

The Enforcement of Council Tax and the Bridgend Case

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Time to suck eggs!!!

BUT – Nothing has changed!!

Apart from!!

- The competence of billing authorities to bring these actions
- Numerous case law on clarification of statutory principles generally linked to Billing Authority failure, and of course
- The Taking Control of Goods as a precedent, together with
- The recognition of the vulnerable debtor

The Time limit

- The debt is on a annual statutory cycle
- No application for a Liability Order may be instituted for Council Tax after 6 years from the day it became due.
- Timeliness is critical
- Failure to act makes enforcement difficult
- The application for the liability order should where ever possible be in year
- Cases should not be allowed to fester

Choice of Action

- **Attachment of Earnings Order (Regulations 37 to 43 A&E Regulations 1992 SI 1992/613)**
- **Attachment of members allowances (Regulation 44)**
- **Insolvency (Regulation 49)**
- **Charging Order (Regulations 50 and 51)**
- **Deduction from Income support -CT (Deductions from Income Support) Regulations 1993 SI 494**
- **Taking Control of Goods (Regulation 45)**

Post the Liability Order

- Billing Authorities can only use one option at a time on the same Liability Order
- Different recovery is permissible in respect of different Liability Order's except for deductions from welfare benefits.
- Option can be used more than once
- Endorsing the liability order is a necessary precedent before the enquiry

Request for Information

- The regulations provides that on the issue of a Liability Order the debtor is obliged to provide certain details regarding their circumstances. They must supply:
 - Name and address of their employer
 - Actual or expected earnings
 - Actual or expected deductions in respect of income tax, NI and pension
 - Any other AOE orders in force
 - Employment identity number
 - Info on all other sources of income

Request for Information

- Information to be supplied within 14 days of its request in writing
- Failure to supply info or knowingly or recklessly supply information which is false is a criminal offence
- On summary conviction to a fine not exceeding level 2 (failure to supply) and level 3 (providing false information).

Debtor Intelligence is the Key

- Gathering accurate data should be the norm
- Choice of action should be debtor related
- Evidence of the precedents should be clearly presented
- Evidence of the enforcement events should be properly recorded
- The Billing authority evidence should prompt the Magistrates in the enquiry

The Centre for Criminal Appeals and The Bridgend Case

- The Centre for Criminal Appeals promoted the case and as a result is now preparing to intervene in a judicial review of the legality of the current system by which people are committed to prison for non-payment of council tax.
- Such a challenge would focus on whether the present system violates Article 6 of the European Convention of Human Rights, the right to a fair trial.
- Each year around 100 people are imprisoned for non-payment of council tax.
- Extensive research by the Centre for Criminal Appeals indicates that such prison committals have almost always been found to have been unlawful when reviewed by the High Court.
- The Centre, has identified and reviewed 145 cases since 1980 where a person's committal to prison for non-payment of dues such as fines, council tax and the community charge has been ruled unlawful in the High Court.

The Parties to the Judicial Review

**R on the application of Woolcock (Claimant)
and
Bridgend Magistrates' Court (Defendant)**

And

- (1) Cardiff Magistrates' Court (Interested party)**
- (2) Bridgend County Council (Interested party)**

The Background

- The Claimant is a single mother. She lives with her son. The Claimant failed to make payments of council tax in respect of two properties that she occupied.
- The first was Flat 3, Precinct Rest Bay, Porthcawl where the Claimant failed to pay council tax between 1 April 2009 and 21 April 2013, that is, over five different council tax years.
- The total amount unpaid, including costs, was £2,992.78.
- The second was 1 Seagull Close, Porthcawl where the Claimant had failed to pay council tax between 22 March 2013 and 31 March 2014, that is, over two council tax years.
- The total amount including costs in relation to that property was £1,748.97

The Grounds

- The Claimant contended that the magistrates adopted a flawed approach to
 - the assessment of her culpability for non-payment of council tax and the making of the orders on 20 October 2015, and imposed a period of imprisonment in default of payment which was so excessive as to be unlawful.
- She further contended that the
 - Magistrates erred in committing her to prison on 18 July 2016 as they failed to take steps to secure her attendance at court and to obtain the information necessary to any decision to commit her to prison.
- There is an additional ground of challenge to the lawfulness of the system by which liability for payment of council tax is dealt with.

What the Law Provides (1)

- The power to commit a person for non-payment of council tax is contained in regulation 47 of the Council Tax (Administration and Enforcement) Regulations 1992 that regulation provides so far as material that:
- Where a billing authority has sought to enforce payment by use of the Schedule 12 procedure pursuant to regulation 45, the debtor is an individual
 - who has attained the age of 18 years,
 - and the enforcement agent reports to the authority that he was unable (for whatever reason) to find any or sufficient goods of the debtor to enforce payment,
 - the authority may apply to a magistrates' court for the issue of a warrant committing the debtor to prison.

What the Law Provides (2)

- On such an application being made the court shall (in the debtor's presence) inquire as to his means and inquire whether the failure to pay which has led to the application is due to his wilful refusal or culpable neglect.
- If (and only if) the court is of the opinion that his failure is due to his wilful refusal or culpable neglect it may, if it thinks fit.
 - issue a warrant of commitment against the debtor, or
 - fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions (if any) as the court thinks just.

What the Law Provides (3)

- The warrant is to be made in an amount reflecting the outstanding amount of council tax and the costs reasonably incurred by the local authority seeking payment: see regulation 47(4) of the Regulations.
- The maximum period for imprisonment is not to exceed 3 months (see regulation 47(7) of the Regulations).

What the Law Provides (4)

- There is also provision for a magistrates' court to remit the amount outstanding rather than issue a warrant or fix a term of imprisonment in default of payment.
- Where an application under regulation 47 has been made, and after the making of the inquiries mentioned in paragraph (2) of that regulation and no warrant is issued or term of imprisonment fixed, the court may remit all or part of the appropriate amount mentioned in regulation with respect to which the application related.

The Comments of the Judge

- The general principles governing the making of an order under regulation 47 of the Regulations are relatively well established in the case law. For present purposes, the material principles are these.
 - First, the power to commit is intended to be used to extract payment of the debt not to punish the debtor.
 - Secondly, it is clear from the terms of the regulation that the magistrates' court must conduct a means inquiry in the presence of the debtor and must consider whether the failure to pay is the result of wilful default or culpable neglect.
 - Thirdly, an order may be made if, but only if, the debtor is guilty of culpable neglect or wilful default. The means inquiry will need to consider the period or periods in respect of which liability is due in order to determine, amongst other things, whether non-payment is the result of culpable neglect.
- Further, the means inquiry will need to consider the present position of the debtor to enable the magistrates' court to determine whether the debtor is in a position to pay the debt and the magistrates' court will need to consider what enforcement options are available to it to secure payment of the debt,
- *J. in R (Wandless) v Halifax Magistrates' Court and others* [2009] EWHC 1857 (Admin.)

The Judgement

- Decided in favour of the claimant on all grounds
- Detailed criticism of the process
- Nothing new in his comments
- Exposes flaws in the local authority's procedures
- Should form the basis of good practice!!

In Conclusion

- Enforcement should be timely
- Correct and appropriate procedure is critical
- The general approach must be agreed with the Magistrates and in accordance with the law
- The officer making the application must be competent and legally agile
- The Billing Authority should have policies that prevent and avoid inappropriate action