

APPENDIX (B)

CONSULTATION RESPONSE FORM

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QUESTIONS

Q1: Do you agree that the sanction of imprisonment for non-payment of council tax should be removed?

NO

Please provide supporting comments

There are currently robust processes in place to ensure that the cases committed for imprisonment are carefully assessed prior to any decision being made, as outlined below.

In order for committal to be lawful then Magistrates must carry out a means enquiry into the period(s) to which the debts relate and even then can only make a commitment order if they are satisfied that the debtor has shown Wilful Refusal or Culpable Neglect in their non-payment. Therefore it is only those debtors that can clearly afford to pay who should be committed to prison. As a result, the focus should be on ensuring that Magistrates effectively use their powers when committing defaulters to prison rather than removing an important tool which assists Local Authorities (LA's) in obtaining high collection rates by carefully selecting appropriate cases for committal action.

Lord Justice Hickenbottom stated the following at paragraph 94 in the High Court Queens Bench Division in the case of Woolcock and the Secretary of State for Communities and Local Government, The Secretary of State for Justice and The Welsh Ministers :

*“Ms McGahey has focused upon that part of the system that takes place in magistrates’ courts, but even in that small part of the system, the numbers and proportion of cases are small compared with the number of applications for committal made (see paragraphs 88-89 above). But, although for the purposes of his claim I too have focused on that stage, the provision for ultimate enforcement by way of committal is just one small part of a sophisticated system for enforcement of council tax liability set up by Parliament which, as a whole, **is remarkably efficient at recovery** (which is over 97%); and a part designed, not to put people in prison, but to encourage payment from those who have received various reminders and various court orders requiring them to pay their arrears of council tax, but who, despite being able to pay, have not done so.”*

Caution should therefore be exercised before removing a tool that assists LA’s in recovering otherwise uncollectable debts from persistent non-payers who have the ability to pay but choose not to do so. If no viable alternative is available then this could also encourage other council tax payers who currently pay their council tax to resist payment as the collection process, in certain circumstances, would become severely hampered due to the limited, costly options available to LA’s.

The Vale of Glamorgan Council (VOGC) is very selective in its approach to committal ensuring that action is only taken against those debtors who refuse to engage. In addition a sharing agreement exists between the Revenues Division and the Social Services Department in order that each case is vetted prior to a committal summons being issued. As a result, all areas of Social Services are explored such as Adult Services, Child and Young People Services, Mental Health and Safeguarding. Should a household be identified by Social Services as being vulnerable then committal action is immediately suspended and the relevant Social Worker is alerted in order that they can engage with the Revenues Division in order to resolve the matter on behalf of the client.

The VOGC currently has approximately 58,000 properties shown in the Valuation List and has secured **£416,712** during the past 4 years by actively pursuing debtors who had the ability to pay but chose not to do so. It is likely that there would have been little alternative but to write these debts off had committal action not been an option available to the Council. The number of debtors who served a term of imprisonment during this period totalled 7.

The table below illustrates the comparison between the amount collected and the number of debtors imprisoned:

Financial Year	Amount Collected	Number of Debtors Committed To Prison
2014/2015	£147,063	1
2015/2016	£ 86,083	1
2016/2017	£106,623	5
2017/2018	£ 76,943	0
Total	£416,712	7

Whilst the VOGC can identify that **£416,712** has been collected as a direct result of committal action from summons stage onwards, unfortunately it is not possible to identify the amount collected as a result of pre committal letters being issued, which is likely to be far higher than the amount generated through summonses being issued and committal action being taken.

These letters clearly outline the obligations of the debtor and the consequence of non payment. In the vast majority of cases, payment is received through negotiation rather than a summons being issued to bring the debtor before the Magistrates for consideration of committal.

The table below illustrates the number of letters issued where Enforcement Agents have been engaged, but the case returned as they are unable to collect the debt outstanding:

Financial Year	Pre Committal Letters
2014/2015	995
2015/2016	1,004
2016/2017	1,014
2017/2018	728
Total	3,741

The VOGC is therefore against the proposal to remove committal action as there are debtors who refuse to engage with the Council, even though cases have been referred to Enforcement Agents and are subsequently returned uncollectable. As a result, to suggest that committal should end without a viable alternative is simply unrealistic and would inevitably lead to a reduction in collection rates when council resources and services are already over stretched.

Should the consultation result in the removal of committal then a suitable alternative collection method must be provided through Regulations.

If no viable alternative is available then this could also encourage other customers who currently pay their council tax to resist payment as the collection process would be far less effective resulting in increased write offs.

The consultation refers to the removal of committal, the reduction in the use of Enforcement Agents and exploring ways to increase take up of benefits through the Council Tax Reduction Scheme (CTRS).

All of these goals could easily be achieved through data sharing by allowing Council's to access HMRC/DWP data, as is currently allowed for Housing Benefit Overpayments (HBOP)

The HBOP Debt Service Project is already delivering rewards through the implementation of Direct Earnings Attachments. If this were extended to allow LA's to also access the data for Council Tax and NDR purposes, where Liability Orders have been issued by the Magistrates' Court, then this would be a viable alternative to committal action as it would allow Council's the ability to obtain income/employer details for the purpose of implementing Attachment of Earnings/Benefit Orders.

It is often the case that debts are referred to Enforcement Agent's as there has been little or no engagement from the debtor and therefore as LA's are 'blind' to the circumstances of the debtor then there is no other viable alternative. However, if access to HMRC/DWP data were allowed then LA's would be in a position to implement Attachment of Earnings/Benefit Orders, in appropriate circumstances, without the need of the referral of cases to Enforcement Agents. As a result it is likely that there would be a significant reduction in the use of Enforcement Agents, which ultimately, would considerably reduce additional costs being added to the debt through additional fees imposed by the Enforcement Agent.

In addition, LA's could also use the information obtained from HRMC/DWP to target potential recipients of CTRS where it is identified that households are on low incomes but have not submitted the appropriate CTRS claim form.

Having already seen significant success with the HBOP Debt Service Project within our own LA, then it is also likely that there would be an increase in collection rates across Wales if this additional, important recovery tool, was allowed through the implementation of appropriate Regulation.

Q2: Do you have any other comments regarding this consultation?

In the consultation at **point 3**, it is suggested that council tax debt is a growing problem. It is the VOGC's opinion that these reports do not fairly reflect the support that is provided by LA's to those in debt, through deferred payment arrangements, benefit advice and budgeting advice.

There has been an inevitable increase in Council Tax debt in England as a result of the introduction of local CTRS schemes which has seen a considerable reduction in the support low income households receive from their respective Councils. However, with full CTRS support being maintained in Wales then the same issues do not apply in the Principality.

LA's in Wales are becoming more and more proactive at referring cases to advice agencies which would help explain the increase in the number of debtors seeking advice for council tax debt. This should be seen as a positive step forward in assisting those in debt rather than suggesting that LA's are indiscriminately taking action against those debtors who are experiencing financial difficulties.

Point 5 – Whilst the VOGC agrees that getting into debt is not a crime; there must be sufficient remedies available to LA's to ensure payment can be obtained from those debtors who, despite being able to pay, refuse to pay. Ultimately, if the LA is unable to collect the debt then it will be written off and the burden will then fall on those council tax payers who meet their council tax obligations, some of whom may also be on limited incomes and experiencing financial difficulties.

As evidenced at **points 7 & 8**, protection exists for those on limited income through the CTRS where those most in need, as a result of financial hardship, receive maximum support and therefore have no council tax liability to meet.

Point 9 states that there is evidence to show that many households are not aware of the support to which they are entitled to receive, such as CTRS. It is difficult for LA's to identify those households who may qualify for CTRS but have never applied and for whatever reason, do not engage with the LA. Access to HMRC/DWP data would allow LA's to be more effective in targeting low income households rather than using stretched resources in a scattergun approach across the whole of its community.

Point 14 - The VOGC ensures that training is provided to all appropriate frontline staff on identifying vulnerability in order that appropriate support can be provided. The VOGC has a comprehensive contract with its Enforcement Agents where Welfare Teams exist to help support those most in need. Quarterly meetings are a condition of the contract in order to monitor performance and ensure that Enforcement Agents are acting in accordance with prescribed Regulations, whilst supporting those who may be considered vulnerable.

The VOGC carefully selects those cases which are appropriate for committal action and if at any stage during the process, vulnerability is identified, the Council will seek to recover the debt by alternative means such as an Attachment to Benefits.

In addition a sharing agreement exists between the VOGC Revenues Division and its Social Services Department in order that each case is vetted prior to a committal summons being issued. As a result, all areas of Social Services are explored such as Adult Services, Child and Young People Services, Mental Health and Safeguarding. Should a vulnerable household be identified by Social Services then committal action is immediately suspended and the relevant Social Worker is alerted in order that they can engage with the Revenues Division in order to resolve the matter on behalf of the client.

Point 43 – Whilst there is an additional cost to the public purse in imprisoning individuals, it is a very rare occurrence as in the vast majority of cases payment is received. The cost to the public purse must be considered against the potential loss in collection.

Point 54 highlights the difference in collection rates between Scotland and Wales where committal is not an option. Whilst the difference may not simply be attributed to the difference in enforcement regimes, there may well be a correlation.

The evidence shows that there was a 1.6% difference in the overall collection rate in 2016/17 between Scotland and Wales. The Welsh Government Statistical Release shows that in 2017/18 the total amount of council tax payable in Wales, excluding CTRS was £1,492 million. A loss of 1.6% across Wales would therefore equate to a £24 million reduction in Council Tax revenue each year.

As highlighted in **point 42** there are also additional powers available in Scotland, such as Money Attachments and Arrestment and Sale, which are currently not available in Wales. As a result, if the option of committal is removed, with less recovery options, then the 1.6 % difference in collection rates, in reality, is likely to be higher.

The Welsh Government states at **point 50** that they believe that the other sanctions available to LA's are sufficient and proportionate for those with the means to pay.

It is often the case that debtors do not engage with their LA and therefore there is no option, in the first instance, other than to refer cases to Enforcement Agents. Where debtors refuse to engage with the Enforcement Agents then cases are returned to the LA as uncollectable. In the absence of income details, at present the most viable options available would then be committal action, bankruptcy or charging orders.

The costs associated with committal action are limited and are governed by Regulations, these being:

- £245.00 for the committal application
- £ 75.00 for an arrest warrant bringing the defaulter before the Magistrates where they refuse to attend by their own free will.

Should committal be removed then it is likely that LA's would be forced to either seek a charging order from the County Court or initiate bankruptcy proceedings. These could be perceived to be extreme measures causing debtors to fall into further financial hardship due to the considerable costs involved with these actions.

Where a charging order is successfully obtained, the debt together with associated costs would be registered with Land Registry and the LA would only see the benefit following a relevant transaction, such as a sale. As a result, the LA may not see a cash benefit for many years to come, unless they seek to force sale of the property which could then cause homelessness for the household concerned. With an on-going council tax charge year on year this recovery option is only viable in very limited circumstances.

In order to initiate bankruptcy proceedings then the total debt must exceed £5,000. Therefore, the LA could have to wait several financial years before the debt reaches the minimum debt value level. In addition the costs associated with bankruptcy to the debtor can amount to tens of thousands of pounds and it is often the case that the costs far outweigh the actual council tax debt.

Due to the costs and consequences involved with bankruptcy and charging order applications then if committal action is removed it is imperative that a viable alternative recovery method is provided through Regulations. The most obvious, best alternative, which would meet all the aims set out in the consultation paper, is to Legislate for data sharing with HMRC and the DWP.

END.

Please Note: This response will be presented to the Council's Cabinet and therefore may be subject to change.

