesign their council tax letters for the year and helping to make the information on the back of the letters more user friendly.
- > Carrying out research with our members on good practice in debt collection, which we share later in this report. Our research shows how one council has increased its debt recovery by being more strategic about who it pursues and working more collaboratively with the advice sector.
- > Launching an online Council Tax tool which enables people to see if they are entitled to exemptions, discounts and council tax reduction¹². We see this as a preventative measure to help avoid debt by informing people about the savings that are possible, if only they were claimed. City of Edinburgh Council have included reference to this tool in their council tax billing letters for 2020/21.

⁶ <https://www.cas.org.uk/publications/council-tax>

⁷ <https://www.cas.org.uk/publications/community-charge-and-council-tax>

⁸ <https://www.cas.org.uk/publications/rent-arrears>

⁹ <https://www.cas.org.uk/publications/sink-or-swim-consumers-experiences-water-and-sewerage-debt>

¹⁰ <https://www.cas.org.uk/publications/charting-new-course-study-developing-affordability-policy-water-and-sewerage-charges>

¹¹ https://www.improvementservice.org.uk/__data/assets/pdf_file/0011/11801/collaborative-council-tax-collection-web.pdf

¹² [Checkmycounciltax.scot](https://www.checkmycounciltax.scot)

Council Tax

In 2019 across the Citizens Advice network in Scotland 17,000 pieces of advice were issued on council tax debt, and a further 22,000 pieces on council tax generally. The average council tax debt per client works out at £3,102.46, nearly three times the average council tax bill of £1,147 per year according to the most recent Scottish government data.

Unlike other debts, council tax has a fast track through to enforcement. Typically (pre COVID-19) if a person fails to pay their council tax they will receive at most two official reminders, after which they lose the right to pay their council tax by instalments and a final notice is issued charging them for the full year. Given that the failure to pay is usually a symptom of not having enough money, it is unlikely that at this stage the full year's council tax will be paid. The thresholds for taking action for non-payment of council tax are generally low¹³ and in some cases the enforcement costs are the same or greater than the debt owed. There is also seldom consideration of the person's financial circumstances and their ability to pay, before moving to enforcement.

If the council tax is not paid in full a summary warrant is then issued which adds a 10% surcharge to the outstanding amount and the debt is handed over to sheriff officers to enforce. Unlike consumer debts there is no legal process to defend against the summary warrant.

This whole process of shifting debt from council revenues team to sheriff officer can take place in a matter of 6-8 weeks from a missed payment. This has to be considered against the wider

context of legislation, practice under other debt collection regimes and the state of people's finances.

- > In terms of legislation, councils were successful in influencing the Scottish Law Commission to explicitly exclude council tax debts from the shorter five year prescription period that applies to other debts in the draft legislation that went on to become the Prescription Act 2018¹⁴. This means that they have 20 years to enforce their debts, not five like other creditors have¹⁵. With this right should come a commensurate responsibility to use their enforcement power wisely, proportionately and in a timely manner, however this doesn't appear to be the case in all councils as can be seen from the cases we share in this report.
- > Consumer credit debts are collected differently. Consumer creditors have five years to enforce their debts from the last time the customer made a payment. If the customer doesn't pay or acknowledge the debt in writing, and the creditor hasn't taken them to court then the debt is extinguished after five years under the Prescriptions and Limitations Act 1973. Despite this limit, consumer creditors will only reluctantly proceed to court action after they have tried everything else to contact the customer and to persuade them to pay, preferring to avoid unnecessary enforcement action that may not actually be of any value.

¹³ One council told us that they had recently reviewed their thresholds which were £2 to send a bill, £5 to send a reminder and £10 to issue a summary warrant. They now have a minimum of £10.

¹⁴ "We received a number of responses from local authorities. Among the points they made were that the policy reasons which justify exempting taxes payable to the Crown from the five-year prescription apply equally to taxes payable to local authorities; and that, while it was acknowledged that as a rule five years should be sufficient time to collect these taxes, there were cases in which local authorities faced difficulty in collecting the taxes when they fell due as well as arrears of tax from previous years." 2.28 p16 https://www.scotlawcom.gov.uk/files/3414/9978/5138/Report_on_Prescription_Report_No_247.pdf

¹⁵ In England and Wales the equivalent statute of limitation period for council tax is 6 years.

- Recent work has also shown that years of austerity have reduced people's financial capacity. Our annual tracker survey in 2019 revealed that 47% of Scottish people in work had run out of money before payday at least once in the previous year and of those workers, 35% had gone without food for their household at least once over the previous year as a result. In addition, 25% of people who had run out of money before payday had missed a council tax payment and 8% had missed the payment six times or more¹⁶. We have also found that more than 40% of the debt clients registered on our debt casework system do not have any disposable income with which to pay their debts¹⁷.

Given this wider context it is difficult to see why some councils, armed with a robust enforcement policy, having four times as long to recover debts, and no doubt an awareness of people's finances through growing arrears and impacts on social services, insist on moving through the enforcement stages so quickly. Indeed the costs of collection have to be absorbed by the council if the person can't pay so using sheriff officers too quickly or at all may actually be a false economy¹⁸.

Scottish Government also have a part to play. The National Performance Framework's focus on alleviating poverty is unlikely to be achieved without reforming council tax debt collections. When people are living only a payday or two away from crisis, there can be no doubt that the

enforcement can tip people over from managing to not managing as the following case shows.

! Citizens ALERT A West of Scotland CAB reports a client with council tax arrears.

The client was billed for a total of 16 months to be paid over 5 instalments. The client could not afford to pay the instalments as requested by the council. The council then passed the account to the sheriff officer and they added a 10% surcharge which came to nearly £155. The client received a letter from the sheriff officer and 5 days later the CAB requested a hold to be placed on recovery for 4 weeks, but 2 weeks later a Charge for Payment was served and a further £81 added. The client is at risk of a wage arrestment now. She is on half pay at work and Universal Credit and would struggle to afford a wages arrestment of approximately £45 plus her ongoing council tax from 1st April. The client is also at risk of bank arrestment as the funds in her account are greater than £529.90 at some dates. She also has rent arrears and the landlord is asking her to pay these back at the same time.

Before carrying out enforcement sheriff officers have to serve a "Charge for Payment" and a Debt Advice and Information Package¹⁹. The Charge for Payment gives two weeks for the debt to be paid in full after which enforcement can begin. Sheriff officers charge between £80-£100 for serving the charge for payment and this is typically added to the debt. 201,026 Charge for Payments were served in 18/19²⁰ which gave sheriff officers, at minimum, a £16 million revenue stream²¹.

¹⁶ All figures, unless otherwise stated, are from YouGov Plc.

Consumer Tracker Survey 2019: Total sample size was 2,078 adults, of which 983 are workers. Fieldwork was undertaken 12th – 23rd March, 2019. The survey was carried out online. The figures have been weighted and are representative of all Scottish adults (aged 18+).

¹⁷ Our sister organisation Citizens Advice in recent research found that many people in council tax arrears can't afford to pay their debts, and have an average of just £7 left at the end of the month after covering their living costs. Some four in 10 have no money left at all. The overwhelming majority - nine in 10 of the people who seek help from Citizens Advice with council tax debt - also owe money on other household bills, most commonly water and energy costs. <https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/debt-and-money-policy-research/negative-budgets-a-new-perspective-on-poverty-and-household-finances/>

¹⁸ A 2019 Freedom of Information request revealed that, for every £1 of debt referred to bailiffs by councils in England and Wales, only 27p is ever returned to them ([https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Citizens%20Advice%20FOI%20request%20-%20council%20tax%20arrears%20collection%20\(1\).pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Citizens%20Advice%20FOI%20request%20-%20council%20tax%20arrears%20collection%20(1).pdf)).

¹⁹ https://www.aib.gov.uk/sites/default/files/298834_sct1116101094-002_debt_advice_information_package_p3.pdf

²⁰ <https://www.aib.gov.uk/scottish-diligence-statistics-2018-19>

²¹ It is somewhat alarming that 88% of debt enforcement relates to council tax enforcement. Clearly it is a significant source of income for many sheriff officer firms and without the current council tax system, they would not be viable.

The most common type of enforcement is a **non-earnings arrestment**, which is also referred to as a **bank account arrestment**. In 2018-19, there were 167,356 non-earnings arrestments²² served in respect of council tax debts, a 21.3% increase on the previous year. A non-earnings arrestment seizes any money in the person's bank account above a "protected minimum balance" (which is set by regulation every 3 years²³). If the bank arrestment has been successful and seized funds then the person has three options:

- 1 Agree to the funds being seized and sign a mandate that allows the bank to release the money to the sheriff officer
- 2 Contest the arrestment through a sheriff court process on the grounds that it is unduly harsh.
- 3 Do nothing and after 13 weeks the bank automatically releases any funds captured.

! Citizens ALERT An East of Scotland CAB reports a client had £880 arrested from her bank account by sheriff officers. On contacting them regarding her council tax debt they refused to give her any information until she had made another payment, not even the amount outstanding. The client is unemployed and dependent on Universal Credit.

The person in debt has the costs of the arrestment added to their outstanding balance, typically £60-£80, meaning sheriff officers earned a minimum of £10 million in such fees in 18/19. In addition, even if there is no money in the bank account, the bank itself may charge the customer for having had their bank account arrested.

! Citizens ALERT An East of Scotland CAB reports a client's bank has charged him £25 for an attempted bank arrestment which was not paid out. The client is also being charged an £8 daily fee. When the client phoned the sheriff officer to make an arrangement, they aggressively demanded much more than he could afford.

Since the arrival of Universal Credit people on benefits may also be susceptible to having their bank accounts arrested. A single monthly payment of UC can include a housing payment, and the £529.90 protected minimum balance can be significantly lower than this. This is especially unfair when comparing claimants of UC with people on legacy benefits who very rarely exceed the PMB in an account because of shorter payment periods and housing benefit being paid direct to the landlord. Protection from bank account arrestment for the worst off and people dependent on benefits was one of the reasons for the PMB being introduced by the Bankruptcy and Diligence (Scotland) Act 2007. There are a few ways this can be mitigated, i.e. if UC is paid every two weeks or the housing element is paid to the landlord, however these are not standard options and the claimant has to ask for their UC to be paid in this way. There is also a legal remedy which can be used, i.e. applying to court to have an arrestment lifted because it is unduly harsh. However, this process takes time (i.e. weeks) during which the claimant would be subject to financial distress. It would also be challenging for an individual to do on their own behalf as the forms are not held on the Sheriff Courts and Tribunals website and the option of a legal challenge is not common knowledge. In all likelihood most people would need a debt adviser or legal representation (if affordable) to assist with this process.

²² <https://www.aib.gov.uk/scottish-diligence-statistics-2018-19>

²³ Currently £529.90 <http://www.legislation.gov.uk/ssi/2018/345/contents/made>

²⁴ <https://www.aib.gov.uk/scottish-diligence-statistics-2018-19>

The next most common type of **enforcement is an earnings or wage arrestment** which requires an employer to make deductions from wages payments. There were 71,835 earnings arrestments²⁴ in 2018/19, a 4% increase on the year before, adding another £4 million to sheriff officer revenues. Again there is a protected minimum balance of £529.90 and the wages above that level are subject to a sliding scale of deductions. There are fewer defences against an earnings arrestment, unless it has been improperly carried out. However a time to pay order under the Debtors (Scotland) Act 1987 or debt solutions like the Debt Arrangement Scheme, Protected Trust Deeds and Bankruptcy stop earnings arrestments.

! Citizens ALERT An East of Scotland CAB reports a family are being forced into poverty due to zero-hour contracts and food banks are the only option to help them meet essential living costs. The real cause of the deprivation though is caused by the client and her husband's earnings arrestments.

Most worryingly, the diligence statistics shared by the Accountant in Bankruptcy show that councils are turning to **Exceptional Attachments** to enforce their debts, with 225 carried out in 2018/19²⁵. This has to be understood against the context of zero Exceptional Attachments for council tax in the years 2012/13 to 2016/17. An Exceptional Attachment allows a sheriff officer to come into a property and seize non-essential items. It is meant to be exceptional by nature and needs to be approved by a sheriff who assesses the merits of it against criteria that are meant to protect debtors²⁶. Exceptional Attachment replaced the much despised Poidings and Warrants process used to enforce the poll tax and

early years of council tax. We are concerned that councils are increasingly using such a draconian means of enforcement, especially given that many people do not have sufficiently valuable enough non-essential possessions that would pay off their debts²⁷. Exceptional Attachments cause fear, distress and humiliation so that the subject feels compelled to pay off the debt. We do not think this has any place in a modern progressive Scotland.

Other methods of recovery used include **attachment** of goods outside of the house (typically used to seize vehicles) and inhibiting the person from selling or remortgaging their home, via an **"inhibition"**. If the person in debt is a homeowner who has not paid council tax for some time, the council may consider bankrupting them. This will either encourage the person to find the money quickly or potentially they will lose their home through the process.

One of the most difficult and intractable problems with dealing with council tax debt collection is the unrelenting way that debts can build up once somebody gets behind on their payments. Without fail the council will bill every year and if the person is already in arrears, trying to balance ongoing payments to council tax against debt payments for previous years on top of already frugal budgets is very difficult. This is exacerbated if sheriff officers are carrying out enforcement for arrears as the likely outcome is a further reduction in available funds to pay the new bill. There is no easy answer to this particular problem, apart from debt write off.

In England and Wales it is possible to appeal to a council to apply discretionary powers to completely write off the council tax where other

²⁴ <https://www.aib.gov.uk/scottish-diligence-statistics-2018-19>

²⁵ Ibid

²⁶ The sheriff officer has to apply to a Sheriff for the warrant and show that they have tried everything else and that they can cover their cost plus £100.

²⁷ There is a list of exempt items that sheriff officers are not allowed to seize, making it extremely unlikely that any exceptional attachment will be successful. <http://www.legislation.gov.uk/asp/2002/17/schedule/2>

discounts and schemes cannot be applied. The power is under section 13A of the Local Government Finance Act and there have been recent tribunal decisions requiring councils to apply that discretion²⁸. We think that councils in Scotland should consider following the examples of councils in England and Wales in writing off debts, especially ones that they know are unpayable.

We do see some positive developments, for example councils are trying new ways of encouraging people to pay. For example City of Edinburgh Council uses text messaging reminders. The messages don't count as formal reminders and they help prevent debts shifting too quickly through the formal reminder stages.

We are also delighted that Councils have worked with partners like ourselves on the Collaborative Council Tax Collection guidance²⁹. We see this as a platform on which to build new working relationships and we will be working with partners to increase awareness of the guidance. The standards agreed for working together are set out in Appendix 1.

²⁸ http://info.valuation-tribunals.gov.uk/decision_document.asp?Decision=liability&appeal=%2Fdecision_documents%2Fdocuments%2FCT_England%2F4610M240354%2F283C

²⁹ https://www.improvementservice.org.uk/__data/assets/pdf_file/0011/11801/collaborative-council-tax-collection-web.pdf



Rent

CAS has done extensive work in recent years on the causes and consequences of rent arrears³⁰ and the impact of welfare reform in particular on rent arrears³¹. The considerable growth in rent arrears as an area of advice has coincided closely with changes to the social security system.

The recommendations from our October 2018 report can be found at appendix 2 and are still very much relevant. Most local authorities³² have their own housing stock which they can allocate to relieve homelessness. In many local authorities there is not enough council housing to meet the demand³³ and there is pressure on councils to ensure they are managing the housing stock well. Councils report on the level of rent arrears they carry to Scottish government, and at the sharp end rent arrears are actively managed by local housing offices and individual housing officers with large caseloads³⁴. It is worth bearing in mind that high caseloads may mean the local housing office may not actually know their tenants very well, or their household circumstances either, especially if the tenant has previously had their rent paid for many years through housing benefit.

! Citizens ALERT An East of Scotland CAB reports a client finds it difficult to engage with her local housing office due to physical and mental ill health, in addition to being unable to afford mobile phone credit or taxi fares. She finds that a housing officer or housing support worker will drop a letter through her letterbox without knocking, and then she is not readily able to respond as she cannot walk to the office, call or e-mail. She

is only able to leave the house briefly a couple of times per week, so feels the opportunity to discuss things with her are missed when a letter is simply deposited. She is in rent arrears and struggles to keep on top of her agreed payments to her arrears at times due to an ongoing shortfall in being able to meet living costs on her Universal Credit income.

Universal Credit (UC) has been a considerable challenge for housing officers and tenants alike to manage. UC has caused an increase in arrears because:

- > the delay receiving the first payment creates rent arrears,
- > variations in UC payments due to changes in income during assessment periods can change the amount the claimant receives, making it difficult to budget,
- > some tenants have issues budgeting and prioritising with the housing payment being part of the UC payment. This is somewhat mitigated by the choice being available in Scotland to have the rent paid directly to the landlord,
- > UC is paid to the council in arrears and the payments don't correspond to the council's own rent cycle, which causes "technical arrears" even though over a full year the rent will be covered.
- > deductions are being taken off of Universal Credit to repay advance payments and previous DWP debts, and these take priority over rent arrears.

³⁰ https://www.cas.org.uk/system/files/publications/rent_arrears_oct_2018.pdf

³¹ <https://www.cas.org.uk/publications/cas-briefing-impact-uk-government-welfare-cuts-and-universal-credit-poverty>
<https://www.cas.org.uk/publications/cas-submission-social-security-support-housing-inquiry>

³² Dumfries and Galloway, Glasgow, Scottish Borders, Argyll & Bute, Na h-Eileanan Siar and Inverclyde have all transferred their housing stock to local housing associations.

³³ As at 31 March 2019, there were 21,000 applicants on the EdIndex waiting list in Edinburgh, <https://democracy.edinburgh.gov.uk/documents/s5477/Homelessness%20Services%20-%20referrals%20to%20HHFW%20-%20combined.pdf>

³⁴ Average Housing Officer caseload is between 130-190, Ibid

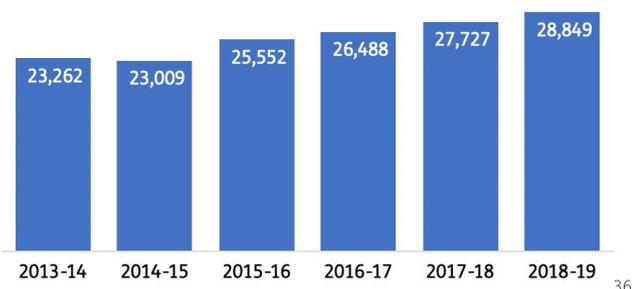
! Citizens ALERT

An East of Scotland CAB reports a client with large deductions from her Universal Credit

where £95 per month was being deducted for DWP debts, rather than being paid to her council landlord. This led the client to accrue further rent arrears and subsequently put her home at risk. The adviser called DWP debt management to reduce the deductions to £15 each for the DWP debts for a period of 6 months. This was time consuming and required more negotiation than expected as the DWP were unwilling to reduce the deduction that much, despite the risk to her home.

The eviction process follows a fairly set pattern. If the tenant does not respond to contact about their arrears and they continue to build, then the council will usually serve a “notice of proceedings for recovery of possession” (NOPFROP) on the tenant and any other “qualifying occupier” i.e. any other person in the property over the age of 16. 28,845 NOPFROPs were served across Scotland in 2018/19 for rent arrears and this continues a rising trend from 2014/15³⁵.

Notices of proceedings for rent arrears across Scotland



Before serving the notice of proceedings the housing officer needs to have carried out pre-action protocols – essentially a set of actions to

show that they have done all they can to help the tenant and these actions are shown as a set of tick boxes on the notice³⁷. The current notice of proceedings has been unchanged since it was introduced in 2012 and still refers to housing benefit, which is unhelpful for tenants who are receiving the housing element of Universal Credit. This needs to be urgently addressed by the Scottish Government to avoid misunderstandings around landlord obligations to provide assistance with relevant benefits for both council and registered social landlord tenants.

! Citizens ALERT

An East of Scotland CAB reports a client is in significant rent arrears and has been struggling financially due to low income. She is a single parent with 2 children who works part time. The client was not aware that she is entitled to help with housing costs via Universal Credit until she engaged with CAB. If she had been provided with income maximisation advice and support previously the rent arrears situation may not have escalated to the point of court action.

The client’s situation has been explained to her housing officer. Even though the client should be entitled to the full rental costs paid via Universal Credit, has an active claim in progress, and is engaging with the council funded housing debt project the housing officer has instructed legal services to seek a decree for eviction when the case calls in court. This means that the client and her two children are now in a position where they are threatened with becoming homeless. This raises the question of what the exact function and purpose of social housing is? It also breaches one of the social housing charter objectives to provide support and assistance to tenants facing financial difficulty as this client has been pursued for rent arrears without receiving any income maximisation advice or assistance.

³⁵ <https://www.gov.scot/publications/housing-statistics-management-of-local-authority-housing/>

³⁶ Ibid

³⁷ <https://www.legislation.gov.uk/ssi/2012/92/schedule/2/made>

If the tenant does not respond to the notice of proceedings, then the council will start serving court documentation any time after 4 weeks has elapsed since the notice. The tenant will receive a Summary Cause Summons which will have a “return date” for returning a response form and a “calling date” at which they should attend to tell the sheriff why it is unreasonable for them to be evicted. Some sheriff courts have in court services that can help tenants with the completion of return forms and representation at a hearing.

The court documentation may bring about engagement for the first time from the tenant. The first time the tenant makes contact may be to seek help from a CAB, advice project, civil legal assistance office, or law centre rather than the housing office, but this is still engagement and councils should work with partners like these to help tenants.

The Summary Cause Summons court form will usually “crave” (i.e. ask the court) for eviction of the tenant and also recovery of the arrears. For that reason the Summary Cause forms allow the tenant to ask the court for more time to pay the debt by completing a “time to pay direction” as part of the return. However this can be a tactical mistake in that the sheriff can evict the tenant but accept the time to pay direction. This is just one of a number of pitfalls the tenant could face, without good advice.

It should be noted that there is inconsistent usage of the courts by local authorities across the country with South Lanarkshire taking just 356 cases, and North Lanarkshire taking 1,540 tenants to court, just over 4 times as many³⁸.

! Citizens ● ALERT

A West of Scotland CAB reports a client is being evicted by the Council for rent arrears. The client however has mental health issues around depression and anxiety. She has not previously been engaging with the housing office, but the rents team are point blank refusing to negotiate at this point. There appears to be a change in policy by the council around rent arrears, especially if an open decree is granted.

There are a number of significant issues with using the sheriff court to recover rent debt:

- > People may not understand the legal process given that the court has its own language and way of doing things.
- > People are naturally frightened of having to go to court.
- > Access to justice. In some areas there are court projects able to assist tenants to put their case to a sheriff, but where these services don't exist tenants are ill equipped to stand in front of a sheriff and explain themselves.

Given these factors, it is unsurprising that 85% of tenants do not attend to defend the eviction case³⁹. If the tenant does appear for the court hearing sheriffs will generally respond positively to the court appearance and allow the tenant more time to pay back the arrears. They may “continue” the case to another day to allow the tenant to show that they can make payments in good faith. They can also “sist” the case, which puts the case to sleep within the court system, only to be awakened again if the tenant fails to pay any arrangement they have made or once the arrears are cleared. If the tenant fails to maintain their arrangements and/or doesn't make any appearance eviction may be granted, which happened 3,640 times in 2018/19⁴⁰.

³⁸ <https://www.gov.scot/publications/housing-statistics-management-of-local-authority-housing/>

³⁹ Civil Justice Statistics in Scotland 2017-18

⁴⁰ <https://www.gov.scot/publications/housing-statistics-management-of-local-authority-housing/>

Once the council obtains a court decree for eviction the tenant will generally have 4 weeks until removal from the property by sheriff officers. The sheriff officers have to serve a Charge for Removing, giving 2 weeks' notice of the eviction date. Even at this stage it is possible to stop the eviction by the tenant paying the arrears in full, or if they were not at the last court hearing to ask for a "recall" which stops the eviction so that the tenant can attend court and have their missed hearing.

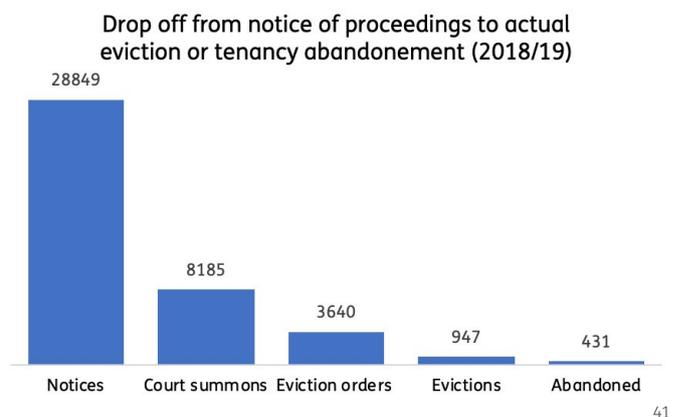
Another way of stopping the eviction is for the tenant to enter bankruptcy prior to the date of eviction. The arrears are then written off. Citizens Advice Scotland's data hub shows 40% of bankruptcy cases had rent arrears as part of their debt profile. Whilst this solves the immediate housing issue, this may not be a welcome development for the tenant who may feel that they have had little choice in the matter. Bankruptcy will have consequences for them getting credit for 6 years, may prevent them from working in some professions and may also be a black mark against them if they try to let privately, if the letting agency does credit checks.

! Citizens ALERT An East of Scotland CAB reports a 20-year-old client previously lived in a joint tenancy with her sister following a family breakdown. Both sisters received half of the Universal Credit housing cost element towards the rent on the property. Neither of the sisters paid this money to the council on a regular basis and as a result the council took the case to court. The Sheriff granted a repossession decree and the client is due to be evicted from the property. This client is now at risk of becoming homelessness as her sister has now moved out the property, however is not paying towards the joint debt, the tenancy has been switched from a joint to a single tenancy. With CAB assistance a minute of recall has been lodged. The client is struggling financially and has limited disposable income

to make a realistic repayment offer towards the arrears on the rent account. With no repayment offer in place the council intends to request a repossession decree again. The client's only option now is sequestration.

! Citizens ALERT An East of Scotland CAB reports a client is in significant level of rent arrears due to the fact that her son committed suicide and the client had to pay for the funeral costs. The council are now taking the client to court on the grounds of rent arrears and are seeking to gain possession of her property. She also has an earnings arrestment for council tax. This is causing the client extreme stress and anxiety. The client will be making an application for bankruptcy.

Data from councils shows that there is a very steep drop off from notice of proceedings to actual eviction. Some tenants also abandon their tenancy before eviction takes place.



However the process itself causes great anxiety and stress for tenants for what can be relatively small sums. It may also be that the arrears are caused by circumstances beyond the tenant's control, such as an income shock or a benefits issue and this can add to the feeling of helplessness and despair that the tenant feels.

⁴¹ <https://www.gov.scot/publications/housing-statistics-management-of-local-authority-housing/>

Losing a home causes significant disruption to the life of the tenant, their families and communities and can impact on education and employment.

In cases where eviction is carried out the tenant may have to be rehomed, at least temporarily by the same council, adding to the costs and it is estimated that an eviction of a tenant costs in the region of £10,000⁴², but there is no publicly available data on this. This cost has to be absorbed by councils, council tax payers and of course there is a wider impact on limited resources in advice agencies, legal projects, homelessness charities, social work and food banks.

Clearly the current system for collecting rent arrears ensures that councils can effectively manage their housing stock, however for the tenant this can feel like a sledgehammer to crack a nut. The system is expensive, bureaucratic, drives unnecessary insolvencies, and overuses the legal system to resolve what are very human issues.



⁴² https://scotland.shelter.org.uk/_data/assets/pdf_file/0004/223672/Evictions_Nov09_Shelter.pdf



Water Debt

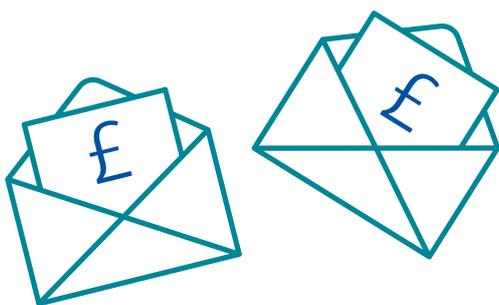
Citizens Advice Scotland has a unique insight into water debt issues having been the consumer representative to the water industry since 2014, a role which was transferred from Consumer Focus Scotland. Most of the recommendations in the CAS Water Team's 2015 report "Sink or Swim"⁴³ have still to be implemented, but are just as relevant today (see appendix 3).

Local authorities in Scotland have a statutory responsibility for collecting water and sewerage charges on behalf of Scottish Water. In practice the water and sewerage charges are on the same notification that is issued for council tax at the start of the year and both are collected together under a single payment. Some exemptions apply, for example if the person gets a council tax exemption then they are also exempt from water and sewerage. However, confusingly, if the person receives a full council tax reduction, which replaced council tax benefit in 2013, then they still have to pay 75% of the water and sewerage charge, and this is where the problems begin.

People receive council tax reduction because they are on a low income. However people who get a full council tax reduction are prone to water and sewerage debt for a number of reasons including poor communications and a general lack of affordability. Water and sewerage debt is collected like council tax debt i.e. it follows the summary warrant process and is enforced by sheriff officers, which is a harsh response to people who are on minimal incomes and have little resilience.

! Citizens ALERT A West of Scotland CAB reports a client has been served with a charge for payment by a sheriff officer for unpaid water and sewerage rates going back to 2009. Previously, he had been paying £3.70 per week via third party deduction from his Employment and Support Allowance money. The council had applied for a summary warrant which resulted in an additional charge of £82.16. This seems unfair on the client and is indicative of a trend where the council is passing cases over to the Sheriff Officer before exploring all the possible solutions open to them. If it becomes standard practice it will only increase the client's debt. The client was vulnerable in receipt of full council tax reduction and was unaware of their liability for water and sewerage costs.

Communications and billing from councils add to the confusion, because they tend to be focused around the council tax, or council tax reduction which they administer. For example one council's reminder letter we have seen does not refer to water and sewerage charges at all, but will be sent to people who have not paid it. So somebody receiving the reminder letter will assume it is irrelevant to them as it only refers to council tax, which they know they are already exempt from, and the opportunity will be missed to deal with the water and sewerage arrears. CAS highlighted communication in "Sink or swim" and will be continuing to work with councils to highlight this issue.



⁴³ <https://www.cas.org.uk/publications/sink-or-swim-consumers-experiences-water-and-sewerage-debt>

Water Direct is an unfortunate new development in the council debt collections landscape. If a person is in receipt of benefits it is possible to have water and sewerage arrears plus an ongoing payment towards their current year's liability deducted from benefit payments. Because of the ongoing payment element, new arrears of water and sewerage should not accrue, so theoretically this is a good debt management tool. However in practice the payments are difficult to manage on benefits which are meant to provide a subsistence living at best.

! Citizens ALERT A South of Scotland CAB reports a client has deductions made from her Universal Credit payments for water and sewerage that have left her with insufficient funds to buy food. The client was referred to a local foodbank.

Councils are allowed to apply for Water Direct without agreement or consultation with the person in debt and the numbers of councils using this method of recovery has grown from just two who were pilot areas, to nearly half of all councils in Scotland.

! Citizens ALERT An East of Scotland CAB reports a client who is having significant deductions from her Universal Credit award (4 different agencies are taking money back including water direct deduction of £66). The client is a young lone parent with a 1 year old child. She is effectively being left with only £80 per week to live off.



Multiple council debts

CAS has produced or contributed to reports with recommendations on all the individual types of council debt. However, we haven't previously looked at how these interact together and how councils respond when a person has more than one debt.

It is interesting that clients with multiple council debts are more likely to be female (54%), aged between 45-59 (33%), single (55% against an overall client profile of 38%), either unable to work or unemployed (21% and 24% respectively) and in the lowest SIMD deciles (51% were in the 1st SIMD decile and 35% in the second). This would indicate that the client group affected are dealing with very challenging financial circumstances.

! Citizens ALERT An East of Scotland CAB reports they supplied a food bank voucher due to the client's low income. Both clients are on zero hour contracts and their wages are being arrested due to council tax arrears. They also have rent arrears.

From a client perspective being in touch with multiple council departments who all have their own priorities is daunting and one department could undermine the other's debt recovery. So for example, if a person has an arrangement to pay back rent arrears and the income they depend on is then subject to an earnings arrestment for council tax, then the arrangement may become unmanageable, causing a crisis.

! Citizens ALERT An East of Scotland CAB reports a client having difficulty paying her rent. She lives in a two bedroom council house with her son. She works 14 hours per week and previously received Housing Benefit but her earnings were high one month so her Housing Benefit was stopped. The client was told she needed to apply for Universal Credit and she has done that. As a result of the confusion over her housing benefit stopping she is in arrears with her rent by approximately £600. She has signed an agreement with the council to repay £80 per month on top of her rent. They

said if she fails to make a payment they will start court proceedings for eviction. This month she has not had a full payment of Universal Credit and cannot make the full rent payment. Her Universal Credit payment has varied from £810 one month to £470 the next. She also has Council Tax arrears and has a wages arrestment of between £15 and £20 per month to repay it.

! Citizens ALERT A West of Scotland CAB reports a sheriff officer instigated a bank arrestment against a client who already had an earnings arrestment in place. This resulted in the client being unable to pay her rent. The CAB raised a complaint with both council and sheriff officer who advised that the bank arrestment had been done as the earnings arrestment only covered her previous 2 addresses and not her current address. They expected the client to make additional payments in respect of council tax arrears for her present address which was not realistic given the client's income.

CAS has carried out research looking at every council website in Scotland to establish whether they have published a multiple debt policy. Some don't appear to have a debt policy at all, whereas others appear to be progressive, ensuring that all debts are included in a single recovery process, the most important debts get paid first and the payment is affordable.

We think it is vitally important that council departments take account of the individual and recognise that they have to take a joint approach across the whole of the council to debt recovery, or they risk causing further detriment to already financially vulnerable people.



Developments in debt collection

In this section we look at developments in debt collection with the HMRC, UK Government, Treasury and the wider consumer credit field, as all of these provide opportunities and challenges to thinking around council debt recovery.

HMRC

The HMRC are primarily concerned with the collection of taxes and have the same fast track approach available to them as councils have for enforcing council tax debt, i.e. the summary warrant process. So they are a good comparator for consideration in terms of how councils should recover owed money. The HMRC has not always been the easiest creditor to deal with, however their latest debt collection guidance⁴⁴ allows for:

- > bespoke support to people facing financial hardship or in personal difficulty
- > affordable monthly payment options based on income and expenditure
- > acceptance of financial statements from Citizens Advice Bureaux, and recognition of the 'Standard Financial Statement' as the way to agree an appropriate level of payment.

We think that the HMRC's approach should be seen as a model for councils.

The Fairness Group

The Fairness Group was set up in 2016 to recommend improvements to the government's debt-management practices. It includes representatives from central government, local government, the debt advice sector and industry experts. Its purpose is to outline how

government and the debt advice sector will work together to support vulnerable people.

In a joint statement the group has committed to "improve how government interacts with people in debt, particularly those in vulnerable circumstances and/or experiencing financial hardship by:

- > *understanding the impact that debt collection practices can have and how to improve them*
- > *implementing a joint programme of work to further examine practices in central and local government debt management which support vulnerable people, and make evidence based recommendations for change*
- > *applying Fairness Principles to government debt management, in line with sector best practice*
- > *balancing the statutory and societal obligations of government to collect debts and ongoing liabilities, and prevent fraudulent activity, with the need to ensure fairness"*

Council debt collection on the whole is driven by legislation, procedure and performance indicators. However the impact of debt collection on people, and especially vulnerable people, can spill over into other spheres including health, mental health services, social work, welfare, housing, the criminal justice system, so it is only right that improving this is a priority for central and local government. With a few exceptions, councils in Scotland still have some way to go in terms of balancing their statutory obligations with the need for fairness, especially for vulnerable citizens.

⁴⁴ <https://www.gov.uk/guidance/find-out-how-to-pay-a-debt-to-hmrc-with-a-time-to-pay-arrangement#contents>

Breathing Space⁴⁵

In response to demand from debt organisations the UK Treasury has consulted on “breathing space”, which will introduce time for people in debt to consider their options free from creditor harassment, interest and charges and enforcement. The breathing space lasts for 60 days and is a development on the statutory moratorium introduced in Scotland in 2015 by the Bankruptcy and Debt Advice Scotland Act, which prevents creditors from enforcing their debt for 42 days, but does not deal with interest and charges. In addition breathing space will also be given to people suffering a mental health crisis until their treatment is complete.

Breathing space will apply to government and local government debt collection in England and Wales. Councils in Scotland are not covered by these provisions, but arguably should be making similar arrangements for people in Scotland to benefit from. If nothing else, councils should provide breathing space to allow people to seek help, before they transfer debts to sheriff officers.

The Financial Conduct Authority (FCA) regime

The FCA took over regulation of the financial services industry from the Office of Fair Trading and the Financial Services Authority in 2013. Compared to both its predecessors the FCA has taken a more proactive approach in regulation, notably curbing short term high cost lending, cleaning up the commercial debt advice sector, forcing banks to reduce costs on unauthorised overdrafts and capping the amount that can be paid back in payday loans and rent to buy deals.

At the core of its regulatory work lies a set of high

level principles for business⁴⁶ that the FCA has chosen to interpret widely, particularly principle 6:

A firm must pay due regard to the interests of its customers and treat them fairly.

“Treating customers fairly” has become a mantra for many financial services firms as they grapple with issues like vulnerability and managing their collection processes. Whilst not perfect, the FCA approach has come to be seen as good practice in terms of debt collection and in particular their guidance, CONC7, sets out their expectations when customers fall into arrears⁴⁷. We think that similar guidance should also sit at the heart of council debt collection and we have included suggestions from CONC7 at Appendix 4.

The FCA also expects consumer creditors to focus on vulnerability; debt collectors must respond appropriately where vulnerabilities are identified and provide a more sensitive approach to identified needs. Councils and sheriff officers come into contact with the same vulnerable people, however their approach is much more process driven and this can exacerbate issues like mental ill health.

Summary

To conclude, with the changes implemented or planned by the HMRC, Fairness Group, Treasury and FCA, we can see a more positive direction of travel being taken towards people in debt under other collection regimes. Their approaches recognise the following:

- > a one size fits all approach does not work
- > affordability needs to be based on a realistic assessment of income and expenditure

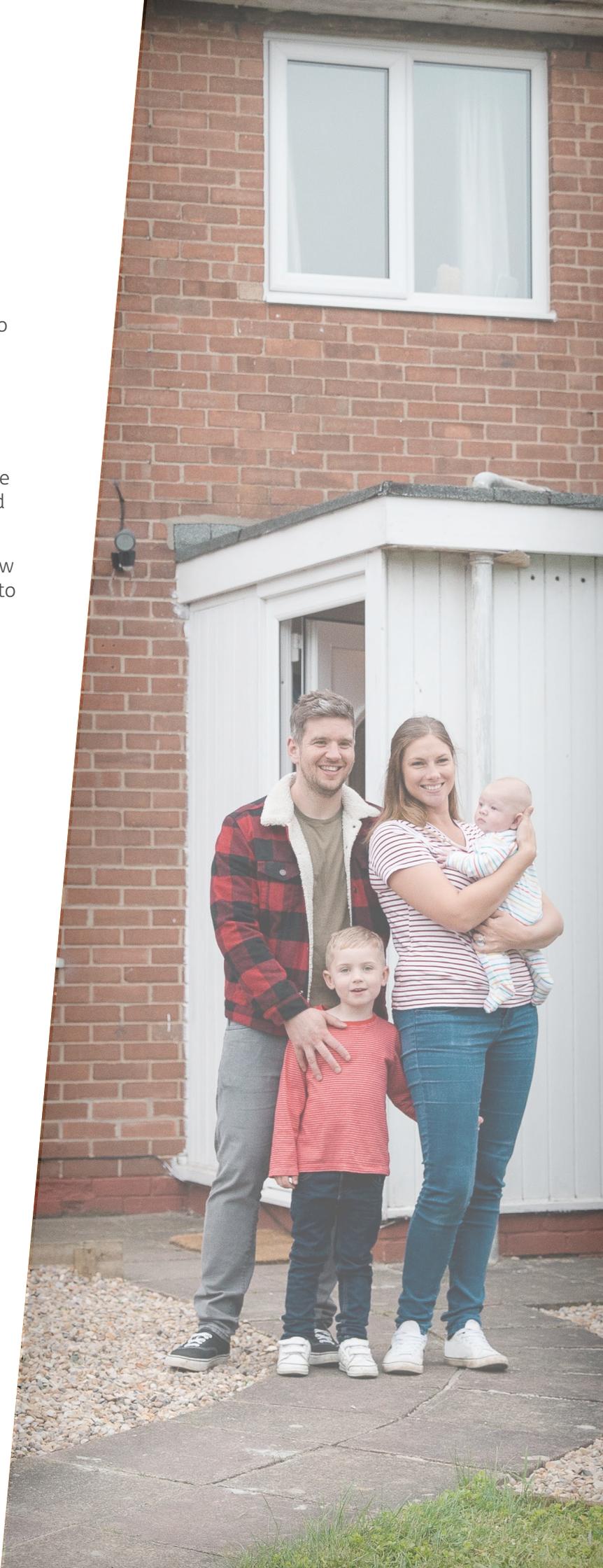
⁴⁵ <https://www.gov.uk/government/news/breathing-space-to-help-millions-in-debt>

⁴⁶ <https://www.fca.org.uk/about/principles-good-regulation>

⁴⁷ <https://www.handbook.fca.org.uk/handbook/CONC/7/?view=chapter>

- > the necessity for fairness and sensitivity to vulnerability
- > the need for an approach based on the best practice in debt collection
- > the requirement for an evidence based approach to collection and a balance to be struck between rights of enforcement and fairness
- > the importance of breathing space to allow people clear time free from enforcement to get advice

We think this learning would be similarly applicable to Scotland's local authorities.



Research

In order to come to robust conclusions and to support the development of our charter on council debt collection we undertook two pieces of research. The first looking at good practice and the second a desktop survey of the information available to people through council websites.

Good practice in council debt collection

For the first research phase of our work on council debt we undertook interviews with three bureaux and two local authorities to understand more about what good practice in council debt recovery looks like. Two of the bureaux reported good working relationships with their local authority and the interviews were conducted with both CAB and council officers present, which was a testament to the strength of the relationships. These CABs and local authorities were based in the East and South of Scotland. A CAB based in the west of Scotland reported a poor relationship with their local authority, particularly around rent arrears. Interviews were conducted with the CAB's debt adviser and a CAB lay representative at the local sheriff court who worked with a number of bureaux and local authorities. As confidentiality was a condition of all interviews, none of the bureaux and local authorities are individually named; we are most grateful for their participation.

The interviews took place in March and April 2020 and were based on pre-COVID-19 experience.

These are the common themes that came through the research interviews:

Joint working

The Eastern CAB and local authority have worked hard to develop a good working relationship. They said this required some “head knocking”, especially in the early days when the council handed over responsibility for all debt advice in the local authority area to the CAB. Both parties recognised that the logical thing to do was to work together. For both, the heart of good joint working is having key personnel to drive it, and they recognised that for good practice to be developed there has to be a willingness to take change forward. Both parties also benefit from access to a shared system for referrals. Information on the client is accessible to all and it's clear what each agency needs, speeding up referrals from both sides. The CAB and local authority even have ‘non formal’ contact outside of meetings, such as coffee mornings and phone calls.

The Southern CAB have a good informal relationship with their local authority, with formal working processes currently being put in place. They help each other with relevant training and the positive relationship between the CAB and Local Authority extends beyond debt; the CAB also sits on a Tackling Poverty Group and Local Housing Forum, amongst other things. This close working relationship wasn't always the case and at one time council tax debts were swiftly passed to sheriff officers for enforcement. However there was recognition within the council of the opportunities for better working, especially around the time of the introduction of Water Direct.

The Southern CAB and local authority identified a number of barriers to joint working:

- > A “this is what we've always done” approach
- > Staff often feel they're firefighting or 'under siege'
- > Some Local Authorities are under a great deal of pressure

- Revenues and Benefits Teams sitting in different areas and having different accountabilities.

They acknowledged that organisations need to want to work together and get past the “them and us” mentality. Individual personalities are always going to play a role in that too.

The Western CAB said there were no formal arrangements or policies in place for working with the council. Co-operation is entirely down to individual personalities. For example, the debt adviser knows the council employee who makes decisions on Debt Arrangement Scheme applications. The standard response to a DAS application is “no”. However if the adviser contacts the DAS decision maker and explains the reasons for the application then 9 out of 10 times cases are then approved. Likewise the lay representative has good working relationships with some of the housing managers at the council, but this is down to the individual personalities involved and not any policy or agreed way of working.

The impact of an individual personality can work both ways. The Western CAB has seen a harder line being taken on rent cases in recent years, with arrears of as little as £300 being put into court. This may be attributable to a new housing manager introducing a harsher recovery policy. Consequently, the CAB has noticed that the rate of evictions has gone up. This was raised at a meeting with the council who initially denied it. However the CAB produced evidence of this from an FOI request, which was acknowledged by the council, and has led to an opening of lines of communication for the first time, signalling that things may be about to improve.

The Western CAB has good informal relationships with certain areas of the council. They work well with the debt recovery team, but the debt recovery team does not have the full debt picture and, for example, doesn’t have access to details of rent arrears and payments in other parts of

council. The lay representative also has a good relationship with the court team, although this doesn’t always translate into flexibility being given for rent cases. The CAB meets with the council’s debt advice team every quarter, but this has only recently been reinstated after falling away.

In terms of change the Western CAB would like to work more closely with the council and to have dedicated points of contact for CAB like it does with utility companies. Both interviewees felt that having dedicated contacts would allow different sides to better understand each other’s position and improve consistency.

A common understanding of the client’s circumstances

The Eastern CAB felt that in the early days, there was no common understanding between them and the Local Authority (and their Sheriff Officers) on client financial statements, nor acceptance of the Common Financial Statement (CFS) as a method of agreeing what was affordable for people to pay to their council tax debts. However these have now been accepted.

The Western CAB reports having no standard assessment of income and expenditure agreed with the council and in particular sheriff officers do not recognise the CFS figures commonly used by debt advisers and other creditors. The debt adviser said that the lack of basic understanding of income and expenditure becomes particularly problematic if there is a repayment plan for council tax arrears in place when the new financial year starts. People cannot afford to pay both arrears and new council tax and will need to scale back their arrears payments. However the sheriff officers are not supportive of doing this and it creates a vicious circle of new council tax debts being incurred by clients, for want of affordable arrangements.

The Western CAB debt adviser noted that people received confusing council tax correspondence from the council with different amounts shown as owing between letters. Often the follow up “charge for payment” letters from sheriff officers do not match what is owed in the previous letters either.

The council were also poor at recognising bankruptcy (sequestration) and its impact on the debts owed. Western CAB clients have experienced issues with housing officers still trying to pursue rent after the arrears have been dealt with by bankruptcy. In some cases frontline staff had been telling clients that the only way to prevent eviction is by payment in full of all the arrears, even though the debt should have been written off. It also takes too long for a bankruptcy award to filter through to the relevant departments and for the council’s records to be updated. The CAB works around this by getting the client to take their bankruptcy confirmation letter to a local office and asking them to copy and pass this on to the rent and council tax teams.

An acceptance of the role of the adviser

The local authority trusts the professionalism of the Eastern CAB staff and their input. The CAB also liaises directly with sheriff officers and doesn’t have to go through the local authority to do this.

The Southern CAB and local authority summarised this as, “we’ve all got the same goal” and “it makes it easier for everybody” if resources are pooled and shared. The local authority has complete trust in the CAB and is happy for them to deal directly with sheriff officers.

The Western CAB debt adviser felt that there was a misunderstanding of the CAB role as professional intermediaries and that there was a view within the council that advisers were trying to help people evade their responsibilities.

The adviser believes it is in everyone’s interest for people to pay their council tax and rent, and reported that they have an excellent working relationship with the local housing associations who accept their intermediary role and professionalism. There is no working relationship with the council’s sheriff officers either, who often refer issues back to the council; the council then refers the debt adviser back to the sheriff officer, leaving the client in limbo.

Local authority discretion to help people in debt

In the Eastern local authority area it was thought that only a small number of clients are extremely vulnerable, however many of their clients could be characterised as experiencing in work poverty, i.e. they have a job but do not earn enough to live on. People are treated as individuals and the local authority staff have a reasonable amount of discretion to take an individualised approach. An example was given of Water Direct: this hits the most vulnerable hardest because they are “the easiest to get to”. But the local authority has control over Water Direct administration and will stop repayments on council tax arrears if someone is struggling with Water Direct repayments.

The southern advisers and council officers felt that it is easy to become jaded and start to disbelieve what clients are saying; but it’s important to believe the ‘stories’ until proved otherwise and “chancers” are very much in the minority. The local authority has a range of responses to help people including offering them breathing space and in some cases writing off historical arrears (see **new ways of working**).

The Western CAB debt adviser wasn’t aware of any write off policy. Far from using discretion to help people, at one stage the council were bankrupting people for council tax arrears that the council knew could not be paid back or recovered. In terms of flexibility, the council will allow people to pay council tax back over 12

months rather than 10, but there is a big focus on in year collection. The adviser had come across a corporate debt policy through looking up minutes of council meetings. The policy is quite old now and has not been updated. The council doesn't appear to be following its own policy and the debt recovery team within the council is unaware of its existence. There is no discretion, so everyone in difficulties is treated as a serial non payer. The debt adviser felt that the neighbouring council was better at dealing with offers of payment and taking a reasonable approach.

This view was also held by the lay representative who works with both local authorities at the sheriff court. The next door council housing officers encourage tenants with rent arrears to seek advice about bankruptcy with a view to writing off arrears, and would not proceed to recovery where tenants were getting advice. She also felt that in addition to a lack of discretion there was also a lack of pragmatism and consistency at the Western council. In some cases the council has pursued eviction in court where the tenant is likely to become a burden on Social Work, or potentially lose employment and have to be helped through homelessness. In these cases there was too narrow a focus on housing office priorities and targets rather than the bigger picture and greater expenses likely to arise from eviction.

The lay representative felt that the council is unrealistic in its expectations of people engaging with them, particularly those with mental ill health. Where there is non communication from the tenant, the council is relying on legal action to drive engagement, which is more likely to be counterproductive for clients with some mental health conditions.

Early intervention

In the East there was an early intervention process for rent arrears. The process involves a standard letter (currently being improved via

work with adult literacy), a phone call, then a visit in person after one month. They can also change the collection of payments to weekly or fortnightly if this is easier for the client. The local authority are also working on standardising all contacts in relation to rent, even down to text messages that are sent.

In the South, part of the work that was done to improve working relationships involved putting training into place, part of which emphasised that council tax reductions promote Council Tax collection. The council has also looked into different ways of payment.

In the West there appears to be no obvious early intervention policy with rent arrears of £3-£4,000 not being uncommon. This was attributed to the council not working in a joined up way in terms of helping vulnerable people, especially those with mental ill health. The lay representative felt that social work, housing and benefits teams needed to work more closely together to prevent people falling through the net. Rent arrears cannot be viewed as a single department issue as the reasons for it are often down to complex socio-economic factors. An example of how this works in practice is that the council is not as hands-on at helping people with benefits due to resourcing issues, and those who don't typically engage can be left to build up significant amounts of debts which then become a problem for the housing team. Therefore approaching rent arrears with a single-minded view of this as a housing problem does not work.

The impact of welfare reform

Universal credit (UC) has had an impact on all the local authority areas we looked at.

In the East the priority list for deductions from UC which prioritises previous benefits and advance payments over council debt has had an impact. The rate of deduction was a problem too with the deduction 'threshold' initially being set at 40%. Staff in both the CAB and local authority found

that DWP staff were not engaging with them and felt this was down to a lack of dedicated, local DWP staff. There was recognition that “if we weren’t putting measures in place, all of our UC clients would be in rent arrears”. They noted that there are sometimes delays with the DWP processing Water Direct applications, in getting deductions both started and stopped and to get deductions removed once the debt has been paid.

The southern CAB felt that a lot of the issues with UC already existed with the legacy benefits. They said the UC debt collection line could be problematic, but on the other hand the local Jobcentreplus is good. They also mentioned that deductions are now being taken from benefits like Disability Living Allowance, which didn’t happen before. The local authority had some issues with UC direct deductions for a while but these are now fixed. They see particular difficulty for those who work and get UC as their monthly income can fluctuate. The local authority has proposed a few solutions, such as not taking recovery actions for extended periods or changing the frequency of how payments are taken.

The Western CAB has witnessed new problems from the introduction of Universal Credit as the deductions that can be taken off UC are much higher than under legacy benefits. Also the council’s rent teams often make demands for additional payments, meaning that people are hard pushed experiencing both deductions and demands for additional payments from the council.

UC had impacted on rent arrears in other ways:

- > People losing housing benefits when their circumstances changed
- > People being afraid to claim UC meaning they lose potential income

- > The first payment being made to the individual rather than the landlord making it almost inevitable that the first month’s rent is not paid, as it is used to cover the shortfall in normal expenditure from the long waiting period
- > Individuals struggling with keeping up with claims and being sanctioned
- > UC money for housing costs being reduced because of deductions
- > Heavy fluctuations in income making it more difficult for people to budget
- > Monthly UC payments not working well for employed people who are paid weekly.

All of these issues had created more demand for rent arrears advice.

One positive development in the West was a new council grant service to help prevent technical rent arrears building up while people were claiming UC. This is only open to people who have no previous arrears and who are new UC claimants.

Approach to multiple debt

Most councils are large organisations with multiple departments and directorates. Sometimes this results in a silo approach to debt recovery.

The Eastern local authority (like the CAB) takes the approach that if a customer has the courage to address one debt then they will take the opportunity to look at all other debt. However, they will not ‘mollycoddle’ clients when they won’t engage. There was an acknowledgement that local authority collection procedures will sometimes conflict with one another

In the Southern council, council tax and other sundry payments (including benefit

overpayments) are dealt with separately, with neither team knowing what the other is doing. The council tax team has opened discussions with the benefits (recovery) team, so they can be alerted if a client encounters difficulties. The local authority are trying to change the culture – but acknowledge there can be ingrained behaviour and resistance to change.

The Western CAB has experienced problems with the council operating in silos and the various parts not speaking to each other. The council's own debt advice team experiences the same issues as the CAB, and are just as in the dark about the housing department's approach to rent arrears. The council also collects sundry debts including historical housing benefit overpayments. The introduction of Direct Earnings Attachments under the Welfare Reform Act has allowed the council now to recover these arrears from wages, but this leaves people with not enough money to pay their rent and council tax which is counterproductive.

Issues with multiple debt were also undermining rent payment arrangements agreed at court, with wage arrestment's being put in place for council tax at the same time as people were trying to pay back rent arrears. Similarly agreements to pay back rent arrears through deductions from benefits could be undermined if the council submits a deduction to the DWP for council tax arrears at the same time.

The use of sheriff officers

In the East a reminder goes out if a council tax payment is missed; if there is no engagement after 14 days then a bill for the full year is sent out. So if a citizen ignores paying council tax at the beginning of the financial year, it can "be in court by June". CAB advisers can liaise directly with sheriff officers to help clients experiencing debt recovery.

In the South, debts used to be sent over to Sheriff Officers as quick as possible, who would be resistant to payment offers after this had

happened. However the way sheriff officers collect debts has been part of the review process within the council. It was recognised that some people just don't want to pay, though these are in the minority. For others, it has to get to an extreme stage before they'll take any action. Bankruptcy is viewed as the very last resort as it can incur a lot of costs and the council can end up with nothing or very little recovered. The CAB highlighted that inflexibility of sheriff officers can be an issue, but the local authority is happy for the CAB to deal directly with Sheriff Officers.

The Western CAB gets very little co-operation from the council's sheriff officer. Officers don't see council tax debt as part of the bigger picture and expect to be prioritised over other debts. They don't put accounts on hold to allow the person in debt and debt adviser to have time to put plans in place. They often claim not to have the authority from the council to put recovery on hold, but when the council are asked they say this is up to the sheriff officer. In the meantime the sheriff officer's recovery actions add charges to the outstanding debt, increasing the person's indebtedness.

The debt adviser also noted that sheriff officer correspondence was difficult to understand and often the client was overwhelmed with multiple letters at a time. The language in the letters was correct but not bespoke to the individual's circumstances i.e. one size fits all. So letters threatened bankruptcy, but debts owed were less than the threshold for bankruptcy. Or they threatened people with loss of possessions, which would be a disproportionate response to the level of debt owed. There was also very little consistency between people he spoke to at the sheriff officers in the course of his work.

The sheriff officers justify their approach by saying council tax is a priority debt. However for a lot of people council tax is not a priority and the debt adviser thought that there needs to be a sense of realism from both council and sheriff officer that council tax doesn't automatically

go to the front of the queue. The Western CAB adviser suggested that concentrating on allowing people to pay the ongoing current year's council tax, with a minimum payment to historical arrears would be preferable as it stops new debts from being incurred.

He also pointed out that the council and their sheriff officers have competing priorities to collect ongoing council tax and arrears from the same limited money, and sheriff officers have a financial incentive to collect as much as they can, which impacts on the client. The CAB has anecdotally been told that some people have been encouraged to pay council tax to sheriff officers instead of paying their rent which could potentially cause homelessness. The behaviour of sheriff officers is not illegal, but neither is it morally right. This impacts on clients in terms of their finances, well-being and stress. The council and sheriff officers are also potentially making people homeless and vulnerable.

New ways of working

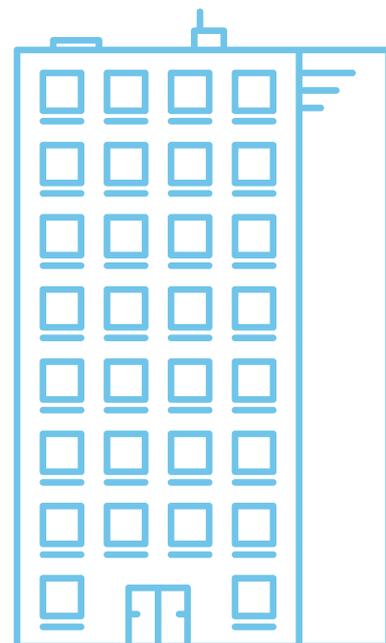
The Southern local authority has made some significant changes to the way it works recognising “the stick” can only work so far; and sometimes, the cost of “the stick” can make matters worse. Changes made include:

- > The introduction of ‘breathing space’ to give people time to address their debts
- > Directing those in arrears to CAB
- > Simplifying recovery letters and including signposts to CAB and StepChange on the back of these letters
- > Updates to the website
- > Emphasising to staff that they should be more helpful

- > Building relationships of trust with the CAB
- > Reviewing contracts with Sheriff Officers and introducing new conditions
- > Providing clear instructions to sheriff officers and putting in a minimum debt threshold so that any debt below £250 will not go to Sheriff Officers
- > Creating sustainable recovery plans
- > Suppressing accounts at the ‘final notice’ stage, if there are interruptions in income (e.g. with UC)

As a result of these changes, debt recovery levels have actually increased.

Interestingly this chimed with the view of the debt adviser at the Western CAB who felt that better practice would benefit the council to collect money more sustainably and overall the level of debt would come down.



Council website survey

The second part of the council debt research was a desk based survey⁴⁸ of local authority websites which highlighted a lack of consistency in terms of helpful information provided to citizens. It should be stressed that if our research did not find the relevant policies or information, that does not mean that they do not exist elsewhere. Our focus is simply on what was accessible to the public through a website search.

Each website was searched for the terms “debt” and “arrears”. Some local authority websites had hundreds of search results and included references to council meetings, and in some cases the number of search results actually changed over consecutive days. There isn’t a perfect correlation between the number of results and difficulty finding relevant information. For example Falkirk Council’s top results were the most pertinent pages to anyone looking for information on the council’s debt policies.

Nearly all council websites (78%) spelt out the consequences of failing to pay council tax on their website. The remaining websites asked people in difficulty to contact the council for information instead and one had the relevant information within a policy document.

6 local authorities do not have housing stock (marked as “n/a”). Of the remaining councils 35% had full information on the rent arrears process, 31% had partial i.e. essentially an outline of the consequences, 15% had the information in a policy document and 15% had no information at all. Whilst not having any information for tenants is concerning, there were invitations to discuss arrears with housing officers.

Only 6 local authorities had information on Water Direct, although nearly half of councils are using it as a recovery method.

On their council tax and rent arrears pages 66% of local authorities referred to other sources of assistance, such as the CAB network. This is very important as people may not want to engage with another part of the same council, e.g. an internal debt advice team, when the housing or debt recovery team is pursuing them for debt.

Only 31% of councils had a corporate debt recovery policy that could be located on their own website. Using an external search engine turned up another 22% of authorities. That means that nearly 50% of councils do not have a debt policy that is available to the public. On a positive note, a special mention should be made here to West Dunbartonshire council whose debt policy includes reference to accepting payments calculated using the common financial statement, which is used widely in the consumer credit sector and also by the HMRC as a way of calculating affordable payments.

Having a debt policy is especially key for understanding how councils approach multiple debts to different parts of the council. Nearly 38% of councils had such an approach, or spoke of aspiring to handle multiple debt in a co-ordinated way. This seems comparatively low and ideally every council should have a multiple debt policy to avoid causing detriment to people who the council may also be trying to assist with anti-poverty measures.

Lastly, relating to the COVID-19 outbreak, at the time of writing, many councils have publicly committed to forbearance measures including delaying council tax payments and halting debt recovery. Encouragingly 53% had published their approach on their website and another 16% invited people in financial difficulties to contact them.

⁴⁸ carried out on 7 to 9 April 2020

	Availability of information on local authority websites								
	Number of search results related to "debt"	Number of search results related to "arrears"	Council tax recovery process explained	Rent arrears recovery process explained	Water direct process explained (where used)	Referrals to external sources of help	Publicly available corporate debt policy	Multiple council debt policy	Covid 19 council tax forbearance information
Aberdeen City Council	6	6	✓	partial	n/a	✓	external search	✓	✓
Aberdeenshire Council	15	17	✓	✓	✗	✗	✗	✗	case by case
Angus Council	422	180	✗	✓	✗	✗	✗	✗	contact us
Argyll and Bute Council	21	2	✓	n/a	✓	✓	✓	✓	✗
City of Edinburgh Council	222	69	✓	✗	✗	✓	✓	✓	✓
Clackmannanshire Council	672	326	✓	✗	✓	✓	✓	✗	✗
Comhairle nan Eilean Siar	158	101	in debt policy	n/a	n/a	✗	✓	✓	✗
Dumfries and Galloway Council	5	8	✓	n/a	n/a	✓	✗	✗	✓
Dundee City Council	60	19	✓	✓	✗	✓	✗	✗	✓
East Ayrshire Council	199	158	✓	partial	✗	✓	✗	✗	✓
East Dumbartonshire Council	10	6	✓	partial	✗	✓	external search	✓	✓
East Lothian Council	1100	730	✓	partial	n/a	✓	✓	✗	✓
East Renfrewshire Council	11	7	✓	partial	n/a	✓	external search	✓	✗
Falkirk Council	455	525	✓	✓	✗	✓	✓	✓	✓
Fife Council	23	19	✓	partial	✗	✓	✓	✓	✓
Glasgow City Council	44	11	✓	n/a	✓	✓	✓	✓	✓
Highland Council	19	19	✓	✓	✗	✓	✗	✗	✓
Inverclyde Council	225	84	✓	n/a	✓	✗	external search	✗	✗
Midlothian Council	399	334	✗	✓	✗	✓	✗	✗	✓
Moray Council	987	704	✓	Policy doc	✗	✓	✗	✗	✗
North Ayrshire Council	81	71	✓	✓	n/a	✓	✗	✗	✓
North Lanarkshire Council	119	72	✓	✗	✗	✗	external search	✗	✓
Orkney Islands Council	501	323	✓	✓	n/a	✓	✓	✗	contact us
Perth and Kinross Council	21	17	✓	Policy doc	✓	✓	✗	✗	✗
Renfrewshire Council	77	20	✓	✓	✗	✗	✗	✗	✗
Scottish Borders Council	620	149	✗	n/a	n/a	✓	✓	✓	contact us
Shetland Islands Council	n/a	n/a	✓	✗	n/a	✗	✗	✗	contact us
South Ayrshire Council	10	11	✗	HTTP 404	✗	✗	✗	✗	✓
South Lanarkshire Council	64	25	✗	Policy doc	✗	✗	external search	✗	✗
Stirling Council	10	10	✗	Policy doc	✗	✗	✗	✗	✓
West Dunbartonshire Council	36	11	✓	partial	n/a	✓	external search	✓	✓
West Lothian Council	29	23	✓	partial	✓	✗	✗	✓	✗

Appendix 1

Collaborative Council Tax Collection standards⁴⁹

It is recommended that councils adopt the practices below to support people in arrears:

Communicate effectively

- > Communicate with people using plain language – accessible information guidance recommends writing to an average reading age of 9–11.
- > Market test, on a regular basis, the understanding of communications with bill-payers and a range of representative organisations, e.g. debt and money advice agencies, to verify that everyone involved has a common understanding.
- > Actions and communications at every stage should be geared towards avoiding enforcement action by encouraging early engagement with the council, highlighting the availability of free advice on managing arrears and other debts, and warning about the implications of non-payment.

Support people

- > Advise people in arrears to engage with the council early, seek free advice and apply for any exemptions, discounts, rebates, band relief and band re-assessment or reductions to which they may be entitled.

- > Support people in arrears to experience better outcomes – this can be achieved by: supporting those able to self-help to set sustainable repayment levels; helping people with arrears to maximise their incomes; and allowing repayments which enable people to build their financial resilience and repay their debts.
- > Seek to spot signs of vulnerability or financial difficulty among people and treat those in such circumstances with extra care.
- > Establish a transparent, robust and fair process for calculating affordability (see previous comments on Common Financial Tool).
- > Be willing to accept flexible repayments, this is critical if people have a fluctuating income, or an outstanding claim for support. It is also relevant if there are arrears that would be cleared within 12 months.

⁴⁹ https://www.improvementservice.org.uk/__data/assets/pdf_file/0011/11801/collaborative-council-tax-collection-web.pdf

Appendix 2

Rent arrears recommendations

In its Rent Arrears report⁵⁰ CAS made the following recommendations:

Address Universal Credit issues

CAS recommends the UK Government reduce how long people have to wait for their first Universal Credit payment. In particular, consideration should be given to a single, additional, non-refundable Assessment Payment being introduced for new Universal Credit claimants to avoid hardship being caused by having no income for at least five weeks.

CAS recommends the DWP takes all steps to ensure that the processing of Universal Credit claims are not delayed. In particular, it should ensure that additional information required from claimants, particularly in relation to housing costs, is not unduly onerous and is processed in a timely manner.

CAS recommends the maximum permitted deduction rate from UC to repay debts should be reduced from the current level of 40% of the standard allowance⁵¹.

CAS recommends the DWP take a holistic overview of the claimant's circumstances and allow claimants to negotiate the level of deduction before it is applied, particularly if the proposed level of deduction may cause hardship.

Promote methods of support to pay rent

CAS recommends the Scottish and UK Governments, in conjunction with social landlords should continue to raise awareness of the availability of Universal Credit Scottish Choices, for people who would find having their housing costs paid directly to their landlord helpful in managing their finances.

CAS recommends the UK Government works with organisations representing social landlords to harmonise the frequency of payments of UC Scottish Choices and Alternative Payment Arrangements with Universal Credit payments and cycles of rent payments.

CAS recommends that the Scottish Government and local authorities ensure Housing Benefit and Universal Credit claimants who are affected by the underoccupancy penalty are able to receive a DHP mitigating their full losses until such time as:

- > Housing Benefit is fully replaced by Universal Credit and;
- > The Scottish Universal Credit flexibility allowing the under-occupancy penalty to be removed at source is fully operational

CAS recommends the Scottish Government and local authorities review processes to ensure that delays are minimised, and that claims not related to the under-occupancy penalty are treated fairly at all times of the year.

CAS recommends the Scottish Government, COSLA and local authorities continue to raise awareness of the Scottish Welfare Fund, particularly amongst hard to reach and vulnerable groups. This could include working in partnership with other organisations, or investing in a specific awareness-raising campaign.

CAS recommends the Scottish Government, COSLA and Local Authorities establish links with other services to ensure people are able to access relevant support and address the causes of their income deprivation.

CAS recommends advice providers, emergency food aid providers and Local Authorities establish links to ensure that those in need have access to advice about statutory crisis assistance as well as access to emergency food aid.

⁵⁰ https://www.cas.org.uk/system/files/publications/rent_arrears_oct_2018.pdf

⁵¹ This is now 30%, and is planned to be reduced to 25% in October 2020

Ensure that housing support covers the full costs of accommodation

CAS recommends that Universal Credit and Housing Benefit should cover the full rental costs for temporary homeless accommodation in private rented sector placements.

CAS recommends that local authorities consider homeless people facing a shortfall in their rent as a priority for DHP support until the full cost of temporary homeless accommodation is met through reserved benefits.

CAS recommends the UK Government review the freeze on Local Housing Allowance rates, with a view to enabling them to cover the bottom 30% of market rents once more.

CAS recommends the Scottish Government should consider options, including legislation, to prevent landlords from excluding recipients of benefits when advertising lets.

CAS recommends the UK Government reconsider the lowering of the Benefit Cap, with particular regard to the impact on lone parents with large families who will be unable to find paid work or move into a smaller house due to caring responsibilities for multiple young children.

CAS recommends the UK and Scottish Governments examine the effects of the Benefit Cap on:

- > People in temporary homeless accommodation;
- > People who have been subject to domestic abuse;
- > The willingness of landlords to accommodate people affected by the Benefit Cap

CAS recommends the UK and Scottish Governments put steps in place to ensure that the Benefit Cap does not act as a deterrent to people finding suitable, settled, affordable and appropriate homes.

CAS recommends local authorities should look to make long-term Discretionary Housing Payment awards to people affected by the Benefit Cap, covering the full value of the loss.

Ensure that rent levels are affordable

CAS recommends that local authorities and housing associations continue to keep rent levels under review to ensure they are affordable to tenants on the lowest incomes.

CAS recommends local authorities make full use of the power to apply for Rent Pressure Zones, to ensure that rent increases do not make areas of Scotland unaffordable for people needing to rent from private landlords.

Encourage landlords to follow best practice in dealing with rent arrears

CAS recommends housing associations follow best practice with respect to flexibility around the first month's rent to protect tenants from hardship.

Ensure tenants receive the best advice and support when faced with arrears or potential eviction.

CAS recommends that funding for quality independent holistic advice should be a priority for local authorities and the Scottish Government. This should ensure suitable provision of in-court advice.

CAS recommends that the definition of 'lay representative' should be clarified, particularly taking into account the duality of current practice: those who undertake the role as a oneoff and those who undertake the role as a career.

CAS recommends that specific training should be delivered to Sheriffs and Summary Courts on lay representation.

CAS recommends that social rented sector cases should be transferred from the Sheriff Courts to the First-Tier Housing Tribunal.

CAS recommends that the Scottish Government explore options for increasing awareness of tenants' rights. This may include working with specialist organisations, and considering how it might be taught in schools under Curriculum for Excellence.

Appendix 3

Recommendations from “Sink or Swim”⁵²

Short Term Measures

1. Water Direct – clearer overview of the aims, timescales and evaluation of the pilot

There is a need for the Water Direct Steering Group to provide information on how the pilot will develop. Prior to any further roll out, it would be helpful if the Scottish Government and associated stakeholders could address the following:

- > Provide an update to key stakeholders on the development of the pilot
- > Provide a recommendation on the future of the pilot to Ministers
- > Confirm how and when the pilot will be evaluated and by whom
- > Confirm how an evaluation will capture the experiences of vulnerable consumers.

CAS has begun dialogue with the Scottish Government on issues around the Water Direct pilot and we would welcome engagement with the Water Direct Steering Group to review and to address the above issues and concerns.

2. Preventing debt - innovative multi-channel communications to engage with ‘difficult to reach’ groups in receipt of Council Tax Reduction and / or on low income.

Multi-channel communication will be more effective at engaging with ‘difficult to reach’ consumers using alternative media and should contain clear, simple information on:

- > levels of reduction for both council tax and water and sewerage charges, and why they differ

- > the principle of one invoice, two bills
- > the relationship between Scottish Water as the water and sewerage provider and local authorities for billing and collection of water and sewerage charges
- > accessible and suitable payment options
- > signposting to available debt advisory services to support improved debt and money management.

CAS recommends that Scottish Water and local authorities should agree a minimum standard of communication for difficult to reach groups. CAS would welcome the opportunity to engage with stakeholders to support the development of this work. Further consideration should be given to local authorities issuing separate bills for water and sewerage and for Council Tax.

Longer Term Measures

3. Developing a more supportive debt recovery framework

Principles of debt recovery applied by local authorities for water and sewerage charges should promote measures that protect the most vulnerable members of our society, and help them recover from debt and meet their obligations. Measures should include:

- > A commitment to develop a clearly defined Scotland-wide debt management framework that sets out clear principles of debt recovery to be applied across Scottish local authorities
- > Pre-legal steps that consider an individual’s wider personal and financial circumstances, their needs and means, and what they can afford to pay; legal action should be a last resort

⁵² <https://www.cas.org.uk/publications/sink-or-swim-consumers-experiences-water-and-sewerage-debt>

- > Partnership working between Scottish Water and local authorities to consider what is required to identify and support vulnerable consumers.

Additional support beyond existing ‘affordability’ measures is required; this would include the provision of discretionary direct financial relief, for example:

- > grant schemes
- > assistance funds
- > a debt write-off scheme.

4. Creating a more flexible governance framework for vulnerable consumer

Greater flexibility in debt recovery, through legislation, could more effectively protect and support those struggling to pay:

- > Legislation should be amended to reduce the statute of limitation that allows local authorities to recovery water and sewerage charges from 20 years to 6 years in line with other utilities
- > Legislation should set out the development of a debt management framework (as in point 3 above).

5. Reforming taxation, reforming debt

CAS recommends that the ongoing Local Taxation Commission gives consideration to the following areas in relation to water and sewerage charges:

- > Any new system for local taxation needs to consider the arrangements for water and sewerage charges and their impact on low income consumers
- > Any new system for local taxation that remains linked to water and sewerage charges needs to consider what more is required to improve consumer awareness of their liability to pay

If billing for Council Tax and for water and sewerage charges are to remain together or to be separated, Ministers should consider whether those assessed as unable to contribute towards Council Tax should receive a 100 per cent reduction in water and sewerage charges.



Appendix 4

FCA guidance to consumer credit firms on arrears

CONC 7.2.1

A firm must establish and implement clear, effective and appropriate policies and procedures for:

- (1) dealing with customers whose accounts fall into arrears;
- (2) the fair and appropriate treatment of customers, who the firm understands or reasonably suspects to be particularly vulnerable.

CONC 7.2.2

Customers who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable customers.

CONC 7.3.2

When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under Principle 6 (Customers' interests) to treat its customers fairly.

CONC 7.3.4

A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.

CONC 7.3.6

Where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay the debt.

CONC 7.3.7A

If a customer is in default or in arrears difficulties, the firm should, where appropriate:

- (a) inform the customer that free and impartial debt advice is available from not-for-profit debt advice bodies; and

- (b) refer the customer to a not-for-profit debt advice body.

CONC 7.3.10

A firm must not pressurise a customer:

- (1) 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;

- (2) to pay a debt within an unreasonably short period of time; or

- (3) to raise funds to repay the debt by selling their property, borrowing money or increasing existing borrowing.

CONC 7.3.13

A firm seeking to recover debts should have regard, where appropriate, to the provisions in the Common Financial Statement or equivalent guidance.

CONC 7.3.14

- (1) A firm must not take disproportionate action against a customer in arrears or default.
- (2) In accordance with (1) a firm must not, in particular, apply to court for an order for sale or submit a bankruptcy petition, without first having fully explored any more proportionate options.

CONC 7.5.3

A firm must not ignore or disregard a customer's claim that a debt has been settled or is disputed and must not continue to make demands for payment without providing clear justification and/or evidence as to why the customer's claim is not valid.

CONC 7.9.4

A firm must not contact customers at unreasonable times and must pay due regard to the reasonable requests of customers (for example, customers who work in a shift pattern) in respect of when, where and how they may be contacted.

CONC 7.9.5

A firm must not require a customer to make contact on a premium rate or other special rate telephone number the charge for which is higher than to a standard geographic telephone number.

CONC 7.9.7

When contacting a customer:

- (1) a firm must ensure that it does not act in a way likely to be publicly embarrassing to the customer; and
- (2) a firm must take reasonable steps to ensure that third parties do not become aware that the customer is being pursued in respect of a debt

CONC 7.10.1

A firm must suspend the pursuit of recovery of a debt from a customer when:

- (1) the firm has been notified that the customer might not have the mental capacity

to make relevant financial decisions about the management of the customer's debt and/or to engage in the debt recovery process at the time; or

- (2) the firm understands or ought reasonably to be aware that the customer lacks mental capacity to make relevant financial decisions about the management of the customer's debt and/or to engage in the debt recovery process at the time.





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