

# **///APPEAL**

## **Decriminalising TV Licence Non- Payment**

**Consultation Response**

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## ***About APPEAL***

APPEAL is a law charity that fights miscarriages of justice and demands reform. We investigate miscarriages of justice by screening to find cases with merit and high potential impact, and then dig deep to find the fresh evidence that proves a conviction is unsafe or a sentence is unfair. We litigate by bringing cases to the Criminal Cases Review Commission, the Administrative Court and the Court of Appeal. We also work with former prisoners, campaigners, students, legal professionals and policy makers to ensure our justice system learns from its mistakes.

## ***About the Women's Justice Initiative***

The Women's Justice Initiative represents severely and multiply disadvantaged women who are seeking to challenge their sentences or convictions. We represent:

- Women imprisoned for minor, non-violent offences including for council tax and TV licence non-payment
- Women sent to prison instead of being given mental health support
- Women imprisoned for crimes in which domestic abuse was a factor
- Innocent women prisoners, especially those whose 'crime' was in fact accidental or the result of natural causes.

## ***Ending the use of imprisonment for debt***

The Women's Justice Initiative has been heavily involved in the call to end the use of imprisonment for non-payment of council tax, both through assisting with litigation and campaigning for the repeal of Regulation 47 of the Council Tax Regulations 1992. We supported Melanie Woolcock's judicial review of her imprisonment for non-payment of council tax, the pressure from which led to the end of the use of imprisonment for non-payment of council tax in Wales. Our work in areas of debt has expanded to look at TV Licence fee non-payment, due to the stark disproportionate effect it has on women.

## ***About the Consultation on Decriminalising TV Licence Evasion***

More can be read about the consultation on the Government's website here:

<https://www.gov.uk/government/consultations/consultation-on-decriminalising-tv-licence-evasion/consultation-on-decriminalising-tv-licence-evasion>

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## **Executive Summary**

Our recommendations are informed by five months of Magistrates Court observations of TV licensing hearings, and conversations with women facing prosecution. Their stories are provided throughout this report as case studies (names have been changed to protect anonymity).

Our main recommendations are as follows:

1. We believe unequivocally that non-payment of the license fee should be decriminalised. We believe this is the appropriate course of action due to the gender disproportionality in the enforcement of the offence, the draconian way this measure criminalises poverty, the flaws with the use of the Single Justice Procedure and the risk of imprisonment for non-payment of the fine.
2. We believe the appropriate alternative enforcement model should be a move to the civil debt system. We believe a new civil debt system should:
  - a. have appropriate regulation and consistency with other debt collection practises, following guidance for how consumer debt should be collected as outlined by the Financial Conduct Authority and the Water Services Regulation Authority.
  - b. be monitored closely to ensure the gender disproportionality does not continue in the new system.
  - c. eliminate the risk of imprisonment for the non-payment of fines.
  - d. restrict the use of heavy handed tactics such as the use of bailiffs to recover debt owed.

## **Responses**

### **1. Decriminalisation**

***Question 1: Should TV licence evasion (the use or installation of a television receiver without a TV licence) no longer be a criminal offence? Why do you consider that TV licence evasion should no longer be a criminal offence?***

TV licence non-payment must be decriminalised. Current licence enforcement strategy has criminalised some of the poorest members of society, is a disproportionate response to the issue of non-payment of the TV licence fee and has resulted in a system where the vast majority of those being prosecuted and convicted of TV licence evasion are women. Such a discriminatory and excessive punishment goes against fundamental principles of justice and equality.

Our view on decriminalisation has been informed by five months of court observations, in Stratford and Canterbury Magistrates Court. A member of our team has attended and observed TV licensing hearings, spoken to 20 women being prosecuted and numerous friends/family, magistrates, and prosecutors.

#### *Gender Disproportionality*

In 2018, 72% of all prosecutions for TV licence fee non-payment were against women, with women representing 73% of all convictions for the offence.<sup>1</sup> This offence accounted for 30% of all prosecutions against women in 2017,<sup>2</sup> making it the most common crime for which women were prosecuted. This stark gender disproportionality was highlighted in the Government's last review of the television licence enforcement regime.<sup>3</sup> It led to the BBC's own investigation into what was causing this skewed outcome in a 2017 Gender Disparity Report. The Report looked at quantitative data relating to Enquiry Officer visits: information regarding the times of day Enquiry Officers called, how many female headed households there were in the country and how the disproportionality could be broken down into different age groups. It also looked at more qualitative data looking at 'doorstep culture and behaviours' and 'home administration management' and interviews with both Enquiry Officers and their interviewees. The Report's main conclusions were:

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<sup>1</sup> Parliamentary Question Television: Licensing: Written question – 267176 (20 June 2019) <<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-06-20/267176/>>

<sup>2</sup> Ministry of Justice, *Statistics on Women and the Criminal Justice System 2017* (29 November 2018) 114.

<sup>3</sup> TV Licence Enforcement Review (July 2015) (Hereinafter 'the Perry Review') 7

- “Females are more likely to be available when the doorbell rings, despite the efforts made by EOs to call in prime-time, weekends etc. On average, females are at home more than males for every time period across weekdays and weekends.
- Females are more likely than males to answer the door. In addition, females are more likely to engage with a caller and less likely to be dismissive than males.
- National household composition; specifically a large proportion of single parent households drives an inherent skew in bias towards females (because these households are hugely disproportionately female).”<sup>4</sup>

Such a conclusion is deeply unsatisfying and cannot justify the current situation where women are being prosecuted at over two times the rate of men. It is all the more disappointing given the Government’s commitments to divert women away from the criminal justice system wherever possible as outlined in the Female Offender Strategy.<sup>5</sup> We have serious concerns that TV Licensing may in be in breach of the Public Sector Duty of Equality under the Equality Act 2010 on the grounds of gender discrimination.

Based on the Gender Disparity Report, it is not quite clear from where the disproportionality has arisen. It indicates that more Records of Interview are taken from women than men, and that women represent the majority of those who answer the door at both peak and off-peak times for Enquiry Officer visits. It also indicates that a number of houses are deemed ineligible to visit by an Enquiry Officer due to the vulnerability of the occupants, but the definition of vulnerability has not been explained, making it unclear how certain houses are deemed ineligible. Over the five year period of data analysed, the proportion of women being prosecuted (68.6%) is higher than the proportion of women giving Records of Interviews (66.5%).<sup>6</sup> There are currently information gaps in the current criminal justice regime, both in the investigative and prosecutorial decision making stage, in which gender disproportionality may be arising.

As part of this review into the criminalisation of TV licence fee non-payment, TV Licensing must ensure that any alternative schemes proposed do not continue this disproportionate investigative/enforcement regime.

### *Draconian Criminalisation of Poverty*

The current system utilising criminal sanctions has resulted in multitudes of individuals who simply cannot afford to pay receiving criminal convictions. In their response to this consultation, Clinks have highlighted the disproportionate impacts of poverty on women, noting that 90% of

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<sup>4</sup> Gender Disparity Report TV Licensing (December 2017) p 9

<sup>5</sup> Ministry of Justice, *Female Offender Strategy* (June 2018)

<sup>6</sup> Gender Disparity Report TV Licensing (December 2017) p 6 and Parliamentary Question Television: Licensing: Written question – 267176 (20 June 2019) <<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-06-20/267176/>>

single parents living in poverty are women and that restrictions on the child element of Universal Credit has brought hardship to mothers.<sup>7</sup> Women in Prison have also pointed out in their response the propensity for old-age poverty among women,<sup>8</sup> something particularly worrying given the proposed introduction of the licence fee for those over-75.

From attending TV Licensing prosecution hearings in Stratford Magistrates Court over the last five months, we have seen the same problems come up for the many women with whom we have spoken. Of the 20 women we have spoken to:

- 8 women disclosed that they were on Universal Credit,
- 2 women disclosed that they had disabilities and had not been asked about them during their interview with an Enquiry Officer,
- 9 women disclosed that they had caring responsibilities, either for children or older people,
- 6 women disclosed they had other debt issues,
- 7 women disclosed that they had been convicted under the Single Justice Procedure without their knowledge.

The women we have met were overwhelmingly struggling with their finances and other personal burdens. The fines they received in court were yet another bill they had to fit into already over-extended budgets.

### Case Study: Grace



*Grace was on Universal Credit and had an autistic son who needed extra care. He only watched YouTube, for which a licence is not required, and no one else in the house watched any other form of television. Grace was very worried about what would happen in court as she could not afford another bill. She was worried about her son who was off school due to half-term that day – she had had to arrange and pay for extra care for him. The TV she had in her house had been smashed by her son and she said it was unusable when the Enquiry Officer visited, as she could not afford to get it repaired or replaced. She pleaded guilty because she feared the size of her bill had she opted for a trial, and left the court room in tears with a large fine to pay.*

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<sup>7</sup> Women's Budget Group, *The Female Face of Poverty* (July 2018) p 11. Cited in Clinks Response to this consultation.

<sup>8</sup> *Ibid* p 22.

The conviction itself, which can appear on enhanced DBS checks, could represent a barrier to employment, making it even more difficult for someone to keep up with their bills. Many of the roles in the most common sectors in which women work (such as health and social work, retail and education) are subject to such enhanced checks, continuing the gendered disproportionality into the collateral consequences of a criminal conviction.<sup>9</sup>

### *Flaws with the Single Justice Procedure*

Utilising the criminal justice system to enforce the law on TV licensing has involved embracing some of the broader issues with the prosecution of lower level offences. The Single Justice Procedure, whereby an individual is sent a notice of prosecution and expected to respond via letter or online and the case decided by a single Magistrate sitting in private, has led to numerous reports of individuals being prosecuted without their knowledge.

### **Case Study: Katie**



*Katie is a single mother who was fined £675 under the Single Justice Procedure without knowing about it. She only found out after bailiffs called to her house at 7:30am, scaring both her and the kids. She had just started a new job and was unable to get a full paid day off work to attend court. She had to take the morning off without pay and was very anxious that her case was not being promptly called. She became very upset when told her case would not be heard until after the lunch break, despite her being told to show up at 9:30am, as she was unsure whether her boss would accept her continued absence.*

In around 80% of TV Licensing cases, no plea is entered.<sup>10</sup> While it is not possible to know for what reason an individual has not responded, we have seen numerous defendants in Stratford Magistrates Court having to attend to make a statutory declaration that they did not receive the notice, citing a change of address, being moved around in temporary or shared accommodation or post routinely going missing in their housing estate. Some individuals do not find out that they have a conviction until there has been an attachment order made on their benefits or wages, when it comes up on an enhanced check for new employment, or when bailiffs come knocking on their door. When an individual is not aware that they are being prosecuted, they

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<sup>9</sup> Prison Reform Trust, *Working it Out; Improving employment opportunities for women with criminal convictions* (2020) p 9

<sup>10</sup> Parliamentary Question Television: Licensing: Written question – 2683 (21 October 2019)  
<<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-10-21/2683/>>

cannot provide any evidence indicating their financial circumstances or ability to pay. Once the fine is imposed, there is nothing that TV Licensing can do to amend it as it has become a matter for the courts, even when the individual provides such evidence to TV Licensing in trying to sort out the error. While the Consultation document highlights the use of the Single Justice Procedure as a benefit of using the criminal justice system, stressing its efficiency in terms of time and cost, it ignores its serious flaws and lack of transparency, as reported by the organisation Transform Justice.<sup>11</sup> TV Licensing should not embrace this system which has the potential to cause miscarriages of justice.

### *Risk of Imprisonment*

Magistrates may send an individual to prison for non-payment of court fines if the court:

- (i) “is satisfied that the default is due to the offender’s wilful refusal or culpable neglect; and
- (ii) has considered or tried all other methods of enforcing payment of the sum and it appears to the court that they are inappropriate or unsuccessful.”<sup>12</sup>

This is the same test which has been found to have been misapplied in up to 18% of council tax committal order determinations.<sup>13</sup> By pursuing cases through the Magistrates Court as a criminal offence, TV Licensing is putting vulnerable individuals at risk of imprisonment. While TV Licensing frequently stresses that it is not within their power to seek imprisonment for the offence of TV licence fee evasion, by seeking fines and costs from individuals who are barely able to pay the licence fee itself, they put people in a position whereby the court may make a committal order and send them to prison for non-payment of the fine.<sup>14</sup>

The number of people being sent to prison for not paying the fine associated with a TV Licensing conviction has decreased significantly in the past number of years (from 728 to 5 from 1995-2018), but it is a power still used by Magistrates and nearly 350 have been sent to prison for not paying the fine in the past 10 years.<sup>15</sup> Once convicted, the fine is out of the hands of TV Licensing and they would not be able to prevent imprisonment, even if they thought an

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<sup>11</sup> Transform Justice, ‘The right to know you are accused of a crime’ (19 August 2019) <<http://www.transformjustice.org.uk/the-right-to-know-you-are-accused-of-a-crime/>>

<sup>12</sup> Magistrates’ Courts Act 1980 s 76, s 82 (4)

<sup>13</sup> The Council Tax (Administration and Enforcement) Regulations 1992 Regulation 47. In *R on the application of Woolcock v Bridgend Magistrates’ Court and Cardiff Magistrates’ Court Bridgend County Council* [2017] EWHC 34 (Admin)

<sup>14</sup> This power comes from Magistrates’ Courts Act 1980 s 76

<sup>15</sup> Parliamentary Question Television: Licensing: Written question – 26808 (9 March 2020) <<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-03-09/26808/>>

individual would not be able to pay. Imprisonment is a disproportionate response for non-payment of the fine and is economically lacking in sense.

## **2. Retain criminalisation**

***Question 2: If, alternatively, you consider that TV licence evasion should remain a criminal offence, why is this the case?***

We do not believe that TV licence fee non-payment should remain a criminal offence and have outlined our reasons for such above. We will therefore not respond to this question.

## **3. Alternative Enforcement Mechanisms**

***Question 3: If you have a view, what alternative enforcement scheme models do you consider to be most appropriate? Why?***

We want to ensure that the problems that have been identified within the current enforcement regime through the criminal justice system are not replicated in any alternatives that will be put in place going forward. The new system of TV licence enforcement must not:

- a. Result in someone receiving a criminal conviction
- b. Be disproportionately enforced against women
- c. Involve the imposition of a fine for non-payment
- d. Involve the court system before it is absolutely necessary

It is important to note that the system of enforcement for council tax debt should be completely avoided in designing TV Licensing's new enforcement regime. APPEAL has assisted a number of individuals who have been sent to prison due to council tax debt, including Melanie Woolcock,<sup>16</sup> and have seen the hardships and tragedies it can cause. As noted in Christians Against Poverty's response to this consultation, the practices in this area of debt are most draconian and problematic and there are far more proportionate and efficient ways to collect debt.

In writing this response, we have engaged with Christians Against Poverty and Zacchaeus 2000 Trust (Z2K), both working in the debt advice sector, we have considered the alternatives proposed in the Consultation Paper and we have analysed the alternatives that were rejected

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<sup>16</sup> *R on the application of Woolcock v Bridgend Magistrates' Court and Cardiff Magistrates' Court Bridgend County Council* [2017] EWHC 34 (Admin).



in 2015 during the Perry consultation on this issue. From this research, we would recommend that the civil debt model should be strongly considered. This should be caveated by emphasising that we are not a debt advice service. We have come to this issue from a criminal justice standpoint, but we fully recognise that there must be another system in place to insure against a significant blow to the funding of the BBC.

### *Why a Civil Debt Model?*

During the last consultation, both the Money Advice Trust and Christians Against Poverty, two leading debt advice organisations, opined that remodelling TV licence fee enforcement along the lines of a civil debt would be the “least punitive”<sup>17</sup> and “most appropriate, fair and cost effective alternative”<sup>18</sup> to the criminal system. This model is how debt relating to utilities such as electricity and water are treated, in addition to consumer credit and council tax debt. While there is no uniform method of civil debt collection, there are some best practices that have emerged in various areas. Remodelling TV Licence fee enforcement provides an opportunity to consolidate these best practices and act as an example for other creditors going forward. TV Licensing, must not however, embrace the disproportionate and aggressive debt collection tactics used in some areas of civil debt, such as contracting collection to bailiffs and seeking the committal order power currently still in place for council tax debt.

### *How it would work*

A civil debt system would result in fairer and more proportionate responses to those struggling to pay. It should work as follows:

1. Once it is established that a licence fee has not been paid where an individual has been watching licensable content, that individual owes a debt to TV Licensing.
2. The make-up of the household should be considered when assigning the debt to an individual within a household to ensure the debt is not disproportionately falling on women who simply answer the door, despite not being the primary earner in the household.
3. TV Licensing can work out a comprehensive re-payment plan with the debtor that suits their ability to pay and ensures TV Licensing is recouping the money it is owed for the services being provided.
4. Only if this repayment plan is not working and the individual has been given ample opportunity to pay the debt may TV Licensing seek a County Court judgment against the individual, requiring the individual to attend court.

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<sup>17</sup> The Money Advice Trust, *Consultation Response: TV Licence Enforcement Review* (May 2015) p 7.

<sup>18</sup> Christian's Against Poverty, *TV Licence Enforcement Review: CAP's official response to the Department for Culture, Media and Sport's consultation*, (February 2015) p 6.

5. Once this has been obtained, enforcement tools such as attachment of earnings and benefits would be possible but only as a last resort to encourage someone to pay.

### *Regulation & Consistency*

Collection for other debts conducted in this manner is often subject to clear regulation and guidelines. The Financial Conduct Authority, for example, sets out clear guidelines in its FCA Handbook for how consumer debt should be collected, particularly noting principles of proportionality and only using certain powers as a last resort.<sup>19</sup> The Water Services Regulation Authority has also published specific guidelines for dealing with households in debt, highlighting that service providers should offer debt advice services to customers, oppressive and excessive correspondence should be avoided and that there should be a range of payment frequencies for a variety of customer financial situations.<sup>20</sup>

We would propose that regulations are put in place in line with FCA Guidance and the Water Services Regulation Authority Guidelines that allow for the following measures for dealing with customers struggling to pay their licence fee:

1. Consideration of suspending, reducing, waiving or cancelling any further charges for a TV licence when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due
2. Referral to a not for profit debt advice agency, with TV Licensing providing as much relevant information as possible to the agency to inform onward support
3. Consideration of the most proportionate enforcement response before more aggressive ones, such as going to court or the involvement of bailiff agencies, are pursued
4. Providing a reasonable period of time over which an individual can pay and,
5. Trying a variety of communication methods with an individual spread out over time in such a manner as to not be oppressive.

Two areas that have also created particular concern in the debt advice community relate to the speed of escalation and the aggressive use of bailiffs. These concerns will be addressed in our response to Question 4 as it relates to mitigating any unwanted impacts of decriminalisation.

From consulting with debt advice agencies we believe treating TV licence non-payment as a civil debt is the best alternative to criminalisation. TV Licensing has already done great work in expanding the Simple Payment Plan, offering more manageable payment schemes and

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<sup>19</sup> Financial Conduct Authority Handbook *CONC 7.3 Treatment of customers in default or arrears (including repossessions): lenders, owners and debt collectors*  
<<https://www.handbook.fca.org.uk/handbook/CONC/7/3.html>>

<sup>20</sup> Ofwater, *Dealing with household customers in debt –guidelines* (Revised 1 September 2015)  
[https://www.ofwat.gov.uk/wp-content/uploads/2015/10/gud\\_pro\\_custdebt200703272.pdf](https://www.ofwat.gov.uk/wp-content/uploads/2015/10/gud_pro_custdebt200703272.pdf)

assisting those who struggle to pay. Allowing greater flexibility of repayment plans ensures that vulnerable individuals are not receiving an extra financial burden due to their inability to pay. Reconceptualising TV licence fee enforcement as a civil debt is the best way to achieve this goal.

### *Monitoring*

TV Licensing must use this opportunity to put in place greater monitoring systems. They should use this transition period to conduct a full equality assessment, going further than that done in the Gender Disparity Review in 2017, to analyse the impact of existing and proposed enforcement measures. Going forward, they must keep data on:

- the gender breakdown of the enforcement process at all stages, including the levels of debt in which men and women are finding themselves when they first come to the attention of TV Licensing,
- the types of repayment plans being offered to men and women and
- the number of cases being pursued to County Court action and any subsequent enforcement measures that follow a judgment.

Under our proposals, individuals would spend greater time dealing with TV Licensing, as opposed to the courts, as their primary contact in the process. This will allow TV Licensing to better track how decisions are being made and whether or not any direct or indirect discrimination is arising at any stage of the process.

## **4. Mitigating the impact of decriminalisation**

***Question 4: What steps could the Government take to mitigate any impacts that may result from decriminalisation of TV licence evasion?***

### *Mitigating the impact on the BBC*

We recognise the inherent value of the BBC and public broadcasting, both for its independence, and its ability to bring together members of the public over important entertainment, sporting and cultural experiences. It is of particular value to those who cannot afford other television services and provides good value for money in comparison to other streaming options. The 2015 Consultation Report outlined a number of ways in which decriminalisation was not a valid option, primarily citing conceptual differences between the licence fee and other forms of debt, and the risk of significant loss of revenue. We do not wish to dismiss the concerns outright, but rather propose to highlight the changes that have come about since the 2015 consultation that might result in mitigating these impacts.

## *Enforcement*

It was pointed out in the 2015 Consultation Report that the TV licence fee could not be treated as a civil debt as TV viewing cannot be monitored in the same way as water or electricity usage. It could be impossible to tell how much debt is owed. Since then, TV Licensing has developed the Simple Payment Plan, splitting the licence fee into smaller, more frequent payments for those who struggle to pay. Rolling this out more widely would make it easier to monitor how much debt is owed based on how many payments have been missed, rather than having to charge a much larger speculative amount.

For those who claim they do not need a licence but in fact have been watching TV without a licence, evidence relating to the period of time for which they have been watching TV without a licence is currently collected through an interview with an Enquiry Officer when called to the door. If information obtained through this process is currently deemed sufficient as evidence to be used in a criminal trial, it should also be sufficient for the purposes of determining the level of debt owed. It might also be an option for an officer from TV Licensing to inspect an individual's TV or viewing device to see the dates that certain programmes were viewed or recorded. Visiting officers would need to be trained in how to deal effectively with vulnerable customers, shifting from their current primary roles of investigators for the purposes of criminal proceedings to one of information gatherers. They should figure out as much as they can about the extent of an individual's debt as well as their personal and financial circumstances as the first stage of the civil debt process. New questionnaires would need to be developed that question for how long an individual has been watching TV without a licence, why they did not purchase a licence, what their financial circumstances are and how they will be able to repay TV Licensing the money owed for watching TV without a licence.

The organisation Women in Prison has also suggested in its response incentives for those who admit early that they are struggling to pay the licence fee, such as greater flexibility in payment plans offered. This would encourage more open communication between TV Licensing and viewers, assisting TV Licensing in establishing the level of debt and the individual in creating a payment plan within their budget.

### *Risk of Evasion Rates Increasing*

Another impact cited was the risk of increased evasion rates. The BBC's Response to the 2015 Consultation referred to a study conducted by Harris Interactive that predicted that evasion rates would increase from 5 to 9%, resulting in a loss of £150 million to the BBC.<sup>21</sup> As the licence fee forms part of the primary funding structure of the BBC this is not a fear to be readily

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<sup>21</sup> BBC, *TV Licence Enforcement Review; Submission from the BBC in response to Consultation* (April 2015) p 3.

dismissed and we have not costed our proposals for a civil debt style system. It is important to remember, however, that other countries that also use the criminal law to enforce the TV licence fee, such as Ireland and Italy, have significantly higher evasion rates than the UK.<sup>22</sup> We know that the BBC does not collect the fines that are given by Magistrates upon conviction, so it will not be directly losing the money collected via fines.<sup>23</sup>

There would likely be significant short term costs relating to the re-training of Enquiry Officers, restructuring the roles of the prosecution team to ones focused on debt recovery and the absence of ability to recoup the costs of the system in the same direct way as is currently in place through asking for prosecution costs in Magistrates' court. However, if staff are trained in the best practices and attractive incentives are offered to be upfront about struggles to make payments, this could ensure that individuals are paying the full amount they owe to TV Licensing for the services they are using.

### *Mitigating impacts on members of the public*

In addition to avoiding any harmful impacts of decriminalisation on the BBC, the Government must be aware of harmful practices for debtors involved in systems of civil debt. In cases of council tax debt, for example, an individual runs the risk of imprisonment for non-payment of fines.<sup>24</sup> Indeed roughly 100 people are sent to prison each year for non-payment of council tax debt.<sup>25</sup> This is a draconian practice that should not be replicated in any TV licensing debt recovery structure.

The over-use of bailiffs is another area where there have been serious calls for reform in recent years,<sup>26</sup> including pressure to have independent regulators for bailiff companies and to limit their use until absolutely necessary. The women we have spoken to have told us of their difficult experiences with bailiffs showing up at their homes or homes of relatives with little or no explanation of who sent them. The group Taking Control, made up of a number of debt advice organisations, have called for greater regulation of bailiffs, clearer complaints procedures and a restructuring of bailiffs' fees to encourage early, less aggressive resolution of debt problems.<sup>27</sup> TV Licensing should take these calls for reform into account when devising their

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<sup>22</sup> For example, Ireland and Italy have higher evasion rates than the UK yet it is also a criminal offence not to pay for a TV licence in these countries. Ireland: Wireless Telegraphy Acts 1926-1972 and regulations thereunder; Italy: D.L.C.P.S.31/12/1947 n.1542. Tim Masters, 'How is TV funded around the world' BBC News <<https://www.bbc.co.uk/news/entertainment-arts-26546570>>

<sup>23</sup> TV Licensing, 'Financial Information' <<https://www.tvlicensing.co.uk/about/foi-financial-information-AB19>>

<sup>24</sup> Regulation 47 The Council Tax (Administration and Enforcement) Regulations 1992

<sup>25</sup> Social Market Foundation, *Unfair, ineffective and unjustifiable: the case for ending imprisonment for Council Tax arrears in England*, by Chris Daw QC (September 2019)

<sup>26</sup> See for example Money Advice Trust, *Stop the Knock: An update on local authority debt collection practices in England and Wales* (September 2019); Taking Control, *Taking Control, The need for fundamental bailiff reform* (March 2017).

<sup>27</sup> Taking Control, *Taking Control, The need for fundamental bailiff reform* (March 2017).

new debt collection structure, contracting only those bailiffs engaged in best practice, and holding their own visiting officers, who call out to see if a household is watching a TV without a licence, to the same high standards.

In its research on the experiences of individuals with various forms of debt collection, Christian's Against Poverty have also noted that a primary concern of their service users relates to how quickly the process can become unmanageable due to the debt being prematurely referred to court.<sup>28</sup> This is currently an issue in TV Licensing prosecutions. One of the last interactions that an individual has with TV Licensing before a decision is made to prosecute them is with the Enquiry Officer at their door. They may not know what to say in that moment of pressure and intimidation, or how to tell them that they are working hard to pay their licence fee. A number of people to whom we have spoken being prosecuted at Magistrates' courts have told of the fragmented process – they hear they are being prosecuted despite them paying so try to call TV Licensing, who tell them it is out of their hands at that stage and that they must contact the court. If a bailiff comes to their door to collect the fine, they are told that they are to contact someone else to try sort out the issue.

### Case Study: Jessica



*Jessica was convicted under the Single Justice Procedure and only found out about it after an attachment order was put on her earnings. She did not watch TV for which one needs a licence. She had tried to contact TV Licensing to sort it out but was told that she had to show up to court to fix it. She had been in and out of different Magistrates' courts over the past number of weeks, having to make a statutory declaration that she did not receive the original notice, and then was sent to the incorrect court for her hearing. She tried to tell people at each stage that she did not need a TV licence, but she was always passed along by TV Licensing or the courthouse she was in that day. Her case was eventually dropped by the prosecutor, after she had to take time off work to come to Stratford for 9:30am and was only seen after 2pm.*

TV Licensing must embrace both the policies and the practices seen in water or electricity bill collection and consumer credit, where going to court is the last resort. Many people we spoke with highlighted how helpful the prosecutors from TV Licensing were when they met in court, but lamented that it took them having to take a day off work to appear in court before they could speak with someone who was able to help. There must be opportunities for an individual to engage with TV Licensing and work out an achievable payment plan before it is out of their hands and in the court system.

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<sup>28</sup> Christians Against Poverty, *Powerless People: indebted and afraid* (2018) p 10.

## 5. Impact on vulnerable persons

***Question 5: Please provide any evidence you consider appropriate in answering these questions and any other information that you believe the Government should consider, especially where there is an impact on those with protected characteristics or the most vulnerable.***

In a recent Freedom of Information Request, the organisation Transform Justice asked how hidden vulnerabilities or disabilities can be assessed and dealt with under the current regime.<sup>29</sup> While the response provided information of vulnerability training of officers and ongoing assessments of decisions, it did not explain how the most vulnerable, who do not or cannot engage with the process due to their circumstances, can avoid being unfairly criminalised. It also does not explain how some of the women we have met in Magistrates' Courts have ended up there, in personal and financial circumstances which would qualify under any definition of 'vulnerability'.

We have highlighted a number of these women's stories throughout this response which we have thought clearly represent some of the most pressing issues in this consultation. In this section, we outline a number of other case studies to highlight the hardships faced by those being prosecuted, and to show that a system whereby these individuals are the ones being chosen for prosecution is fundamentally broken and in need of reform. Names have been changed. These are the people that the Government needs to keep in mind when making recommendations for reform.

*Amy*

Amy was adamant that she was not in violation of the law regarding TV licensing. She was convinced that a mistake had been made when she switched her method of payment from direct debit to the Simple Payment Plan. She had lots of paperwork with her to show the dates on which she had paid and how this matched up with when she was interviewed by an Enquiry Officer. Amy said an Enquiry Officer had called to her house but she had not let him inside. She said that he asked her to sign a piece of paper to show that he had visited, but he had not explained that it was the 'Record of Interview' document that forms the primary piece of evidence against a person in a TVL case. She said that she was not cautioned before this was

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<sup>29</sup> Freedom of Information Request RFI2020326. Information requested on 24<sup>th</sup> February 2020, response received on 23<sup>rd</sup> March 2020.



done. She said that there was no way one could see a TV from her door, so the description in the Record of Interview that she was seen watching television could not be correct.

Amy had had a very difficult life and experienced a number of hardships in recent years. A member of her close family had passed away, whose funeral she had to pay for, she suffered from crippling migraines yet could not afford to take the time off her 6-day work week to rest. She had recently been engaged in legal actions against other utility providers relating to their overcharging for services and aggressive collection tactics. She sends much of her money to her ill parent who lives abroad, who she cannot afford to visit.

Amy's name was not on the list at Stratford that day due to an administrative error. She was annoyed as she had been wrongly sent to two different courts previously before being sent a letter from HMCTS that she was to come to Stratford. She was determined that she had done nothing wrong yet after speaking in the interview room with the prosecutor she came out and pleaded guilty. She said that the prosecutor was very nice and said she should not have been called to court at all given her difficulties, but that the magistrates might not believe her, and if she did not plead guilty she risked much larger costs. She explained her situation to the Magistrates when given the opportunity to do so and was given a conditional discharge.

### *Beth*

Beth had serious mental health issues. She was very annoyed at having to be in court that day as she had a psychiatrist appointment that she was worried about missing. She said she had been interviewed by an Enquiry Officer while staying at a friend's house and that she was homeless at the time. Due to her mental health problems she could not really remember what she said but knows that she was never asked about any vulnerabilities, mental health issues or financial difficulties. She also mentioned receiving threatening letters and calls from the bailiffs who were threatening to come the address at which she had been at that time, even though neither she nor her friend lived there anymore.

### *Catherine*

Catherine was one of the very few women we saw that pleaded not guilty and had a trial with an Enquiry Officer as a witness. She said that she was only watching TV through an app that allowed her to legally watch shows from a foreign television channel. She said that you could not watch live television using this app.

She and the Enquiry Officer in the case had contradicting stories regarding what happened. The officer said that he saw that a live TV programme was playing. Catherine completely disputed this. She had enquired through the telephone helpline previously about whether or not she needed a licence for the app and had been told over the phone that she didn't need one. She said that the TV was not on when he came in but that she turned it on and a menu



came up, which listed the various programmes that she could watch. She said that he then left without getting her to sign a record of interview. The record of interview listed a TV show that the officer said she had been watching, which she said he could have gotten from looking at this menu that appeared when she turned her television on. Catherine was unrepresented yet cross-examined the Enquiry Officer and was herself cross-examined by the prosecutor.

The Magistrates retired to deliberate for roughly 5-10 minutes. When they came back they announced that they found her guilty. They ordered her to pay the full costs of the trial which was £255. They said they were giving her the lowest fine they could give her given her financial circumstances (she explained that she was on Universal Credit), leaving her with a bill of £333.

### *Danielle*

Danielle came to court with a family friend and her one-month old baby. She said she had been visited by an Enquiry Officer while heavily pregnant, and had not let him into the house. She admitted to him that her kids watched cartoons on her TV, but she said they had been watching them on YouTube and Netflix, and she did not know at the time that you did not need a licence to watch this material. She said that she was not asked any questions regarding her ability to pay by the Enquiry Officer, nor any other vulnerabilities she may have. She was living in shared accommodation and it was in her contract that her landlord is responsible for paying for the licence, yet because she was the one to answer the door, she was the one being brought to court.

### *Erica*

Erica was visited by an Enquiry Officer when she was moving back to permanent accommodation from temporary accommodation (literally while she had boxes in her hand). She said that she had always paid her licence by direct debit but that she had not been notified when she had to renew. Erica bought a TV licence when the Officer called to her house as it was the first time she became aware that it had not been paid. She continued to pay by direct debit after this visit. She thought that was the end of the matter but months later she received a letter saying she had been convicted and owed over £300. The original Single Justice Procedure notice had been sent to her temporary accommodation address and she had not received it. She explained to the Magistrates that she thought by buying a licence on the day that the Officer called around that the matter was closed (which, according to TV Licensing Prosecution Code is true - buying a licence from an EO is considered an alternative to prosecution<sup>30</sup>). Nonetheless, she was convicted. She was annoyed at having to come to court. She said she had not been able to sort it out with anyone from TV Licensing over the phone before being called to court.

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<sup>30</sup> TV Licensing Prosecution Code p 4



*Fiona*

Fiona was very reserved and was slow speaking. She had some difficulties breathing due to health problems. She indicated that because she was in hospital over Christmas, she fell behind on payments and was visited by an Enquiry Officer while she at home recovering. Her carers were interviewed who indicated that she had health problems (which was indicated on her Record of Interview document). She mentioned a number of times that she was very nervous going in, that she was worried about being without her carers who were out doing her shopping. The case against her was dropped, but not before she went through the considerable stress of having to appear in court.

*Hiba*

Hiba indicated that she did not watch the BBC but when an Enquiry Officer called to her house she thought it would be a good idea to buy a licence just in case there was anything she wanted to watch. So she was confused as to why, despite buying a licence, she was called to court. She said she had five small children and said she answered the door to the Enquiry Officer as she did not want to be rude. She said that if her husband was there he would not have let them in. She said she felt rather intimidated and uncomfortable as a Muslim woman letting a strange man into her house but felt she had no other choice.

## **References**

- BBC, *TV Licence Enforcement Review; Submission from the BBC in response to Consultation* (April 2015)
- Christian's Against Poverty, *TV Licence Enforcement Review: CAP's official response to the Department for Culture, Media and Sport's consultation* (February 2015)
- Christians Against Poverty, *Powerless People: indebted and afraid* (2018)
- Communications Act 2003
- Council Tax (Administration and Enforcement) Regulations 1992 Regulation 47
- Criminal Justice and Courts Act 2015
- Financial Conduct Authority Handbook <<https://www.handbook.fca.org.uk/handbook>>
- Magistrates' Courts Act 1980
- Masters T, 'How is TV funded around the world' BBC News (31 March 2014) <<https://www.bbc.co.uk/news/entertainment-arts-26546570>>
- Ministry of Justice, *Statistics on Women and the Criminal Justice System 2017* (29 November 2018)
- Money Advice Trust, *Stop the Knock: An update on local authority debt collection practices in England and Wales* (September 2019)
- Ofwater, *Dealing with household customers in debt –guidelines* (Revised 1 September 2015)
- Parliamentary Question Television: Licensing: Written question – 267176 (20 June 2019) <<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-06-20/267176/>>
- Parliamentary Question Television: Licensing: Written question – 2683 (21 October 2019) <<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-10-21/2683/>>
- Parliamentary Question Television: Licensing: Written question – 26808 (9 March 2020) <<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-03-09/26808/>>
- R on the application of Woolcock v Bridgend Magistrates' Court and Cardiff Magistrates' Court Bridgend County Council* [2017] EWHC 34 (Admin)



Taking Control, *Taking Control, The need for fundamental bailiff reform* (March 2017)

Transform Justice, 'The right to know you are accused of a crime' (19 August 2019)  
<<http://www.transformjustice.org.uk/the-right-to-know-you-are-accused-of-a-crime/>>

TV Licensing, 'Financial Information' <<https://www.tvlicensing.co.uk/about/foi-financial-information-AB19>>

TV Licensing, *Prosecution Code*

TV Licensing, *CAPITA Policy for TV Licence Prosecutions* (May 2019)

TV Licensing, *BBC Television Licensing Vulnerable Customers Policy*

Wireless Telegraphy Act 1949 to 1967

Wireless Telegraphy Acts 1926-1972 and regulations thereunder (Ireland)



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