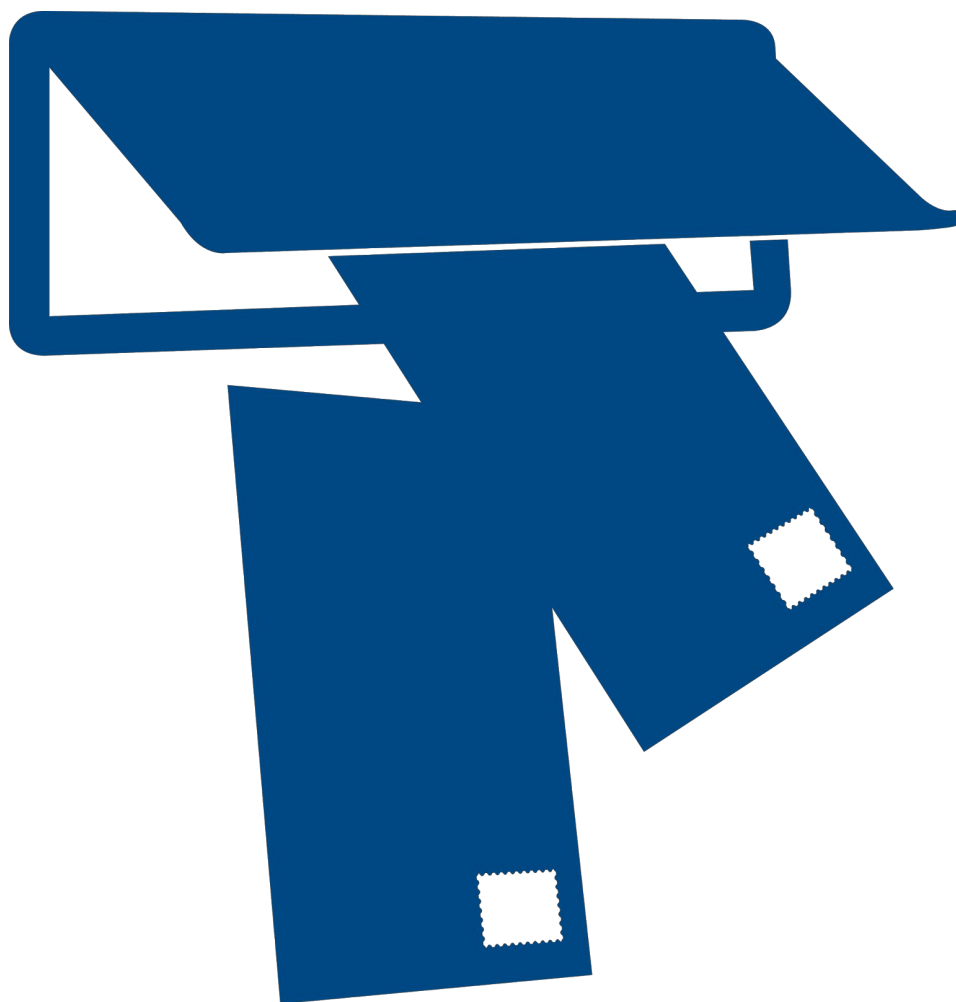


The state of debt collection

The case for fairness in government debt
collection practice



**citizens
advice**

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Executive summary

Citizens Advice has seen an increase in the number of people needing help with problem debts owed to local and national government. Between 2005/06 and 2014/15 the number of these issues that we helped people with more than doubled. In contrast, personal loan and credit card debt issues have more than halved since a peak in 2008.

This report reviews our clients' and their advisers' experiences of dealing with debts owed to government. Citizens Advice helped 400,000 people last year with their debt problems, and we often intervene directly with our clients' creditors. This gives us unique insight into how organisations collect debts. This report uses that experience to compare public sector debt collection practices with other creditors. We focus on the debt problems that are most often raised by our advisers as more difficult to deal with – council tax arrears, tax credits overpayments, benefits overpayments and magistrates' court fines. We analysed thousands of evidence reports from advisers from England and Wales, and a sample of 89,000 complex debt cases for Citizens Advice clients. In addition, we conducted a survey with 259 free sector advice agency staff and volunteers, and held a focus group with debt advisers for an in-depth discussion of our findings.

We found that our advisers rate most public sector debt collectors as poor when it comes to setting affordable payment rates, and that our clients can suffer detriment when public bodies have uncoordinated and inconsistent approaches to debt collections. Our evidence shows that central government debt collection lags behind the higher standards expected of other creditors, including water companies, council tax collection departments, banks and private debt collectors.

Key issues we identified included:

- The public sector is mostly out of step with financial services and utility companies in that it does not have an open or consistent approach to assessing affordability. The solution is to use the common financial statement (and the expected successor, the standard financial statement). When debt payments are not affordable people can be left unable to pay for essentials such as food and heating, and may be unable to stick to their payments, or be unable to deal with their priority debts.
- National government debt collectors are rated poorly at communicating – answering the telephone and responding to letters. Mobile telephone firms also scored badly. Creditors need to maintain high standards in their communications because failures in this area can make it more difficult for

people to pay their debts, for important questions to be answered and for problems to be resolved.

- We found evidence of poor practice, including public bodies asking people to pay money while a debt was being disputed, very old debts being collected even though proof of the debt was not made available, aggressive enforcement being used against people who had outstanding benefit claims that could settle a debt, and an inflexible attitude to people who need time to take advice, or make payments.
- Partnership working between advice agencies and local authorities is widespread but not universal. Over half of our survey respondents reported that councils refer clients to their local free, independent advice agencies for debt advice, and nearly half of the advisers reported that their council was willing to work with local advice agencies and learn from their clients' experience. Adviser comments also recorded strong support for councils that continue to take responsibility for debt collection even after the issue has been passed to an enforcement agent, and that take into account outstanding benefit claims and other debts that people have.

The report's overarching recommendations are:

1. Central government should work with the private sector, Citizens Advice and the other advice charities to develop a best practice debt collection protocol which is publicly available.
2. Local authorities should implement existing guidance and use the council tax collections protocol, as endorsed by the Local Government Association.
3. Local authorities should draw up corporate debt collection strategies. These should connect council tax collection with other local authority debt collection and benefit-processing systems, and be based on clearly articulated good practice principles.

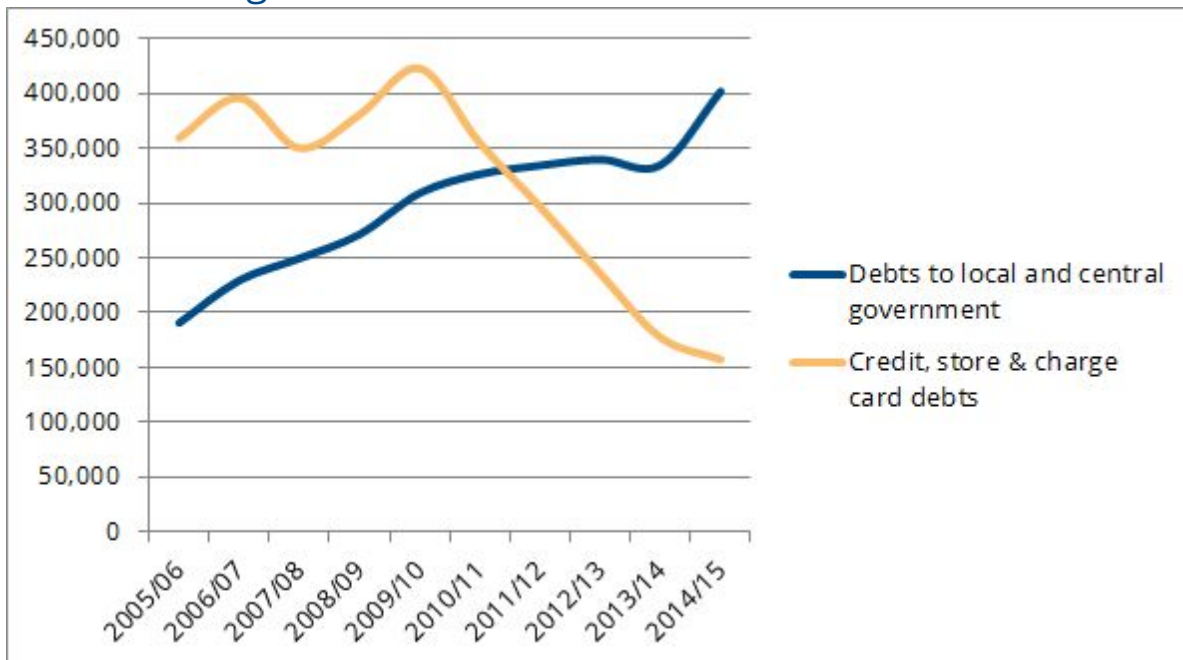
We make further recommendations for local and national government detailing key elements of good debt collection practice.

1. Introduction

Nearly one in five adults in the UK are affected by problem debt.¹ As well as being a widespread problem, the negative effects of problem debt extend to far more than household budgets. Our recent research found that 24 per cent of debt advice clients reported difficulties in their relationships with other people, 42 per cent suffered physical health detriment and 78 per cent were stressed, depressed or anxious.² These problems are serious, and the benefits of solving them are huge.

In 2014/15, two out of every three people who approached Citizens Advice for help with their debt had their problems solved. After getting advice, 89 per cent felt less stressed, depressed or anxious, 53 per cent reported improved physical health and 18 per cent found it easier to do their job or find a job.³ And there are wider benefits to society. Advice clients find their employment, health and family problems reduced and so they become more self-sufficient, engaged with their community and productive at work.

Figure 1: Trends in issues about credit card debt and debts to local and national government between 2005/06 and 2014/15



Source: Citizens Advice

Since the 2008 financial crisis, Citizens Advice has seen a change in the type of debt problems that it deals with. As shown in Figure 1, before 2009, problems with credit

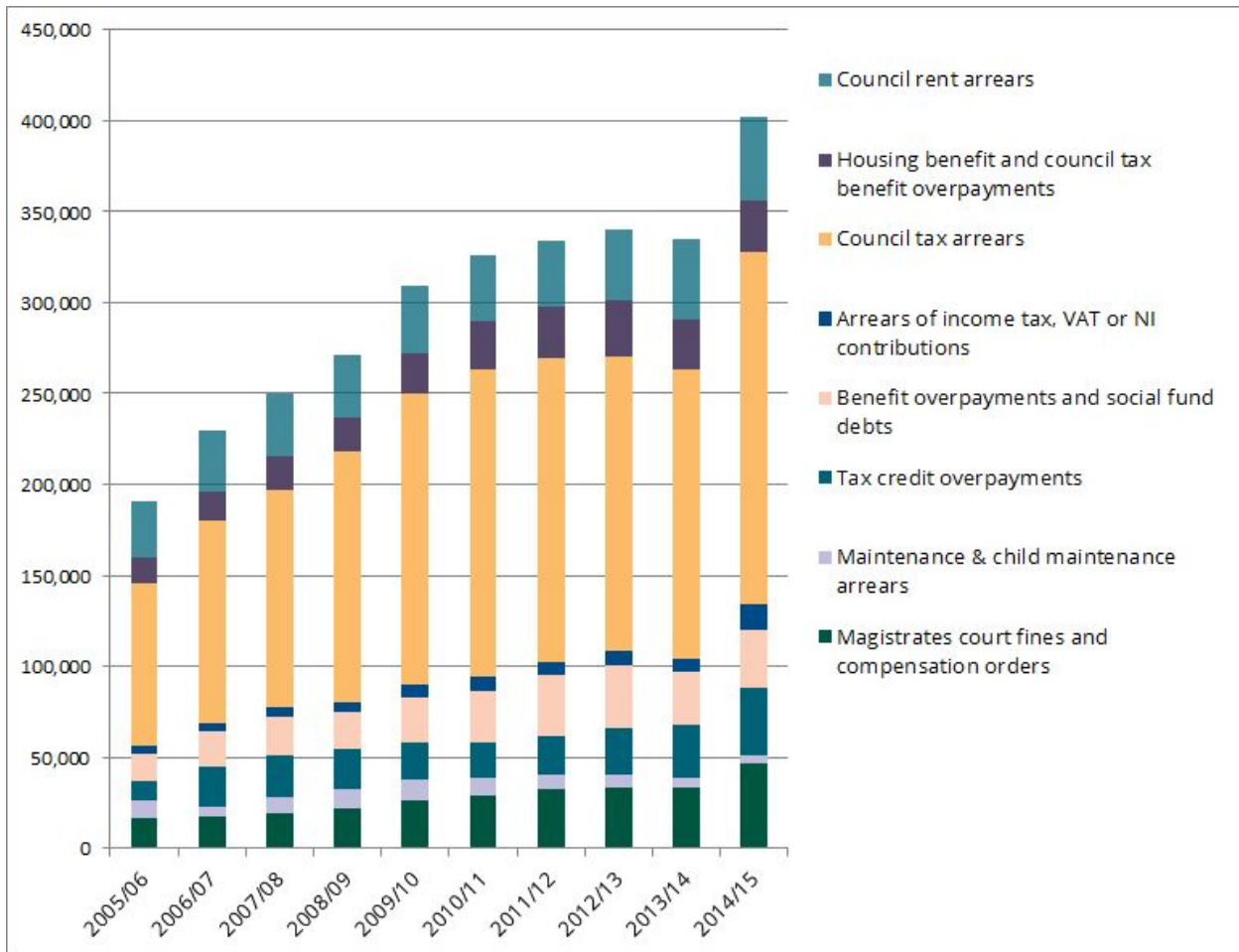
¹ *Indebted Lives, the Complexities of Life in Debt*, Money Advice Service, (2013).

² *National Outcomes and Impact research - 2014*, Citizens Advice (2014).

³ *The value of the Citizens Advice service - our impact in 2014/15*, Citizens Advice (2015).

card debts were generally on the increase. Since 2009/10, these problems have more than halved, whilst issues about local and national government debt have more than doubled, with a sharp increase since 2013.⁴ Figure 2 shows trends in different types of local and national government debt over the same period.

Figure 2: Trends in issues about debts to local and central government dealt with by local Citizens Advice from 2005 to 2015



Source: Citizens Advice

The amount of debt to local and national government that Citizens Advice is helping clients to manage is also large. In 2014/15, those local Citizens Advice services that used our electronic case recording system for complex debt casework recorded that nearly £1 in every £5 their clients owed was to Government (£121 million out of £575 million).⁵

⁴ Government debt relates to issues about benefits and tax credits overpayments, social fund debts, tax debts, child support arrears and magistrates' court fines. Local government debt covers council rent arrears, parking and congestion charges, council tax and overpayments of housing benefit, council tax benefit and council tax support.

⁵ This recording system is not used in all cases.

How do we explain this move from consumer credit debt to debt owed to central and local government? Firstly, there is a lag between problems in the wider economy and how these translate into people's debt problems, and into advice issues. After the financial crisis in 2007/08 consumer borrowing was constrained, but it was not until 2009/10 that the number of enquiries about consumer credit debt peaked and thereafter started to decline. As unemployment increased and pressures remained on income, the Citizens Advice service received more enquiries about benefits and tax credits. However, debt issues arising from some welfare reform measures had a more immediate impact on some people, so a more immediate impact on advice statistics. In particular:

- Localisation of council tax benefit, including a 10 per cent cut to the funds previously provided by central Government to local authorities to cover the costs of council tax benefit. Councils now have to establish their own, localised council tax support schemes and decide whether or not to pass on that funding shortfall as a charge to working-age households. As a result in 86 per cent of local authority areas in England⁶ people on the lowest incomes now have to pay a proportion of their council tax.⁷
- A number of cuts to housing benefit, including the under-occupancy charge, and the introduction of the benefit cap.
- Changes to tax credits rules and rates, particularly a reduction in the amount of disregard when a claimant has an increase in income during the year.

Secondly, the coalition government decided that it needed to improve the efficiency and collection rates of government debts. It identified 17 different departments collecting debts, 86 data sharing initiatives, and noted that 10 per cent of debts were owed by an individual or household with more than one debt to the Department of Work and Pensions (DWP) and Her Majesty's Revenue and Customs (HMRC).⁸ The government came to the view that debts were not being collected efficiently enough and established a programme to improve government debt collection. It aimed to save £10 billion by 2014/15 on fraud, error and debt combined.

There have been some clear results so far. In 2013/14 HMRC collected £815 million in tax credit debt – an increase of 42 per cent over the amount collected in 2009/10. Over the same period DWP increased its debt collection by £100 million to £363 million.⁹ HMRC and DWP were given new powers to initiate direct earnings attachments from wages without a court order. HMRC was also allowed to continue

⁶ This position is not the same in Wales. The Welsh Government has decided to provide additional funding to local authorities to return the council tax support budget to the level it was before the changes until at least 2016/17.

⁷ *Council tax support: The story continues*. Local Government Association (January 2015)

⁸ *Tackling debt owed to government*, speech by Francis Maude MP, 15 October 2012

⁹ *Tackling Fraud, Debt and Error in the benefits and tax credits system*, HM Government, 26 March 2015.

collecting tax credit overpayments that were disputed. The Ministry of Justice (MoJ) has tried a number of initiatives to tackle the £2 billion unpaid magistrates' court fines, including putting magistrates' fine collection out to tender (now withdrawn) and testing out different approaches to collecting unpaid fines.

Whilst many of the initiatives focus on 'knowing the debtor', none of them have placed the same emphasis on respecting the proper interests of the person in debt that is required of banks and regulated private debt collectors. This report explores what is meant by fair debt collection practices and how the public sector should consider adopting them.

This report examines government debt collection from the perspective of Citizens Advice clients and advisers. It focuses on the government debts that are raised most frequently by Citizens Advice advisers as more difficult to deal with – council tax arrears, tax credits overpayments, benefits overpayments and magistrates' court fines. It argues for more fairness and consistency from the public sector. Modernising government debt collection is not just about collecting more money; it should be about aligning government standards with best practice, and with those higher standards that government now requires of the banking and consumer credit sectors.

For this report we have used the following evidence:

- An analysis of our data concerning the 400,000 clients that Citizens Advice assisted with debt issues in 2014/15, and our advice issues figures from the last decade.
- An analysis of 88,292 complex debt cases recorded on the national Citizens Advice case recording system in 2014/15.
- A survey completed by 259 advisers in July and August 2015.
- A focus group of local Citizens Advice debt advisers held in Leeds in August 2015.
- A review of Bureau Evidence Forms reports from Citizens Advice advisers.

Chapter two examines the differences between a range of state and non-state debt collection practices.

Chapter three looks in more detail at communications between debtors and creditors and dispute resolution practices.

Chapter four looks at the degree to which different creditors consider affordability in their debt collection practices and how flexible they are with debtors.

Chapter five takes a particular focus on council tax collections and the opportunities for local authorities and advice agencies to work in partnership.

Our final chapter draws together our findings and makes recommendations for central and local government.

2. How does government rate as a debt collector?

The increasing volume of debts owed to government coming through the Citizens Advice network means the debt collection practices of local authorities and central government departments are an increasing concern. This chapter compares a range of state and non-state creditors, examining their collection and enforcement powers, rules and guidance about collection practices and ratings by our advisers.

Unlike consumer credit or energy bills, government debt does not arise from a contract. It can result from:

- Individuals not complying with the law: not paying their income or council tax on time; not informing government about changes in circumstances which affect their entitlement to benefits or tax credits or committing a criminal offence (eg a fine for driving without insurance or not paying a TV licence).
- Official error, for example DWP not acting on information provided by benefit claimants.
- Tax credit overpayments can be caused by the annual nature of the calculation – some people cannot predict income changes a year ahead.

Government debt is also different in that there is no overarching public statement of best practice in the way it should collect debts or independent regulatory scrutiny of behaviour to balance their often wide ranging powers to collect and enforce non-payment.¹⁰ This contrasts with debt collection in the financial services and utility sectors where regulators expect firms to treat their customers fairly.

Collection and enforcement powers

Powers to enforce and collect debts vary widely between different types of creditor. Table 1, below, sets out the different powers held by creditors. While some non-state creditors such as social landlords, water and energy companies can seek deductions from benefits, the powers of non-state creditors are often weaker than those of central and local government. The DWP, HMRC and local authority housing benefit departments can deduct payments from wages without a court order. Under the Limitations Act 1980 most creditors have six years to sue for debts owed to them. However HMRC and DWP can deduct repayments from benefits without any time limit and, as we shall see in Chapter 3, this has resulted in them chasing very old debts.

¹⁰ Central government does publish some guidance on the collection of debts by local authorities – DCLG provides guidance on the collection of council tax debt for local authorities in England, and the DWP provides guidance local collection of housing benefit overpayments.

Table 1: Debt collection and enforcement powers

Creditor	Collection and enforcement powers
Water companies	Can sue for non-payment in the county or high court. Can seek deductions from benefits.
Local authorities (council tax collections)	Can use a variety of enforcement measures, including instructing enforcement agents to take control of the debtor's goods, once a liability order has been obtained in the magistrates' court. The ultimate sanction for non-payment is imprisonment.
Social landlords	Can take court action for repossession. Can seek deductions from benefits.
Private debt collection agents and high street banks	Can take county court action to recover the debt.
DWP and local authorities (overpayment of benefits)	Can deduct from ongoing awards of benefit and can initiate deductions from earnings without a court order. The local authority/DWP can impose a £50 civil penalty if an individual has been overpaid as a result of giving a false or incomplete statement or has not told them relevant information. Time limits for taking recovery action do not apply to deductions from benefits.
Energy companies	Can cut off supply. Can seek deductions from benefits and can force a customer to have a prepayment meter.
Magistrates' court fines collected by HM Courts and Tribunals Service	Can enforce non-payment by instructing enforcement agents to seize goods. The ultimate sanction for non-payment is imprisonment.
Mobile phone providers	Can disconnect service. Can take court action for outstanding debt.
HMRC (tax credit overpayments)	Can deduct from ongoing awards of tax credits and can initiate deductions from earnings without a court order. Can use enforcement officers to recover goods. Can impose civil penalties of up to £3,000 for non-compliance with some regulations. Can recover tax credit overpayments whilst a dispute is being considered. The maximum deduction rates previously applied to in-year overpayments recoveries have been removed and so tax credit payments can be stopped altogether. Time limits for taking recovery action do not apply to deductions from tax credits.

Rules and guidelines on debt collection practices

Different creditors are bound by different rules in how they go about collecting debt. The law, rules, guidance, contracts, and custom and practice all affect how debts are collected. The rules and guidelines that affect different creditors are outlined in Table 2, below. Industries which are regulated, in particular, financial services, energy and water companies are bound by stricter rules governing debt collection practices than non-regulated creditors.

These rules ensure that customers are treated fairly and that creditors take factors such as affordability of repayments into account when collecting debts. HM Courts and Tribunals Service (HMCTS) collecting magistrates' court fines and mobile phone companies are not bound by published good practice guidance. Local authorities have guidance from DWP on collecting housing benefit overpayments, but this guidance only very briefly mentions affordability. HMRC publishes some information about recovery of tax credit overpayments, but this does not include any high level principles about how debt is collected.

It is clear that regulated industries lead the way in terms of rules and guidance governing their debt collection. The only exception is the Department for Communities and Local Government (DCLG) which provides relatively comprehensive guidance on how local authorities in England should collect council tax arrears. The guidance does not have the status that the rules issued by regulators have.

Table 2: Rules and guidelines governing debt collection practices

Creditor	Rules and guidelines
Water companies	OFWAT, the water company regulator, has a statement of best practice in debt collection.
Local authorities (council tax collections)	In England, DCLG has produced guidance for local authorities. This recommends the adoption of the Citizens Advice, Local Government Association and Welsh Local Government Association best practice protocol on council tax debt collection.
Social landlords	A rent arrears pre-action protocol sets out what actions social landlords should take to ensure that tenants can pay their rent arrears before initiating possession action. Social landlords are expected to make repossession a last resort.
Private debt collection agents and high street banks	The Financial Conduct Authority (FCA) has extensive rules on the way in which consumer credit debt should be collected. It requires firms it regulates to treat customers fairly. The FCA can take into account for authorisation, supervision and enforcement purposes the general behaviour of authorised firms whether collecting consumer credit or other types of debt.
DWP and local authorities (overpayment of benefits)	The DWP publishes guidance for local authorities collecting housing benefit overpayments. This guidance focuses on internal local authority processes and the use of enforcement powers, and touches very briefly on affordability.
Energy companies	Ofgem provides guidance on taking into account consumers' ability to pay and monitors suppliers' compliance with it.
Magistrates court fines collected by HMCTS	None.
Mobile phone providers	None.
HMRC (tax credit overpayments)	HMRC has guidance on how it collects tax credits overpayments and publishes a process manual for collection of all HMRC debts. Neither of these documents include any high level principles about the manner in which debt is to be collected.

In addition to examining the rules and powers regarding debt collection, we also surveyed our advisers about each of these sets of creditors in July 2015. The survey

asked respondents to rate creditors against the following behaviours (which we consider are factors in good debt collection practice):

Helpful, professional communications:

- advisers can get through on the phone to someone who can help
- letters from advisers are replied to promptly
- (creditor) is professional, polite and respectful to customers in financial difficulty

Allows the person in difficulty the time to seek advice and to make affordable repayments:

- (creditor) agrees to set payments that their clients can afford to make
- (creditor) grants breathing space / extra time for clients who need it (to take advice)

Offers appropriate support in difficult situations

- (creditor) is cooperative when there is a challenge to a debt
- (creditor) is effective at supporting customers in vulnerable situations

For each behaviour, the person completing the survey could choose “almost always” (five points each), “sometimes” (three points each) or “rarely or never” (no points). We then presented the total points as a percentage of the possible maximum score for each question. It should be noted that these questions are about the specific practices of the creditors themselves, rather than the other debt collection firms, enforcement agents or third parties that they use.

Table 3: Best practice league table as rated by advisers

Creditor	Rating
Water companies	78%
Local authorities (council tax collections)	69%
Social landlords	65%
Private debt collection agents	63%
Local authorities (overpayment of benefits)	63%
High street banks	62%
Energy companies	59%
DWP (overpayment of benefits)	47%
Magistrates' court fines collected by HMCTS	40%
Mobile phone providers	37%
HMRC (tax credit overpayments)	34%

Table 3 shows that where best practice in debt collection is expected by government or a regulator, advisers consider that creditors in those sectors are more likely to keep to it. Local authorities' better performance may be explained by the impact of the DCLG guidance on council tax collection issued in 2013, and decisions made by the Local Government Ombudsman which have criticised some councils' debt collection practices as unfair.¹¹ But another reason is partnership working between local authorities and advice agencies. Where this happens, council staff tend to respond better to advisers and are more willing to adjust payment and enforcement policies than is the case with national government departments. We will explore this in a later chapter.

In contrast, advisers rated poorly those sectors where there was little or no partnership working or best practice guidance – central government and mobile telephone companies. In terms of central government, there is now a pressing need for them to adopt better practice, particularly as they are increasingly using private debt collection companies to collect their debt, which are expected to follow Financial Conduct Authority (FCA) rules.

¹¹ For example: Local Government Ombudsman Service, *Can't pay? Won't pay? Using bankruptcy for council tax debts* (2011).

It is welcome that the government has sought to simplify how it instructs debt collectors. A company called Indesser,¹² a joint venture, acts as a single point of access for chosen government departments and the public bodies with private debt collectors. All firms instructed to collect these departments' debts will have to comply with the FCA's rule book. This acceptance of FCA rules is an important step forward and needs to be followed in practice. But there is a danger that this could lead to a two-tier government debt collection, with consumers working with in-house government debt collectors receiving less favourable treatment than those dealing with private firms working for a government department.

The government has achieved improved debt collection rates and has begun to make progress dealing with the difficult challenge of cross-governmental coordination in this area. However there is more to do to modernise government debt collection activities. It needs to ensure a consistent approach to debt collection, backed by a public statement on good practice. To be successful in the longer term it needs to learn the lessons from the commercial sectors, work with the advice sector, and at the very least align its treatment of people in financial difficulty with existing best practices used by other creditors.

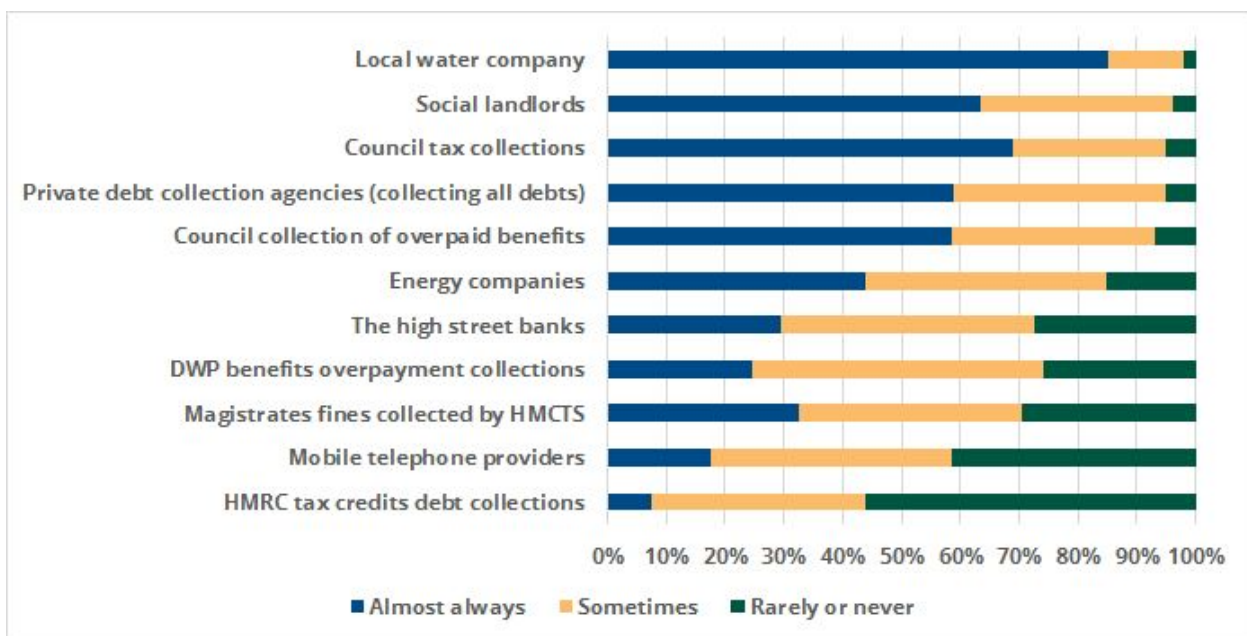
¹² The company provides some information at indesser.com

3. Communications and dispute resolution

This chapter looks in more detail at communications between advisers and creditors. It examines ease of communication by phone and letter, including accessibility and clarity. Finally, how creditors deal with disputed debts is explored.

Good communication between creditors, advisers and their clients helps to prevent debt problems escalating. It also means that people in debt are more likely to engage with their creditors. The Cabinet Office Behavioural Insights Team 2012 report stated: "if you want somebody to do something you should start by making it easy for them to do it... If you want people to pay their tax or fines on time, make it easy for them to do so."¹³ Our survey, therefore, asked advisers to rate different types of creditor by their willingness and ability to communicate by telephone and letter.

Figure 3: Advisers can get through on the phone to someone who can help¹⁴



Source: Citizens Advice survey of advisers, July 2015.

¹³ *Applying behavioural insights to reduce fraud, error and debt*, Cabinet Office Behavioural Insights Team, February 2012.

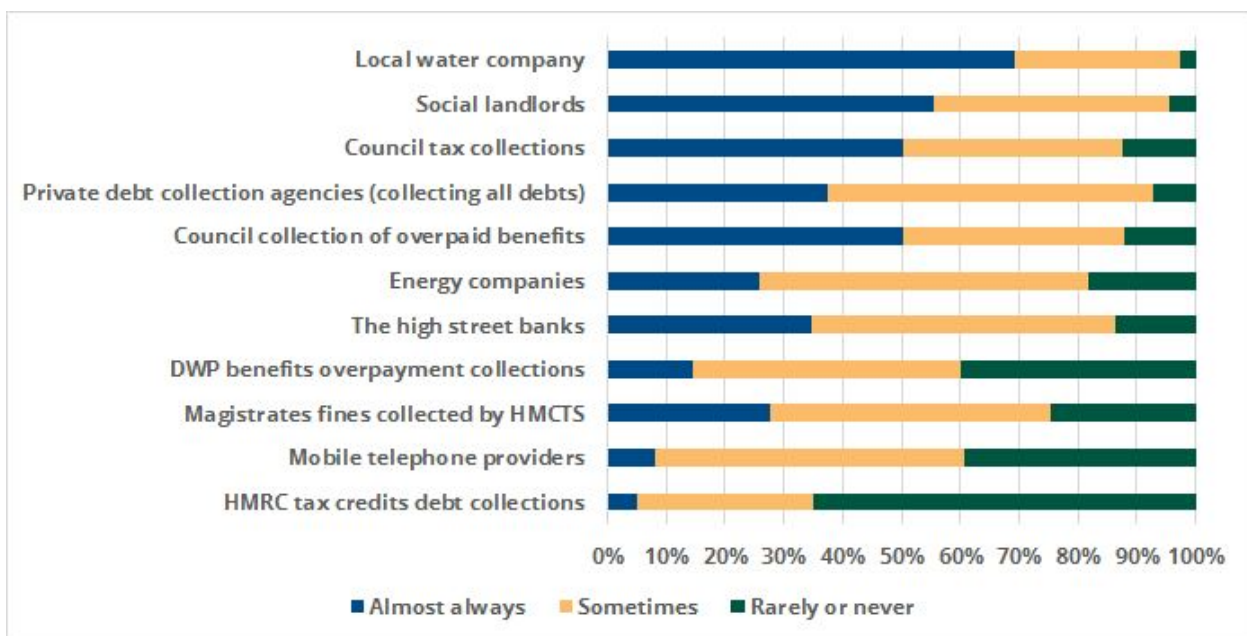
¹⁴ We asked respondents to choose between almost always, sometimes or rarely or never and have presented their answers as a percentage of the answer to that individual question, and ranked them by the average score.

Figure 3 shows that water companies have very good engagement with advisers, whereas central Government creditors are rated poorly. HMRC scored particularly badly with 56 per cent of advisers saying that they can “rarely or never” get through to someone who can help (compared to 2 per cent of the time for water companies, 4 per cent for social landlords and 5 per cent for private debt collection agencies). This is despite the existence of a special HMRC intermediaries’ phone line for advisers. One adviser said:

“HMRC is also really bad. In one case, I held on the line for an hour and 15 minutes, only to be told that the adviser could see the information I wanted on his screen, but if I wanted a print out, he would have to send a request to their Liverpool office which would take three weeks.”

This is not just a problem with tax credit overpayments – poor communication is an issue for HMRC generally. In September, Citizens Advice published figures showing that members of the public had tweeted HMRC over 11,500 times in the last 12 months to complain about long phone line queues.¹⁵

Figure 4: Letters to advisers are always answered promptly



Source: Citizens Advice survey of advisers, July 2015.

Similarly, advisers find that government departments are poorer than the private sector in answering their letters. Advisers write to creditors to give them the client’s written permission to contact them, to ask for information needed to advise the client and make offers of payment. Prompt response to letters is, therefore, essential to the debt advice process.

¹⁵ Thousands turn to Twitter to complain about HMRC phone lines, Citizens Advice press release, 8 September 2015

Whilst mobile telephone companies also scored badly on both communication measures, they do not have powers over their customers' income and assets in the way that government creditors do. As discussed in Chapter 2, DWP and HMRC can seize wages and assets without a court order, and initiate deductions from benefits without consent. When these organisations do not answer the phone or reply to letters, it can stop people who can pay from settling accounts and it can lead to a host of other problems – including depriving people of income that they are entitled to and desperately need. The following example is typical of many reports from across the Citizens Advice network:

A man went to his local Citizens Advice when he received a letter from HMRC about an alleged overpayment of tax credits which he disputed. He told the adviser that he had already tried to contact HMRC on several occasions to ask them to explain the overpayment, but his calls kept cutting out and went to a message referring him to the internet. He did not have internet access. When the adviser tried to call on the client's behalf, the call cut off stating that because of the high volume of calls to HMRC, they could not answer at the moment. The adviser wrote a letter to HMRC on the client's behalf, but six weeks had already elapsed without a response.

The magistrates' court system also has formidable powers to enforce the payment of fines, including imprisonment. Debts are passed to enforcement agents very quickly after non-payment. It is important that people can contact the service about their fine payments if they need to, but our evidence suggests that this is not always the case:

A man who had been paying off his magistrates' court fine by deductions from his benefits found work and wanted to arrange to make payments to the court independently or via his wages and check how much he owed. He tried phoning his local magistrates' court but only got an automated response. When he tried pressing the button requesting to speak to someone, all he got was another message saying there was no-one available. He knew from past experience that there would be no-one he could speak to in person at the court. The man felt frustrated that he could not find out the information he wanted and was worried that the court might send in the enforcement agents once he started work and deductions stopped.

The content of letters from government creditors also often creates problems. Advisers' comments focused on how confusing and incomplete letters from HMRC and DWP can be. They told us that letters need to be simple, accessible and clearly explain how a debt has arisen.

“advisers don't understand the letters, so [it is likely to be] very difficult for clients to... If letters were clear [advisers] wouldn't need to ring!”

Our previous research on debt collection has found that clear and concise communications are needed that allow people to understand what they are being asked to do, what the communication means and how they can ask questions or put something right.¹⁶

Our survey revealed that advisers find central government departments (and mobile phone providers) poor at supporting customers in vulnerable situations. Adviser comments identified a need for a more consistent approach to dealing with people in financial difficulty. Advisers report radically different outcomes for clients that seem to depend on the person that they deal with. One survey respondent said:

“[The] DWP... varies a lot and it’s pure pot luck. It just depends on the person who picks up the phone at the other end. Some staff are, frankly, wonderful, kind, helpful and will do everything and anything... they can, giving a full breakdown of the client’s account. Others will do everything to make life difficult. This can vary from refusing to take calls from third parties and asking the client to set up a different account for this to simply refusing to negotiate. It all depends on who picks up the phone.”

HMRC has announced that they have taken on more staff and are improving their telephony and IT systems so that they can help more people with tax credits issues. This is welcome, but further action is needed to improve communications. With the banks, private debt collectors, water companies and most local authorities, Citizens Advice advisers can contact a relationship manager who works with us and gives clear information about their debt collection activities and escalation points.

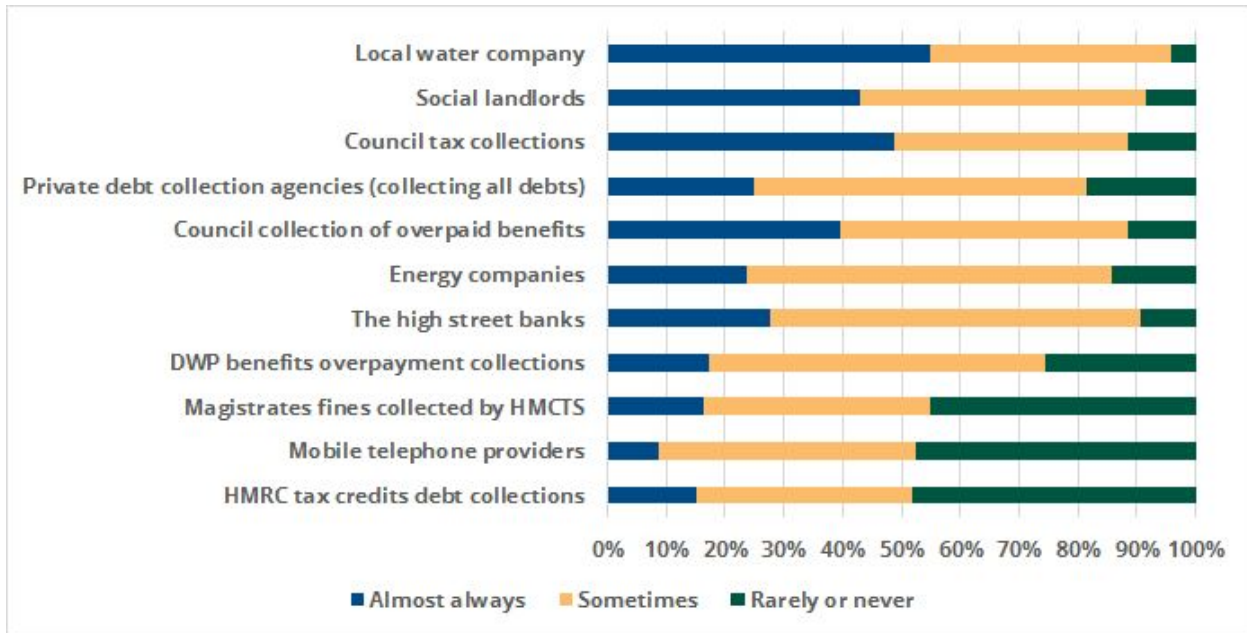
We would like improved communication routes with the HMRC, DWP and HMCTS so that our advisers can escalate individual cases and we can share our evidence and feedback more effectively. Citizens Advice volunteers donate thousands of hours to resolving Government debt problems. Government should, in return maintain and improve communications with us so that we can discuss where the current system isn’t working well, and react accordingly.

Dispute resolution

Good communication between advisers, clients and creditors is particularly important in cases where debts are disputed. We asked advisers about their experience of different creditors in relation to disputed debts.

¹⁶ *How to do the right thing*, AdviceUK, Citizens Advice, the Institute of Money Advisers and the Money Advice Trust (2011)

Figure 5: Creditor is cooperative when there is a challenge to a debt



Source: Citizens Advice survey of advisers, July 2015.

Figure 5 shows that advisers struggle to dispute debts with all types of creditors at times. However, central government deals with disputed debts poorly compared to other sectors aside from mobile phone companies. When asked about how cooperative creditors were, 48 per cent of advisers reported that HMRC tax credits collections were rarely or never co-operative and 45 per cent said that for magistrates’ courts collections, compared to 9 per cent for high street banks and 4 per cent for water companies. In our experience, disputes can be complex whatever the type of debt and can involve multiple organisations. Most non-Government creditors have better systems for dealing with disputes informally – sometimes just by being available to deal with something quickly on the phone.

DWP and HMRC have formal procedures for disputing the recovery and amount of overpayments of benefits and tax credits. For example, if someone wants to challenge the amount of a tax credit overpayment, then they can request a mandatory reconsideration and then appeal. Advisers report that in practice there are big differences between the way that DWP and HMRC staff deal with disputed debts. Figure 5 shows that 26 per cent of advisers feel that DWP is “rarely or never” co-operative when debts are challenged, compared with 48 per cent for HMRC on challenges to tax credit overpayments. While decisions about the existence and amount of an overpayment can be challenged formally, there is no right of appeal to challenge the way that the overpayment is recovered, and advisers and debtors challenging debt collection processes rely on discretionary procedures.

The FCA requires that consumer credit firms “do 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.”¹⁷ In contrast, HMRC can continue to recover the tax credits overpayment while the dispute is taking place, although it will eventually be refunded if the dispute is accepted. As a result, people can end up in hardship for long periods of time. For example:

A woman approached her local Citizens Advice for help with a child tax credit overpayment of over £1,000 which HMRC alleged had arisen because she had not told them that her child had left school. The woman disputed this as her child was studying for A Levels during the period in question. HMRC had taken over five months to investigate and had passed the account to a debt collector. The woman and her husband were not working due to illness and could not afford to make payments while the matter was investigated.

Furthermore, the Government has the power to collect extremely old debts which other creditors would find difficult to enforce. Whilst it cannot take court action if the debt has not been paid or acknowledged for six years, it can and does collect old overpayments by deduction from benefits, tax credits and pensions or by initiating deductions from earnings without a court order. This is particularly unfair when there has been no contact about the debt for many years and communications sent by the Government department in question do not provide any proof that the overpayment exists, has not been paid and is recoverable. The following case is typical of those where a client is being chased by state creditors for very old debts:

In the summer of 2015, a woman approached her local Citizens Advice about a letter she had received from the DWP chasing payment of an overpayment of benefit which dated back to 1989. The letter threatened deductions from her earnings if she did not pay. The woman told the adviser that she did not dispute the overpayment had occurred, but her recollection was that her ex-husband had paid it in full using a credit card nearly 20 years earlier. Given the length of time that had elapsed, she no longer had any records, and she was no longer in contact with her ex-husband. In any case banks only hold records for six years and she did not know which bank account her ex-husband used. She felt very stressed by this situation and faced embarrassment at work if an attachment of earnings was made.

We think that many of the problems that our advisers see could be resolved if central government debt collectors improved their communications with advisers and their clients. This means improving telephone response times, making sure that their staff can deal with queries on the phone, and adopting the generally

¹⁷ CONC 7.5.2 (R), Financial Conduct Authority, *The Consumer Credit Sourcebook*

better practice of the private sector on communicating difficult messages clearly and effectively in writing.

4. Affordability and flexibility

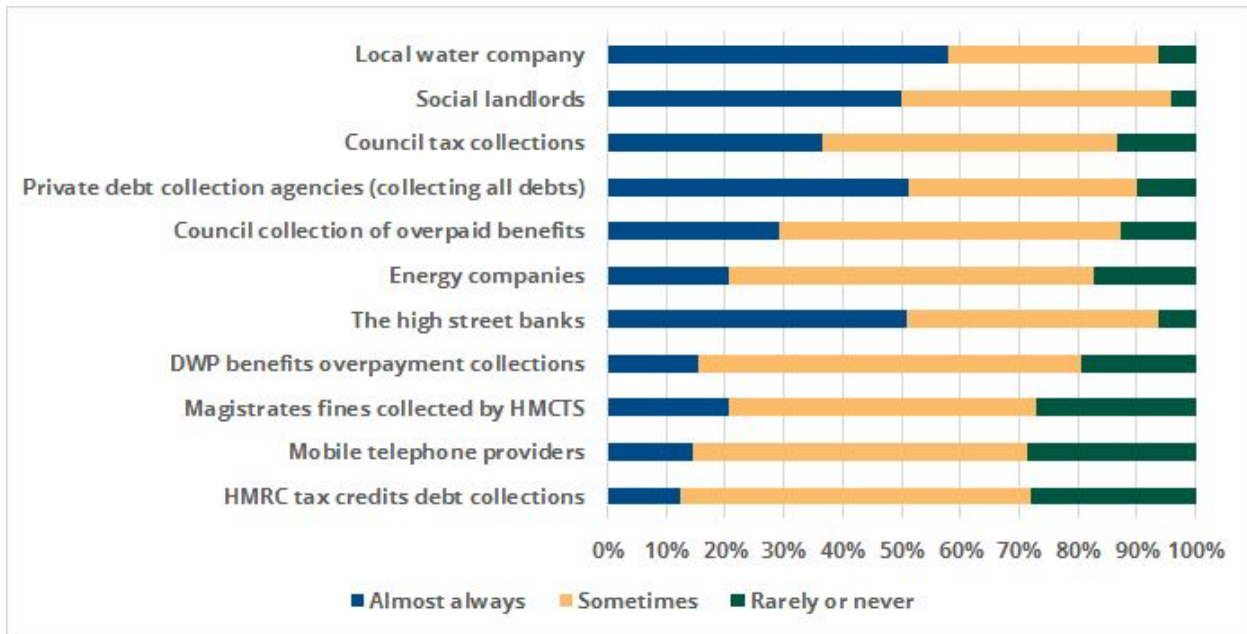
Previous research has found that affordability and flexibility are key principles of best practice in debt collection.¹⁸ This chapter examines the degree to which different creditors take affordability into account when recovering debt in particular through use of the Common Financial Statement. It outlines the new Standard Financial Statement and its importance in ensuring better debt collection practices. Finally, it examines the degree to which different creditors are flexible regarding repayments and periods of forbearance.

Affordability

Good practice in debt collection means a creditor is willing to accept payments that are affordable and sustainable for the person in debt and take into account their whole financial situation. Citizens Advice advisers prioritise payment of debts according to agreed principles; agreements will be reached with those creditors who can enforce non-payment by eviction, imprisonment, disconnection of supply and repossession of essential household goods on hire purchase before other creditors. Some debts are therefore more urgent than others because the consequences of not paying them can be more serious – for example rent arrears and council tax accounts must be prioritised. After debts are prioritised, advisers will speak to creditors to try to arrange repayments that are affordable for the client. We asked advisers to rate the different types of creditor by their willingness to accept affordable repayments.

¹⁸ *Do the right thing - advisers' and creditors' experience of working with and achieving best practice in debt collection*, Citizens Advice (2010); *How to do the right thing*, AdviceUK, Citizens Advice, the Institute of Money Advisers and the Money Advice Trust (2011)

Figure 6: Creditor agrees to set payments that your clients can afford to make



Source: Citizens Advice survey of advisers, July 2015.

Figure 6 shows that advisers find it more difficult to agree affordable payments with Government departments and mobile phone providers. Just 12 per cent of advisers reported that HMRC tax credits collections almost always set affordable payments, compared to 58 per cent for water companies and 51 per cent for both debt collectors and banks. The consequences for people in debt of being required to pay more than they can reasonably afford can be very serious, as the following case shows:

A lone parent with two children who worked full time was struggling to pay a council tax debt and an overpayment. She earned £211 per week after all deductions, including attachment of earnings orders for council tax and the overpayment. From this money she had to pay her rent of £100 per week and on-going council tax of £25 per week. This left £80 per week for food for herself and her family, fuel bills and getting to work. She told the adviser that she was struggling financially and did not see the point of working.

As discussed in Chapter 2, the government has the power to collect overpayments directly from benefits. It can also set the rate at which other debts such as rent, fuel and water can be deducted from benefits. Recently the government has instructed DWP to increase the rate at which overpayments are collected if they are caused by fraud. This has caused severe hardship for some people. For example:

A man sought advice from his local Citizens Advice about multiple debts. He had rent arrears of over £2,000 for which his landlord had already been to court, water debts, an outstanding social fund loan and council tax arrears and a benefit overpayment of nearly £20,000. DWP stated that this had

arisen due to him claiming benefits whilst working. He was now unemployed and claiming Jobseeker's Allowance. DWP now wanted to deduct over £40 per week from his benefit to repay the overpayment, social fund loan and council tax arrears. This would leave him with £30 per week to pay for food, fuel bills, rent and rent arrears and his water bill. The deductions left him destitute and the adviser had to give him a food voucher.

We do not dispute that this client should repay the overpayment, but it is not reasonable to leave people destitute by imposing deductions that are completely unaffordable. Whilst DWP has produced guidance on when deductions can be reduced due to hardship, it only applies to a limited number of situations and this client would not have been helped.

It is, therefore, disappointing that Government debt collection has yet to implement widely-adopted best practice on affordable repayments. The Common Financial Statement (CFS), which is sponsored by the Money Advice Trust, the British Bankers' Association and the Finance & Leasing Association, and supported by Citizens Advice and other free debt advice providers, provides a widely accepted tool for assessing affordability. The CFS uses an agreed budget sheet to gather information about a person's income, assets, liabilities and expenditure. The person's expenditure is then compared against objectively agreed guideline figures. The statement reflects modest expenditure for people living on a limited budget.¹⁹ Offers of payment based on the CFS should normally be accepted by creditors.

This approach is agreed by the FCA. Its rule book states that firms must not pressurise a customer to pay a debt in unreasonably large amounts when to do so would have an adverse impact on the customer's financial circumstances and provides guidance requiring them to 'have regard' to the CFS and equivalent guidance.²⁰

This approach is shared by a number of creditors, many of whom are required to take into account affordability of repayments by their regulator. For example, UK Asset Resolution (UKAR), which is the organisation that brought together the government-owned, FCA-regulated businesses of Bradford & Bingley, Mortgage Express and NRAM (previously Northern Rock Asset Management), has used the CFS since 2009 and takes a responsible approach to collecting priority and non-priority debts owed to government. This model has proven to deliver a successful business approach and good customer outcomes. Some local authorities use the statement and it is used to determine affordability in some insolvency remedies.

¹⁹ For more information about the Common Financial Statement, see cfs.moneyadvicetrust.org

²⁰ CONC 7.14.1(R)

It seems paradoxical that statutory regulators and some public bodies use the CFS as the accepted method of establishing affordable repayments, but government has not adopted it when collecting its own debts. The advisers who took part in the focus group felt that it was particularly important that government take into account affordability when collecting debts because of their powers to collect money directly from income.

The new Standard Financial Statement

Since 2002, the Common Financial Statement (CFS) has provided a transparent, standard, principles based, tested approach to how financial statements are prepared, and how affordable debt repayments should be calculated. An updated financial statement is being now being developed by the Money Advice Service and is expected to be launched in 2016. The new SFS has the potential to achieve long held ambitions to:

- Involve new creditors – mostly public sector bodies – in a standard, cross-sector approach to affordability for people in debt.
- Establish a single agreed budgeting tool across the debt advice sector in all the nations of the UK.
- Promote savings so that people in debt can build their financial resilience.

To guarantee success, the governance of the new statement needs to continue the traditions of multilateral partnership that have characterised the operation of the CFS. And most importantly, the new statement will really add value to dealing with debt problems in the UK if it improves the way that advisers and local and national government bodies co-operate to deal with debt problems.

Adoption of the standard approach embodied by the CFS and planned for the SFS is efficient, sustainable and fair – it is the right thing for national and local government to do.

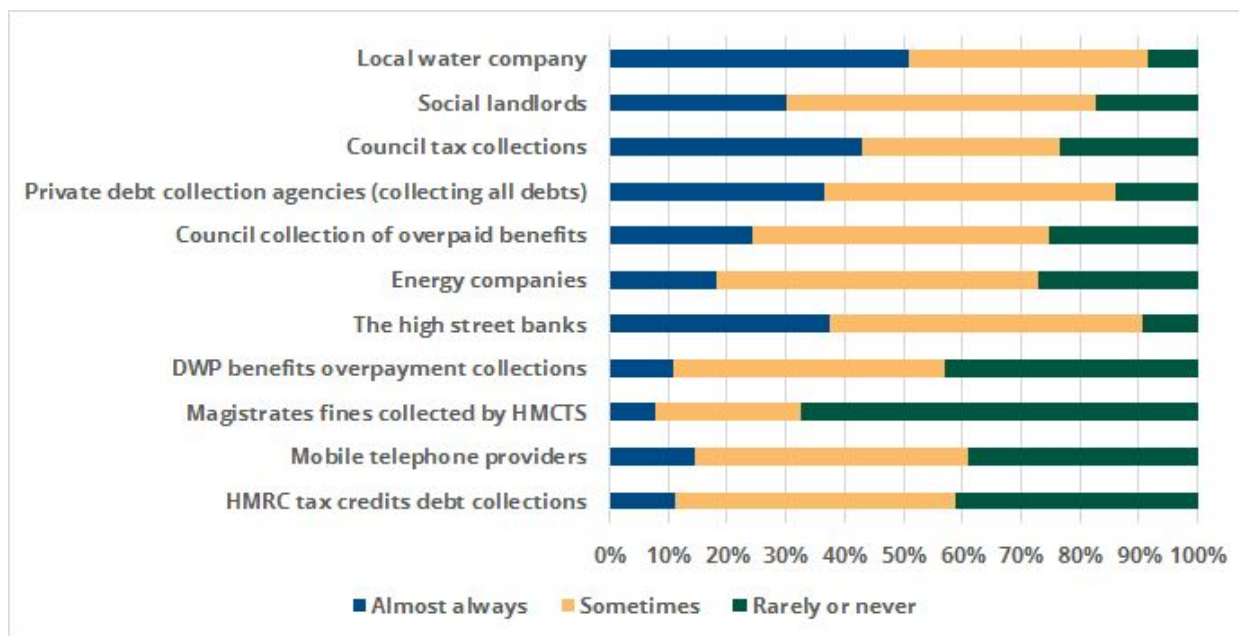
Flexibility

People with debt problems frequently have other problems they need help with. In 2014/15, 45 per cent of Citizens Advice's debt clients had at least one non-debt issue. This can make the debt problem more difficult to settle, and people in this situation may need time to get their situation resolved. It also takes time for people in debt who seek advice to gather the information they need for the adviser to help them.

A number of codes of practice in the credit sector, therefore, require firms to allow people in debt 30 days' breathing space (ie respite from collection activities) so that

they can seek advice. This is enshrined in the FCA's rule book and was a practice that our 2011 *How to do the right thing* report endorsed for all types of creditor.²¹ We asked advisers how willing different types of creditors were in granting breathing space:

Figure 7: Creditor grants breathing space/extra time for clients that need it



Source: Citizens Advice survey of advisers, July 2015.

As the chart above shows, advisers felt that central government and mobile phone operators were particularly poor at granting breathing space. Over 40 per cent of advisers reported that HMRC tax credits overpayments collection rarely or never gave breathing space, rising to over two thirds in relation to magistrates' court fines. In contrast, only 9 per cent of advisers said that banks rarely or never give breathing space.

Evidence from the Citizens Advice networks shows that magistrates' courts are particularly unwilling to be flexible in debt collection. Normally, payment of magistrates' court fines are due immediately, as it is a punishment for wrongdoing. Whilst it is possible to apply to the court for a means enquiry to pay by instalments, court staff appear to feel that they have no flexibility to respond to mitigating circumstances. For example:

A man approached his local Citizens Advice for help dealing with a £90 fine. He was given 28 days to pay the debt. He was not paid until the 1st of the month and so was unable to pay the fine on the date specified. He asked the

²¹ *How to do the right thing*, AdviceUK, Citizens Advice, the Institute of Money Advisers and the Money Advice Trust (2011)

magistrates' court staff if he could pay after the 1st of the month and this was refused. He therefore did not pay and the debt was passed to enforcement agents to enforce. They demanded £450 including their costs.

This situation could have been avoided if the magistrates' court had been willing to be flexible. Instead, the client faced paying a vastly increased debt, compounding his problem. A more flexible approach, giving him a payment date that aligned with payment of his wages, would have resulted in payment of the fine.

Our previous research into best practice on debt collection has found that a rigid approach to debt collection is not helpful for people struggling on low incomes and with more than one debt.²² Indeed the focus group of advisers felt that government debt collection policies are “set up in a way that doesn't recognise the human beings involved. It rewards the amount of money collected and doesn't think about the outcomes for individuals, which can be very bad.” Insisting on repayments that are not affordable or sustainable pushes people that owe the state money into hardship and can also make it more difficult for other creditors to collect the money they are owed. We think the government could learn from the consumer credit and utilities sectors and make its debt collection policy more flexible while still maintaining its collection of funds.

²² See *How to do the right thing*, AdviceUK, Citizens Advice, the Institute of Money Advisers and the Money Advice Trust (2011)

5. Council tax collection – an opportunity to work in partnership

As discussed in Chapter 2, partnership working between advice agencies and local authorities can lead to better debt collection practices. This chapter examines in detail council tax collection, looking at variations in practice and what more local authorities and advice agencies can do to improve council tax collection policy and practice.

Council tax revenues are becoming more important for local authorities because central government's financial support is reducing. At the time of writing, the Local Government Association (LGA) expects council tax to make up 55 per cent of local authority funding in England by 2019/20 (excluding public health) – up from 42 per cent in 2010/11. This income is crucial for services that local authorities deliver and fund, and, as shown in Chapter 2, they have wide powers to collect these payments.

The collection rates achieved by local authorities are high – council tax collection rates were at record levels in Wales in 2014/15, and at high levels in England. Paradoxically, the Citizens Advice service has experienced unprecedented demand for advice on council tax arrears. In the past year, we helped with more than 200,000 council tax arrears problems, an increase of 16 per cent on the previous year.

What is driving this increasing demand for advice on council tax arrears? Council tax debt reported to our advisers is associated with low income. From our sample of 89,000 complex debt cases, those people with council tax arrears had a total average household income from all sources of £960 per month in 2014/15, less than half the average monthly income for UK households of £2,456. Part of the reason that we have seen in an increase in problem council tax debt is that from April 2013 more people on low incomes were asked to pay towards their council tax. Changes to the benefit system reduced government support for council tax relief for working age people, and some or all of this cut has been passed on to claimants in most areas – 86 per cent of English councils no longer pay full council tax support to people of working age who claim assistance. The Welsh Government is currently funding the shortfall between historic funding levels and those now passed over to local authorities by government – thereby making the situation somewhat different in Wales.

Despite dealing with record volumes of council tax arrears, as we saw in previous chapters, advisers rated council tax collections departments comparatively highly compared to other creditors. Only water companies were rated better in

communicating with advisers by phone or by letter, being cooperative when dealing with a challenge to a debt and granting breathing space. This may be the result of many years' work in encouraging local partnerships between advice agencies and local authority council tax collection departments. That led to the development of a council tax arrears best practice protocol with the LGA and Welsh Local Government Association (WLGA) – a document endorsed by DCLG's statement on good practice in debt collection.

We think good practice in council tax collection is especially important because problems can escalate quickly, and because many of our clients with council tax arrears are on very low incomes. Local authorities need to ensure that all people with council tax arrears are treated fairly. Our previous research on best practice in debt collection shows that good creditor behaviour has a beneficial impact for people in debt, in that they are better able to engage with their creditors and find an appropriate solution.

Nonetheless, when examined in greater detail, there is some way to go in getting council tax collections in line with best practice across the country. Our survey asked advisers to identify any common council tax debt collection issues in the past 12 months. For all the issues, a minority of advisers said they had not experienced them in the past 12 months.

Figure 8: Advisers' experience of common council tax debt collection issues in the past 12 months

Local authority debt collection problems in the past 12 months	Never
A debt was caused by or made worse by delays in processing a council tax support or another benefit claim	11%
A debt was passed to a bailiff when it could have been cleared by an outstanding benefits or council tax support / council tax reduction claim	25%
The local authority was very slow to respond to you or the client when you tried to contact them	37%
A debt passed to a bailiff that could have been dealt with by an attachment of an existing benefit claim that the council should have been aware of	13%
There was an important issue that another department of the council was aware of but it was not taken into account by the council tax collection	26%

Source: Citizens Advice survey of advisers, July 2015.

Advisers reported that they often struggle to set affordable payments with poorly instructed and supervised enforcement agents, and often see problems with aggressive and unfair behaviours by private enforcement agents working for local authorities.

“In relation to council collection of council tax, my answers relate only to council staff. Enforcement agents are dismissive, disrespectful of advisers and the Citizens Advice service often telling clients not to come to us as we don't know what we are doing. They have said this to me on several occasions and this means that in most cases of recovery by enforcement agent we get nowhere. This can often create pressures on the client to use money for other essentials (food, rent, etc) to make payments to overly unpleasant enforcement agents. Enforcement agents rarely take into account incomes or vulnerabilities and refuse to hold to allow [people to get] advice.”

Even though enforcement agents are instructed to enforce the debt, council tax collection still remains the responsibility of the local authority. Where councils are willing to instruct enforcement agents to accept affordable payments, they more actively manage enforcement agents' conduct and to take accounts back in-house when appropriate, advisers report that our clients' problems can often be quickly resolved.

“Although most of the above have happened at least once I have found [our local authority] are very good at making arrangements, recalling debts and cancelling fees when they are provided with relevant information. They have also suggested ways for clients to remove debt eg apprenticeship reductions.”

Our survey of advisers reveals that partnership working between council tax debt collection teams and local advice agencies is widespread, but not universal. Nearly half of the advisers reported that their council was willing to work with local advice agencies and learn from their clients' experience. Just over a third of respondents said that their local authority followed DCLG recommendations to work with advice agencies to draw up protocols to offer the right support to vulnerable people with council tax arrears. A similar number also reported that their local authority actively promoted debt advice.

Figure 9: Whether local authorities follow the main recommendations of the DCLG statement of good practice in council tax debt collection

Do the following apply to your local authority council tax collections department?	Yes
Refers clients to your agency for help	51%
Engages with your agency to improve its debt collection practices	46%
Worked with free debt advice providers locally to draw up protocols so the council can understand and offer appropriate support to people with council tax debts who are in vulnerable situations?	36%
Actively promotes debt advice	35%
Has a single debt collection policy – council tax and other council debts are collected using a joined-up council-wide approach	19%

Source: Citizens Advice survey of advisers, July 2015.

Some advisers commented on the benefits of a collaborative approach to council tax debt collection and the problems that occur when these don't exist. For example:

“We have had meetings with [one] local authority in connection with revised council tax collection procedures and these have proved fruitful. We have been able to stop committal proceedings and negotiate affordable payment arrangements on debts already with enforcement agents where we had previously found it impossible. The local authority [will now] recall cases where they have underestimated or missed vulnerability. They are generally happy to agree to put a hold on enforcement action where a client is being advised by [us]. [The other local authority we deal with] is a whole other story – outsourced, they refuse to put a hold on enforcement action (even where clients are in hospital and unable to deal with their affairs) and seem to have a one size fits all scripted response to all enquiries. It is rare to speak to anyone who can make a decision.”

Partnerships allow advice agencies to solve individual problems and to act as a ‘critical friend’ and to help local authorities address common issues – for example local authorities can use their existing data to stop debts being sent to enforcement agents before they have processed a claim for council tax support.

But partnership is a two way process. Advisers at our focus group commented that the free debt advice sector needs to be better at communicating with local

authorities, that we need to understand the pressures that councils are under, that council tax must be collected, and we should explain more clearly that we advise our clients to prioritise their council tax debts. Being open to learn from each other results in effective systems that can continuously improve. For example:

“Thankfully here... we have a working relationship with [our local authority's] council tax [department] that has eased a lot of issues for our clients who have council tax arrears. Enforcement agents are under scrutiny by all the major advice providers... We are all proactive in highlighting vulnerable clients and provide advocacy for the vulnerable at every opportunity. We share good practice with all agencies including the council.”

This method of working was also supported by the DCLG guidance and our Council Tax Collection protocol. We think all councils should do this.

6. Conclusions and recommendations

This report finds that debts to central and local government are high and debt collection standards are inconsistent and frequently worse than other types of creditor. During the last Parliament, government gave a higher priority to debt collection and improving debt collection rates. In contrast, utilities, banks and private debt collection companies have adopted much better practices towards people in financial difficulty, mainly as a result of regulatory action.

The increasing number of local and national government debt issues reported by the Citizens Advice service, and the government's plans to further increase its use of private debt collection firms, highlights the gap between government debt collection activities and the standards used in other sectors. There is a strong case for central and local government to align their practices with good practice in debt collection in other sectors. Below we set out our recommendations for state creditors on how to do this:

Recommendation for central government debt collection

Central government should work with the private sector, Citizens Advice and the other advice charities to develop a best practice debt collection protocol, which is publicly available.

Recommendations for council tax debt collection

For local government, we recommend that local authorities:

- Implement existing guidance and use the council tax collections protocol which is endorsed by the LGA and WLGA and the other recommendations in the DCLG guidance.
- Draw up corporate debt collection strategies that connect council tax collection with other local authority debt collection and benefit processing systems, and are based on clearly articulated good practice principles.

Recommendations for the content of a best practice debt collection protocol for local and central government debt

Towards achieving those improvements, local and national debt collection policies should contain the following commitments:

Setting and maintaining high standards for communicating with people in debt and with advisers

1. Ensure that your staff can be contacted easily by phone.
2. Enable your staff to resolve customers' problems rather than use a scripted approach.
3. Reward staff for constructive engagement with people in debt rather than by amount collected.
4. Ensure that all your communications are clear and easy to understand and include all the necessary information to enable them to take action.
5. Where recovering very old overpayments, provide evidence of the debt, this must include full details of the debt, how it arose and previous communications with and payments from the customer.
6. Create contact points for advice agencies so that they can get through to someone who can help and provide escalation contacts so that particularly complex or urgent cases can be resolved.
7. Respond positively to engagement at all points of your collection process.
8. Be willing to set affordable arrangements and engage with the clients whenever they make contact.
9. Enable front line staff to provide the right support for people in vulnerable situations, supported by teams who have the expertise and tools to provide more specialist support when this is needed.

Engaging with advice agencies

1. Refer people who appear to have multiple debt problems or have other problems to sources of free, independent advice.
2. Allow at least 30 days' breathing space for people in debt who contact you and inform you that they are taking advice.
3. Encourage feedback from advice agencies about how your processes work in practice, so that you can continuously improve.

Fair dispute resolution processes

1. Provide a means for people to resolve disputes quickly and informally – ie just by ringing someone who has the power to help.
2. Be willing to stop collecting overpayments or reduce the amount collected during a dispute where it is clear the person will be in hardship as a result.

Affordability and flexibility

1. Adopt the Common Financial Statement (and the Standard Financial Statement when this becomes available) to assess what people can afford to pay their debts.

2. Be willing to adjust payment dates and accept short payment moratoriums where people have short-term financial difficulty.
3. Accept that people have other debts than just to government; all payments they make need to be sustainable.
4. Be willing to set affordable deductions from benefit.
5. Do not escalate a debt to other enforcement methods without a reasonable attempt to make an investigation into the customer's circumstances. For example, do not escalate a debt to enforcement agents where benefit deductions are possible.
6. Actively manage external debt collectors to ensure they are maintaining high standards, and that good practice and client data is shared appropriately between firms and government organisations.
7. Actively manage any internal or external enforcement agents instructed to enforce the debt and ensure that they accept affordable payments or return the account to be managed by a collections department.

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Alistair Chisholm and Sue Edwards with input from Charlotte Boulton, Debra Hertzberg and Pippa Lane.

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