



# Rossendales Training



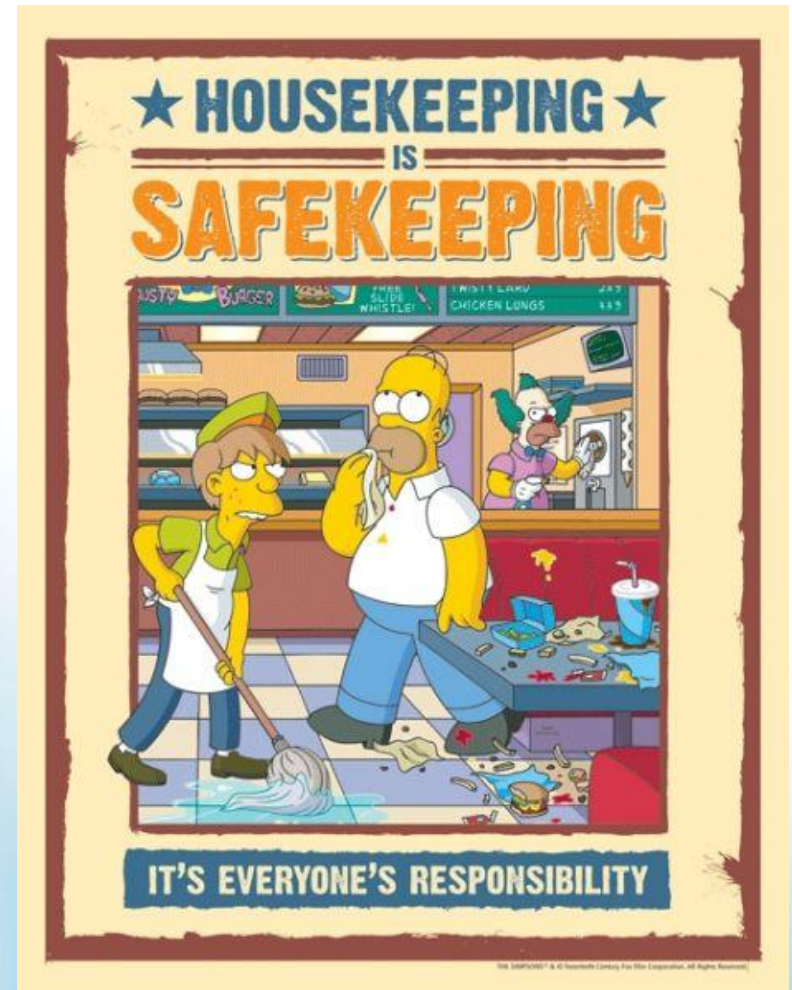
## Local Authority Revenues Committal Workshop

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# House Keeping

- Fire Alarm procedures
- Exits
- Mobile phones
- Toilets
- Refreshments

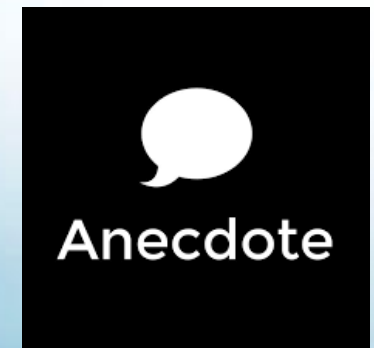


# Introduction and Objectives

- ❖ The presentation of evidence
- ❖ The rules regarding the summons or warrant
- ❖ The conduct of the committal hearing.
- ❖ Detail the various type of decisions that magistrates can pass, making reference to any relevant case law applicable to any of the above,
- ❖ The rules regarding payment after a warrant of commitment is issued, and,
- ❖ The appeals procedure.
- ❖ **New** – update following the ‘Bridgend’ case – JCS news sheet 22<sup>nd</sup> March 2017.

# Anecdotes from around the country

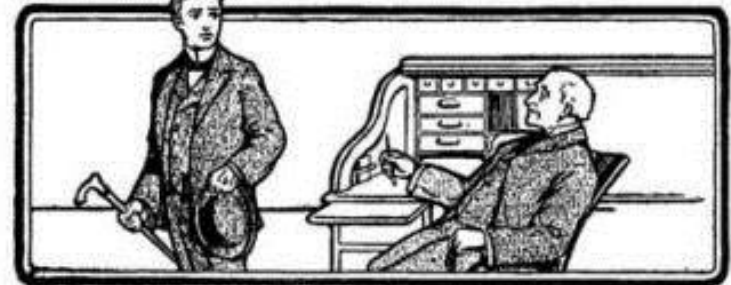
- ❖ “We use Committal to get cases remitted”
- ❖ “There is no support from the Courts”
- ❖ “The Magistrates will never send anyone down”
- ❖ “Court time is being reduced and reduced”
- ❖ “The Courts have refused to let us introduce”
- ❖ “Bankruptcy is far more successful”
- ❖ “Elected Members won’t entertain it”
- ❖ “We only get £5 per week ‘orders’ ”
- ❖ “There is so much inconsistency”



# Anecdotes from around the country

- ❖ “It is very effective for some”
- ❖ “We get a lot of success from it”
- ❖ “The staff find it very motivational”
- ❖ “It’s the first time we ever meet the debtors”
- ❖ “We get a lot of attachments of earnings from it”

## AN INSTRUCTIVE ANECDOTE





## Headlines from around the country: Tax martyrs or law breakers?



- ❖ “Tax dodger’s freeman on the land defence fails”
- ❖ “Boxer jailed after trying to use the Magna Carta to avoid council tax”
- ❖ “Jail term for 'anti-war' Council Tax dodger”
- ❖ “Grandmother (52) jailed over unpaid council tax is freed in time for Christmas after online appeal raised enough to pay off debts”
- ❖ “ “Retired vicar jailed over council tax protest”
- ❖ “Council tax martyr jailed twice for refusing to pay over state of her street”
- ❖ Depressed single mum unlawfully sent to jail for 40 days”

And to prove local taxation is not alone:

- ❖ “Child maintenance powers 'emasculated' after court ruling”

## Committal Context

- ❖ Committal is not a new remedy introduced for CTAX; it existed for earlier taxation systems too as evidenced by the age of some case law decisions, commonly Poll Tax based
- ❖ Statistics confirm 1,426 people imprisoned in 1993 and 1,361 in 1994 for non-payment of Poll Tax
- ❖ A parliamentary question in 2012 confirmed about 100 imprisonments a year for unpaid CTAX
- ❖ CMEC committal orders increased from 230 in 2004/5 to 1050 in 2010/11
- ❖ No data available for more recent years
- ❖ Committal as a remedy is being considered more by billing authorities
- ❖ Abiding principle:

**“The right to liberty is such a fundamental human right that deprivation must always be an order of last resort.”**

**Karoonian & Gibbons v CMEC [2012]**

# Committal within Enforcement

- ❖ Enforcement is a toolkit with different remedies for different circumstances
- ❖ Post EA return the work is no longer production line in approach so expect to spend more time on each case.
- ❖ Expect to be more forensic in approach
- ❖ Do you know the significance of debtor contact at pre-committal stage?
- ❖ Do you keep MI on the collections secured specifically at pre-committal?
- ❖ Do you have an up to date, publicly available and easily accessible recovery **policy** document that details committal as an enforcement option?
- ❖ Engagement is key as you are now working on the real hard to get money
- ❖ The target is pragmatic payment solutions, not dogmatic ones.





# What makes a good case for Committal?

❖ What do we want?



❖ OR



# What makes a good case for Committal?

- ❖ What factors should we consider?
- ❖ Payment history – to the authority and wider (CRA check vital)
- ❖ How many years of debt (proportion v reasonability v law)
- ❖ The age of the debtor
- ❖ Any potential vulnerability – direct or indirect
- ❖ Domestic circumstances (lone parent v family)
- ❖ Employment status
- ❖ Ongoing or ceased liability?
- ❖ Valuation band selection
- ❖ Committal to legitimise write off?
- Do you review the age profile of the debt outstanding?
- Do you proactively write off aged amounts where there is an ongoing liability for the debtor?

# The Age Factor

- ❖ A&E Reg 47 states that one of the criteria to be satisfied is that the debtor be 18 years of age or over, linked to age, consideration needs to be given to:
- ❖ **R v Wolverhampton Stipendiary Magistrate ex parte Mould (QBD)1992**  
In addition to confirming that a debtor has a right to a friend in court, also confirmed that Magistrates should consider **Part 1 Criminal Justice Act 1982** which states that where defendants are under the age of 21, all alternatives to a custodial sentence should be considered.
- ❖ **R v Newcastle Justices ex parte Ashley (QBD) 1993**  
Mr Ashley (then under 21 years and on income support) was sent to prison for 28 days, however on appeal the decision was quashed by the Court because the Magistrates had failed to make a statement of the reason why they believed no other method of dealing with the applicant would be appropriate. They could have accepted his offer to pay £5 per week and postponed the order to see if it was paid, or they could have adjourned the hearing to allow for deductions from his income support. It was further made clear that the powers of enforcement available to the B.A were intended to coerce payment rather than inflict punishment.



**Conclusion:** a billing authority must consider all the relevant facts in each case and take whichever action it considers will be the most effective to coerce payment. Committal action must be interpreted as a coercive, not a punitive measure.

# Revolting Pensioners

**“Silver haired rebel” Sylvia Hardy from Exeter: in 2005 the first female pensioner (73) imprisoned for refusing to pay CTAX arrears (£53.71 + £10 costs) when she was sent to jail for seven days. Non-payment due to level of charge. Magistrates’ Chairman stated: “You may think you are a martyr but you are not”.**



**The Rev Alfred Ridley, 71 of Towcester: in 2005 the first pensioner to be sent to prison over a council tax protest (£63 increased to £691 with costs). Non-payment due to level of charge.**

**Josephine Rooney of Derby: jailed twice in 2006 for three months serving 24 hours until a benefactor paid the £800 bill, and again in 2008 for 28 days owing £1500 that the council wrote off.**

**“A lone voice against social decline” – non-payment due to the state of the street where she lived.**





# Freeman on the Land



## Freeman On The Land



A Free Man on the land is a **human being** in a **common law jurisdiction** who has **revoked consent** to be **represented** and thus **governed** and therefore **is not subject** to any **bylaws, orders...**

...making a **claim of right to ones own sovereignty** sets one **free** from **Statutory law** and allows the **Freeman** to **charge** via a **fee schedule** for any **violation** of his **sovereignty** through a **Notary Public Process**.

This makes the Freeman exclusively bound only to **Common Law**.

Under Common Law a Freeman would **revoke** any **licenses, social security card, birth certificate**

Source: [freedvice.com/civil\\_rights](http://freedvice.com/civil_rights)

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- ❖ People who claim to be 'freeman on the land' are people who believe they remain outside the law and reject the Government.
- ❖ They are people who live under common law jurisdiction and refuse to be governed and exist as an entity upon them.
- ❖ When dealing with these people you need to point out that Council Tax and Non Domestic Rates were introduced by the relevant Local Government Finance Acts and are statutory charges not contractual.
- ❖ The **current** position in English law is that the Sovereign, through the United Kingdom Parliament is supreme.
- **Cheney –v- Conn (Inspector of Taxes) 1A11ER779 (1968)**



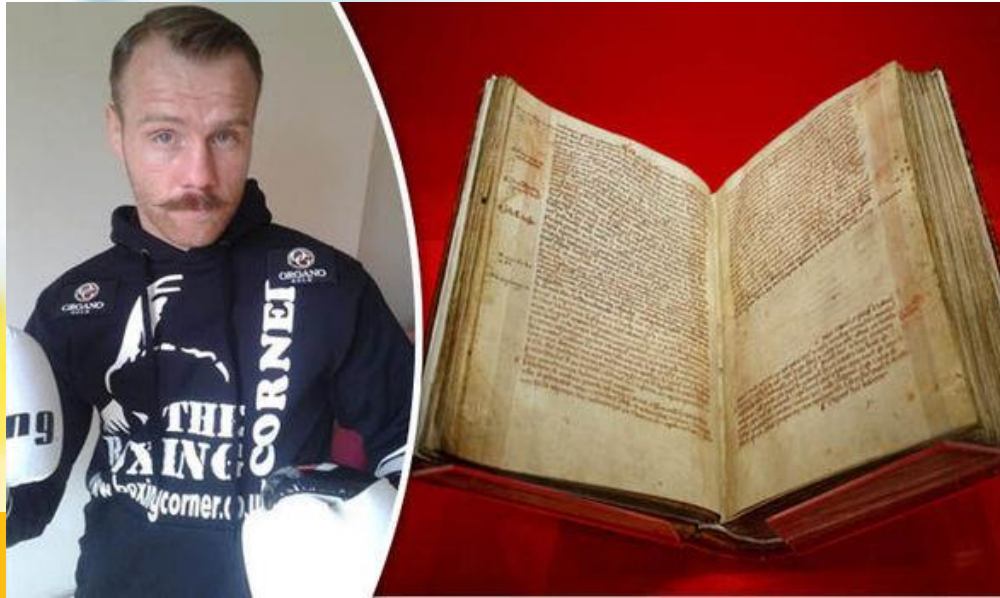
# Mark McKenzie “Freeman of the Land”

- ❖ A man who tried to use ancient laws to justify avoiding more than £7,000 in council tax payments has been jailed.
  - ❖ Mark McKenzie described himself as a "freeman on the land" and suggested people were only subject to English laws if they consent to them.
  - ❖ The 54-year-old, of Moss Side, Manchester, has been sentenced to 40 days in prison for **wilful refusal** to pay council tax. He was also sentenced to an additional 14 days for non-payment of fines, to be served consecutively.
- Manchester Magistrates Court heard McKenzie had failed to make payments since October 2010, while living at a home in Parkside Road.
  - He was summoned to the court in 2015 over the matter, and sentenced to one night in custody for contempt of court after trying to record the proceedings.
  - He then failed to attend court before finally surrendering on Monday.
  - John Flanagan, the council's executive member for finance, said it was an "urban myth" that archaic laws mean people can avoid council tax.
  - "It's pseudo-legal mumbo jumbo, and this case shows that people won't get away with it," he said.



# Oliver “The Ringmaster” Pinnock

- ❖ Professional boxer, father of three, member of national group **Lawful Rebellion - Practical Lawful Dissent**
- ❖ Over 18 months of correspondence , refusal to cooperate with enforcement agents ; failing to attend original committal hearing
- ❖ Warrant without bail granted April 2017, after first unsuccessful attempt to execute Pinnock arrested by officers of the court 2<sup>nd</sup> May
- ❖ Cited Article 61 of the Magna Carta stating he did not have to pay CTAX without a contract between him and the authority
- ❖ Sentenced to 25 days in prison after failing to settle his £875.44 debt with Southend Council; served just two days before debt paid in full
- ❖ Not a high court case but evidences how debtors vocal through pressure groups aren't immune from prosecution



# Chris Coverdale



- ❖ Founder member of Legal Action Against War and the Campaign to Make Wars History
- ❖ Believes it is a criminal offence under the Terrorism Act 2000 to pay taxes for the government to use in 'illegal' foreign warfare, stating:  
"I have never refused to pay tax but I am refusing to commit an illegal act to hand over money for the purpose of terrorist actions."
- ❖ May 2014 judicial review of the Hastings Magistrates' Court decision to award a liability order was not granted; Justice Foskett stated:
  - "Whatever the rights and wrongs of the position the Claimant wishes to take about the actions of central government in relation to engagement in wars, it has nothing to do with the payment of council tax."
- ❖ Further judicial appeal request was also refused as Deputy HC Judge George QC found:
  - "So far as the offences against the Terrorism Act 2000, it is abundantly clear that that is wholly irrelevant to any decision which the magistrates court had to make under the provisions of the legislation relating to the levying of council tax; and that there is no possible way in which the council or the magistrates could be said to be committing an offence under Section 15 or Section 17 of the Terrorism Act. Similarly, it seems to me that it is quite impossible to argue that there would be any offence under Section 52 of the International Criminal Court Act 2001."
- ❖ Coverdale jailed in Lewes prison in March 2015 for 28 days after a previous suspended sentence was triggered following non payment of £1300 but released shortly after when a friend paid the debt. Second jail term for 42 days in October 2015 for non payment of another CTAX debt for more than £1,800

Rother Council commented: "Contrary to what Mr Coverdale may say, council tax is not used to pay for wars but to provide the local services we all need, from waste collection, leisure centres, roads and schools to the police and fire service.

# The Human Rights Act 1998



- ❖ **Article 5 – Right to liberty and security**
  - Lloyd & Other v UK 2006
  
- ❖ **Article 6 – Right to a fair trial**
  - Perks & Others v UK 1999
  - Karoonian & Gibbons v CMEC [2012] EWCA Civ 1379
  
- ❖ **Article 8 – Right to private/family life**
  - Woolcock v Cardiff 2016 (single mother of 16 yr old son)



# Single Parents off Limits?

- ❖ Courts are under a duty to consider the rights of any dependant child and when sentencing balance the seriousness of the offence against ECHR Article 8 rights of the child

**R (on the application of Aldous) v Dartford Magistrates Court and Gravesham BC [2010] EWHC 1919 (Admin) (2011) 175 JP 445**

- ❖ "The existence of children cannot of course keep a person out of prison who should properly be sent to prison, but a sentencing court needs to be able to bear in mind what the effect on the children will be and, if there are children, and if the court does not have the information it needs in order to assess the effect of the parent's imprisonment on them, then the court must make enquiries so that it is properly informed."

- ❖ Cases referenced in Aldous:

**R (P) v Secretary of State for the Home Department [2001] EWCA Civ 1151**

**R v Bishop (Wayne Steven) [2011] WL844007**

Know the debtor's domestic circumstances and consider that where the family life of others, especially entirely innocent children, will be affected, that the Court must take this into consideration when determining sentence





# Age of LO Debts



- ❖ In *Bolsover District Council & Another v Ashfield Nominees Limited and Others (CA) 2010* it was found that limitation does not apply to liability orders once made. This confirmed that the decision in *Ridgeway Motors (Isleworth) Ltd v ALTS Ltd (CA) 2005* applied to CTAX/NDR etc.
- So limitations do not apply once a LO has been made.
- ❖ As for committal, in *R v Warrington BC ex parte Barrett (QBD) 1999*, it was held that five years is too long to leave applying to the court for committal.
- A different timing regime exists between committal and other remedies for non-payment because committal involves potential deprivation of liberty and the courts treat it more like a criminal process.
- That is why the standard of proof at committal is just short of 'beyond reasonable doubt' (*R v South Tyneside jj ex parte Martin (QBD) 1995* and *R v Mid Herts jj ex parte Cox 1995*) as opposed to just the civil standard of the balance of probabilities as with LO applications. A person should not be imprisoned on a mere probability; either the criminal standard of proof or a high civil standard of proof is required.
- ❖ Committal, being the potential deprivation of liberty, falls under Article 5 to the ECHR and a means enquiry hearing under article 6. Which is why the courts have established the above principles and, in particular, **not accepting** applications for debts which are more than four or five years old and if they do, to remit the debts on the basis of age.

# How bold is your Enforcement Strategy?

Year	Number of reminders sent	Number of summons sent	Number of Liability Orders	Number of accounts sent to the enforcement agent	Number of committal summons sent	Number of suspended sentences ordered by the Magistrates	Number of defendants committed to prison.
2008/2009	13284	2864		1392	318	82	20
2009/2010	12649	3167		1274	207	52	40
2010/2011	12645	2889		1396	106	46	41
2011/2012	11874	3083		1420	104	23	28
2012/2013	11958	3020	2628	1376	76	39	22
2013/2014	15809	3891	3112	1398	134	30	13
2014/2015	14896	4259	3432	1443	82	25	10
2015/2016	13750	3518	2782	1415	116	33	25

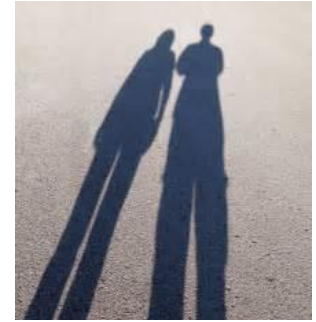
# How bold is your Enforcement Strategy?

“As the sentences imposed are declared in open court, the Council is entitled to publish these details. We do this as we believe it is in the interest of the majority of our customers who do pay their council tax on time.”



# The Rules and Presentation of Evidence

- ❖ Advocacy Training
  - Shadowing existing Court officers
  - Familiarity with surroundings and proceedings
  - Stones Justices manual / Committal training notes
  - Confidence through good preparation
- ❖ Court etiquette & protocols
  - Dress Code
  - Addressing the Bench – Bow
  - Magistrates or District Judges
  - Responsibility for Means Enquiry
  - Role of Chairman
  - Order of evidence
  - Equal standing
  - Fact & Law



Example of the layout of a magistrates' court



# The Rules and Presentation of Evidence

- ❖ Areas of Law you should be aware of:
  - Local Gov't Act 1972,
  - LGFA 1988
  - LGFA 1992, Council Tax (A&E) Regs 1992/613,
  - Interpretation Act 1978
  - Magistrates' Courts Act 1980
  - Magistrates' Courts Rules 1981
  - Human Rights Act 1998
- ❖ Some useful legal terms in handout
- ❖ Review meetings
  - ✓ share/discuss case law with Court?
  - ✓ Agree levels of evidence and documents
  - ✓ Discuss current issues and difficulties





# Magistrates' Courts Act 1980

## ❖ MCA 1980

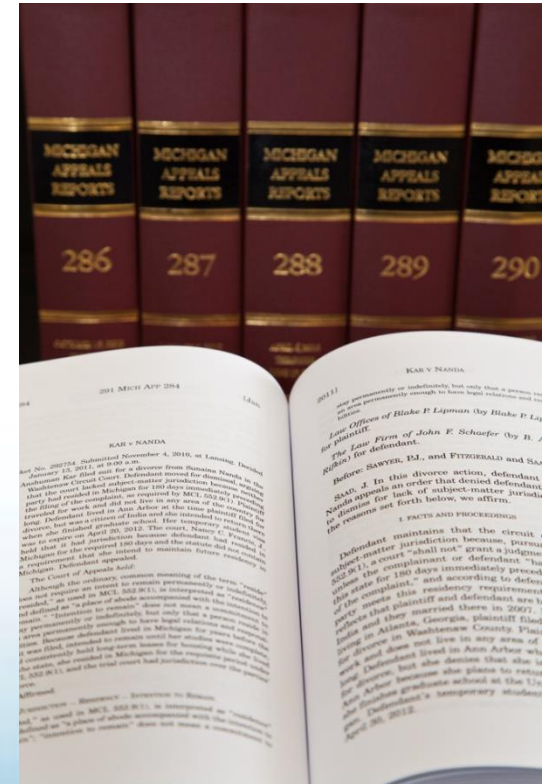
- S.51 – issue of summons on complaint
- S.53 – procedure on the hearing of a complaint
- S.54 – adjournments
- S.56 – non-appearance of complainant
- S.64 – power to award costs
- S.125 – warrants of arrest
- S.127 - limitation of time (See **R v Wolverhampton Stipendiary Magistrates ex parte Mould** 1992)
- S.137 – fees payable



# Magistrates' Courts Rules 1981

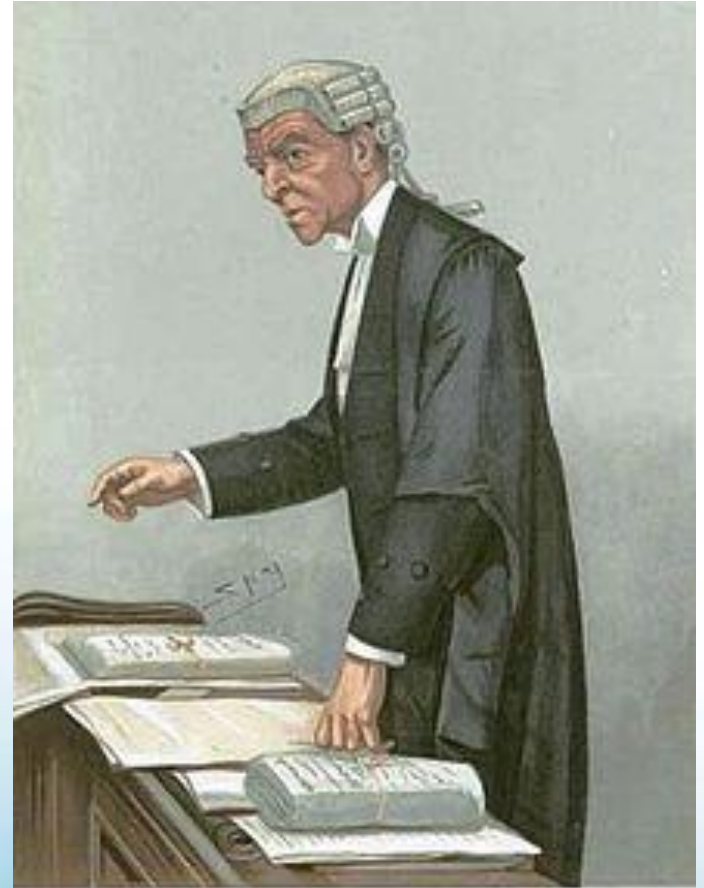
## ❖ MCR 1981

- R.4 – laying of info or complaint
- R.14 – order of evidence & speeches
- R. 66 – court's register
- R.67 – proof of service
- R. 68 – proof of proceedings
- R. 96 – warrants of arrest
- R. 97 – warrants of commitment
- R.98 – form of summons
- R.99 – service of summons



# ATTRIBUTES OF A 'GOOD' COURT OFFICER

1. Ability to get at the right information
2. Accept a decision
3. Articulate
4. Assertive
5. Calm / level headed
6. Confident
7. Considerate / sympathetic
8. Determined / persistent
9. Flexible
10. Friend of the court
11. Well prepared
12. Knowing when to back off
13. Knowledgeable



# ATTRIBUTES OF A 'GOOD' COURT OFFICER

- 14. Listening skills
- 15. Considering all the options
- 16. Negotiation skills
- 17. Organised
- 18. Professional image
- 19. Quick thinking
- 20. Realistic
- 21. Respecting the court
- 22. Seeing the wider picture
- 23. Ability to talk in public
- 24. Think on feet



# The Purpose of Committal

## Regulation 47(1) TO (3), A&E Regulations 1992 S.I 1992/613.

- ❖ Provides that before considering Committal proceedings, a BA must have
  - ✓ confirmed the debtor is an individual over 18 years, and,
  - ✓\* attempted to levy distress (TCoG), and established that there are no, or insufficient goods on which to levy

before it may apply to the Magistrates' Court for the issue of a warrant committing the debtor to prison.

- ❖ It is a requirement that the application is made in the debtor's presence to enable an inquiry to be undertaken as to the debtor's means, and whether failure to pay is due to the debtor's wilful refusal, or culpable neglect.

- ❖ **Caselaw – The need for distress (TCoG) to be attempted:**  
*R v Burnley jj ex parte Ashworth (QBD) 1992*

\* **Note - Laws of Distress replaced by the "Taking Control of Goods" from 6th April 2014.**



# The Purpose of Committal

- ❖ The importance of committal proceedings cannot be understated as it is concerned with the possible deprivation of an individual's liberty for a period of up to 3 MONTHS.
- ❖ The process of committal is an extension of the liability order process. However, there is no limitation on the Billing Authority to take action within 6 MONTHS of the liability order being granted such as applies under Section 127 of the Magistrates Court Act 1980. This was confirmed in the case; *R v Wolverhampton Stipendiary Magistrate ex parte Mould (QBD) 1992*.
- ❖ The initial application requesting a Warrant of Commitment be granted must always be requested in the debtor's presence. At the hearing, evidence must be given by the Billing Authority confirming action taken.
- ❖ The purpose of committal applications is to coerce payment (i.e.) it can be used as a tool of collection and it should not be viewed as "punitive" (i.e.) a punishment. (*R v Preston jj and another, ex parte McCosh (QBD) 1994*).
- ❖ "the power to commit to prison is plainly to be used as a weapon to extract payment rather than to punish", *R v Wolverhampton Magistrates Court ex parte Mould [1992]*
- ❖ The court has now repeatedly made clear that the purpose of the powers of the court under Regulation 41 are not the powers of punishment for past misdeeds, but powers to ensure future payment of past liabilities (*R v Leicester Justices ex parte Deary QBD 1994*)

# The Purpose of Committal

- ❖ The purpose of imprisonment is to extract payment by coercion and not to punish ... In my judgment there is no power in the magistrates to pass a sentence of imprisonment pursuant to Regulation 41(3) as a deterrent. (*R v Leeds Magistrates ex parte Meikleham QBD 1994*)
- ❖ Evaluating Alternatives to Committal:
- ❖ Commonly reference is made to committal being a last resort
- Numerous High Court cases concerned with whether all alternative enforcement remedies should be considered before committal to prison proceedings are commenced.

# The Purpose of Committal

- ❖ The need to consider other enforcement alternatives
- There have been a number of High Court cases concerned with whether all alternative enforcement remedies available to the Billing Authority should be considered before committal to prison proceedings are commenced.
- Billing Authority decisions and those of the Courts should be based on "reasonableness" (taking precedent **from Associated Provincial Picture Houses v Wednesbury Corporation (1948)** when considering the best action to coerce payment.
- Cases concerned with this area are as follows:

# Committal Case Law

## ❖ *R v Birmingham JJ ex parte Mansell (QBD) 1988*

An appeal was allowed in a rating case where the appropriateness of committal was questioned because the appellant whilst having little income had considerable capital assets. It was held that alternatives such as bankruptcy should have been considered by the Justices.

## ❖ *R v Newcastle under Lyme Justices ex parte Massey (QBD) 1993*

A committal order was quashed as the Magistrates had failed to consider the alternatives to committal as Ms Massey was on income support. In judgement, although it was stated that there would be circumstances when someone on income support could be committed, the Magistrates should exercise discretion remembering the purpose of the action was to extract payment.



# Case Law

❖ ***R v the Clerk to the Oldbury JJ ex parte Greasley (QBD) 1993***

ON APPEAL - the court rejected the appeal that LA should have considered the serving of an Attachment of Earnings order before committing to prison.

❖ ***R v Sandwell MBC ex parte Lyn (QBD) 1994***

Regarding the Council's decision to pursue committal as opposed to making a request for deductions from Income Support. The High Court found in the B.A's favour stating "Although there may be a punitive element present in the power to issue a warrant of commitment, the predominant purpose thereof was to coerce the defaulting debtor to make payment".

❖ ***R v Preston jj and another, ex parte McCosh (QBD) 1994***

This clarified the distinction between a forthwith committal, which Turner J referred to as being punitive in its nature, and a postponed committal order, which he described as being coercive.



The golden rule is "Provided the alternatives are considered carefully and it is reasonable to reject them, then the Billing Authority and the Courts will be seen to have acted reasonably and diligently."

# The Summons or Warrant

## Reg 48, A&E Regulations 1992 S.I 1992/613.

The Committal Hearing must take place in the debtor's presence:

- ❖ For the purpose of carrying out the means inquiry in the debtor's presence, to ascertain whether the failure to pay is due to **wilful refusal** or **culpable neglect**, a Billing Authority may issue:
  - ✓ A notice requesting the debtors appearance at court; or a Justice of the Peace or Justices' clerk may issue either;
  - ✓ A summons to the debtor requesting he appear before the court, or,
  - ✓ A warrant for the debtors arrest (either instead of a summons, or because of previous non-attendance).
- ❖ As with a liability order court summons, the committal court summons:  
“shall state shortly the matter of the information or complaint and shall state the time and place at which the defendant is required by the summons to appear” (MCR 98 to SI 1981/552)
- ❖ Provided that the summons clearly cites the periods and amounts outstanding separately, there is no legal reason why it should not show all debts due for which application is made for committal.
- ❖ The warrant of arrest can be executed anywhere in England and Wales by any person to whom it is directed, or by any constable acting within his police area.

# The Summons or Warrant

- ❖ **ACCESS TO JUSTICE ACT 1999 - Execution of Arrest Warrants**
- The above Act received royal assent in July 1999. It had the effect of transferring responsibility for the execution of warrants currently executed by the police to Magistrates' Courts' Committees. The implementation of the transfer was implemented in April 2001.

## **The changes include:**

- Extension of the range of warrants issued by magistrates' courts which may be executed by civil enforcement officers (CEOs) employed by the magistrates' courts, local authorities and police authorities. This will include those made in respect of council tax debts.
- The ability that warrants can be addressed to approved agencies for the area concerned, rather just to an individual, named bailiff. In future, the authorised agencies will be able to execute the same range of warrants as CEOs anywhere in England and Wales.

## Notice of Proceedings

- ❖ Service of notices advising of proceedings is not specifically covered in legislation, however case law informs the process:
- ❖ ***R v Hyndburn Justices ex parte Woolagan (QBD) 1994***  
Confirmed that service of notices advising of committal hearings should be issued by registered delivery in order to ensure the debtor is aware of the time and place of the hearing. This will be deemed to be good service unless they are returned or uncollected.  
Where service is by ordinary post, careful consideration is needed as to whether the debtor knows of the commitment application, and as in Woolagan, resulted in the order being quashed. The appellant was able to prove he had not received the notice as he had left the property prior to its issue.
- ❖ ***Karoonian & Gibbons v CMEC [2012] EWCA Civ 1379***  
Detailed the preference for Magistrates' Court committal summonses to be delivered by personal service and to contain prominent reference to the need for court attendance and the potential for a committal order to be made.

(See also ***R v Newcastle Upon Tyne JJ ex parte Devine (QBD) 1998*** and ***R v Thanet Justices ex parte Schuster (QBD) 1999***)



# So, how will you serve your Committal Summons? 1

*“...service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post” S7 to the Interpretation Act 1978*

Recommended Best Practice:

1. Hand delivery
  - 2.1 Post: hand written pastel coloured greetings card style envelope; not standard shape
  - 2.2 Local Taxation office post code on the reverse in the event of non-delivery
  - 2.3 Postage stamps rather than franked mail
  - 2.4 “Royal Mail Signed For” service – delivery on a Saturday morning advised
- NB - Signature equates to service so if returned afterwards service still effected

Refusal of a registered letter containing a notice to quit did not prevent good service (Van Grutten v Trevenen [1902])

If all else fails there is a plan B...

## How will you serve your Committal Summons? 2

- Regulation 48(5) to SI 1992/613 says:
- “(5) **For the purpose of enabling inquiry to be made as to the debtor’s conduct and means under regulation 47, a justice of the peace may—**
- (a) *issue a summons to him to appear before a magistrates’ court and (if he does not obey the summons) issue a warrant for his arrest, or*
- (b) **issue a warrant for the debtor’s arrest without issuing a summons.**”
- So if you have evidence that a debtor is being obstructionist and does live at a given address go for **PLAN B**



# Fees Charged by the Court wef 13<sup>th</sup> July 2009 22<sup>nd</sup> April 2014\*



- **Magistrates' Courts Fees (Amendment) Orders 2009, S.I 1496 and 2014/875\***
- Details the fees a Billing Authority must pay to the Magistrates' Court.
- Committal Application £245\*
- Warrant of Arrest £ 75
- Total Application **£320**
- **When is the fee charged?**

# When are the Court Fees Charged?

- All Magistrates' courts are different
- There is no case law to date to give direction



## Recommended Practice:

### Initial Application

- Issue the committal summonses
- Engage pre-hearing (arrmts; AEOs & Benefit Deductions) – no cost
- £245 triggered at hearing when the debtor is in the witness box
- Ask for your costs as part of the evidence exchange
- Pay for warrants for non attendees

### Further Hearing

- In theory another £245 applies as it's another application
- Not tested and no case law to date
- If challenged argue it's a continuation of the first application



# Costs of Committal



- The Billing Authority is entitled to recover "reasonable costs" from the debtor against whom committal action has been taken (with leave of the court if necessary).
- **The Council Tax (A & E) (Amendment) Regs 1994, S.I 505.**
- outline the **MAXIMUM COSTS** a Billing Authority may charge in connection with committal proceedings in the event of payment being tendered before a commitment order is made by the Magistrates (ie) the debtor is sent to prison. They are as follows;
- Updated with effect from **1st April 2011** by **SI 2011/528** :

## MAXIMUM COSTS

### Wales

- |  |      |
|--|------|
| • Making an application for a warrant of committal | £305 |
| • Making an application for warrant of arrest      | £145 |

# The Hearing - 1



## Who is authorised to act?

Any member or officer of a local authority who is authorised by that authority to prosecute or defend on their behalf, or to appear on their behalf in, proceedings before a magistrates' court shall be entitled to prosecute or defend or to appear in any such proceedings, and, notwithstanding anything contained in the Solicitors Acts 1957 to 1965, to conduct any such proceedings although he is not a solicitor holding a current practising certificate. (**Section 223, LGA 1972**)

## Shared Service?

You must be authorised by the local authority which employs you. So far as liability order hearings are concerned, you can represent both local authorities by virtue of the Local Authorities (Contracting Out Of Tax Billing, Collection And Enforcement Functions) Order 1996 (SI 1996/1880). However, you can only represent the authority which employs you in committal applications as such hearings are specifically excluded from that Order.

## Contracted Out?

All of the advocacy throughout a committal hearing, including application for a warrant for arrest must be undertaken by client side staff and not by the contractor (which can only be a witness), however there seems to be no reason why the supportive works need not be undertaken by a contractor.

# The Hearing 2:

## “He who asserts must prove”



The purpose of the committal hearing is for:

- ❖ The Billing Authority to satisfy the Justices that the amount before them has become payable by the debtor, and has not been paid, and,
  - ❖ Once satisfied, for the Justices to inquire into the debtors means to ascertain whether or not non payment is due to **wilful refusal**, or **culpable neglect**.
- 
- ❖ The authorised representative of the Billing Authority must show that
    - There are arrears of council tax in respect of which a liability order has previously been made, and
    - That distress/TCoG has been attempted and reported as ineffectual.
    - In *R v Dudley jj and Dudley MBC ex parte Blatchford (QBD) 1992* it was held that a failure to gain lawful access was sufficient to prove that distress had been attempted as no goods could be found.

# The Hearing - 3



## ❖ The debtor has a right to:

- Cross examine the Billing Authority and contest the evidence.
- Have the assistance of a "friend".

❖ *(Both the above principles and the one below were established in the case; **R v Highbury Corner Magistrates and Islington LBC ex parte Watkins (QBD) 1992.**)*

## ❖ The debtor has no right to:

- Request an adjournment to seek legal advice where adequate notice of proceedings has been given. ( **R v Dudley JJ and Dudley MBC ex parte Blatchford (QBD) 1992.**
- Privilege against "self incrimination" for failing to answer questions in a means inquiry. (So debtor responses of "no comment" during a means enquiry do not render it void.)
- Remission on any prison sentence imposed,
- Call the bailiff attempting distress/TCoG to court to give evidence.

❖ *(These principles were established in; **R v Sefton JJ & others ex parte Field (QBD) 1991** and **R v Thanet jj ex parte Spray (QBD) 2000.***



# The Role of the Justices

- ❖ **Regulation 53(2), A&E Regulations 1992, S.I 1992/613** requires that at least 2 Justices or a District Judge must be present to hear committal applications by a Billing Authority.
- ❖ The Magistrates must ensure that their decisions are based on accurate and correct assumptions. Therefore whilst it is not necessary to prove "**beyond all reasonable doubt**" as in criminal matters, the Courts have held that satisfying "**mere probability**" is insufficient proof on which to find wilful refusal or culpable neglect.
  - ***R v South Tyneside JJ ex parte Martin (QBD) 1995***  
**HELD** - *that someone should not be imprisoned on a mere probability and that either the criminal standard of proof must be satisfied, or at least a higher civil standard than the balance of probabilities when making a finding of wilful refusal or culpable neglect.*
- ❖ Therefore, thoroughness when determining a debtor's income, expenditure, assets, liabilities and family circumstances during the relevant period should have a reasonable level of certainty, be stated on oath and where possible supported by documentation.
- ❖ Failure to act properly, make accurate records in the register of reasons why the decision was made, or consider all the facts can result in warrants of commitments being quashed, and damages being awarded to the debtor (under **Section 64, Magistrates Courts Act 1980**).
- ***R v Manchester City Magistrates ex parte Davies (QBD) 1987***  
Magistrates were held liable for damages for committing ratepayers to prison without carrying out a proper inquiry into their reason for failure to pay.

# Options available to the Court

- ❖ The **Justices' Clerks' Society** advised in its March 2017 news sheet that:
  - It is essential that a full and accurate note is made of evidence and of the reasons for the court's findings. If the court postpones commitment, it is crucial that any subsequent court can understand the reasons both for imposing commitment and the terms of the postponement, so that justices can make a reasoned decision on whether to further postpone or issue the commitment.
- ❖ This highlights a critically vulnerable area of the committal process summarised by one clerk when reviewing committal proceedings within her own circuit area:
  - "I am a little concerned at the paucity of reasons for the suspended committals and courts have been advised to put more effort into explaining their decisions in future."

# Options available to the Court (1)

## ❖ (1) COMMIT FORTHWITH, for a period not exceeding 3 MONTHS

- This is a purely punitive measure as it will not have the effect of recovering the unpaid sums and the power should only be exercised in extreme cases.

- *R v Middleton Justices ex parte Tilley (QBD) 1995*

**HELD:** An order committing the debtor to prison for 50 days should be quashed as the Magistrates had failed to allow the debtor the opportunity to make an attempt to pay by postponing the issue of a warrant on terms and whether to allow an adjournment to enable deductions to be made by way of an Attachment of Benefit.

- *R v Hendon Magistrates Court (QBD) (2001)*

**HELD** – The decision to commit the council tax debtor to 28 days forthwith without giving any chances was punitive in its nature and an initial postponement was more coercive.

## ❖ (2) FIX A TERM OF IMPRISONMENT AND POSTPONE THE ISSUE OF THE WARRANT ON TERMS

- This is a coercive measure and the court, by evaluating the evidence to decide what is reasonable, will define the terms.

## Options available to the Court (2)

### ❖ (3) REMIT ALL OR PART OF THE AMOUNT OUTSTANDING

- In order to remit monies, the Magistrates must be satisfied that there is an inability to pay.
- If part of the debt is remitted, the application to commit in respect of any remaining debt on the LO must be dismissed. The Magistrates may not adjourn the matter on terms.
- ***R v Oundle and Thrapston JJ and Delaney ex parte East Northamptonshire DC (QBD) 1980***. No inquiry was held into ability to pay. Magistrates thought the rate charge was unjust and on that basis remitted the charge. **HELD** - the power to remit can only be exercised where there is evidence of inability to pay whether by sale of property or use of savings or earnings.
- ***R v Warrington BC ex parte Barrett (QBD) 1999*** **HELD** – (i) that a commitment warrant should be quashed and a different hearing held to consider again whether an adjournment should have been granted to ascertain the persons right to income support be considered with a view to making a deduction at source. (ii) to consider if they were not minded to proceed by this route whether the whole or part of any sums due be remitted and (iii) to carry out a proper means inquiry in respect of the two community charge debts.



# Options of the Court (3)

- ❖ **(4) DISMISS THE PROCEEDINGS** fixing no term of imprisonment, or refuse to issue a warrant.
  - Where the Magistrates‘ do not find culpable neglect or wilful refusal, the Billing Authority may renew the application at a future date if the circumstances of the debtor change.
- ❖ **(5) ADJOURN PROCEEDINGS** to clarify facts or to secure a debtor’s presence at Court.
  - The Magistrates can adjourn proceedings at any stage before making a finding.
- ***R v Bromley Justices ex parte Johnstone (QBD) 1994 HELD*** - Justices had not erred when refusing a request for an adjournment at a committal hearing where it was proved that the debtor had repeatedly failed to explain his circumstances to the Billing Authority, refusal was not unreasonable.
- ***R v Lincoln Justices ex parte Count (QBD) 1995 HELD*** - A warrant committing a debtor to prison for 9 days in her absence for a debt of £74 should be quashed and costs awarded against the Magistrates as they were wrongly advised by the clerk that they had no power to adjourn the proceedings to secure attendance at a hearing by issue of a warrant of arrest. Refusal to consider an adjournment when the debtor is faced with imprisonment was wrong in law.

# Length of Sentence (1)

- ❖ The maximum length of sentence than can be imposed in committal matters is 3 MONTHS. Case law has challenged decisions of Justices when setting terms, which unlike civil fines are not based on the level of monies due.
- ***R v Highbury Corner JJ ex parte Uchendu (QBD) 1994***: On appeal a 90-day sentence postponed upon payment of £200 per month after an indifferent means inquiry where culpable neglect was found was quashed. The basis of this decision was that Magistrates must appreciate the significance of the means inquiry, and that it is important to keep the concept of proportionality in mind with the 90-day sentence reserved for the worst cases.
- ***R v Stoke on Trent Justices ex parte Booth (QBD) 1995***: Held that an 87 day term of imprisonment imposed on a debtor owing £800 was excessive. There must be evidence to justify the imposition of the maximum sentence and there was no evidence that justices had considered the minimum sentence, which would achieve the aim of coercing payment.
- ***R v Clerk to Warley jj ex parte Harrison (QBD) 1993***: Held that the 90 day sentence imposed on an unemployed debtor who stated in court that he spent £15 to £20 per week on drink and would rather go to prison than not have a drink was not excessive.

## Length of Sentence (2)

- **R v Ealing ex parte Cloves (QBD) 1991:** A means inquiry showed income was insufficient for bare necessities of life for the debtor and their son but a committal order was made by the Magistrates imposing a 90 day sentence suspended on the person paying £1 per week off a debt of £400+. This would have taken 8.5 years to pay.  
**On appeal** the warrant was quashed on the basis that **8 YEARS** was too long for such an order to run but they indicated that **3 YEARS** was reasonable.

# Length of Repayment:1



- The selection criteria for committal need to be informed by the potential repayment period.
- So how long should a repayment period be?
- ❖ **Woolcock v Bridgend Magistrates (AC) 2016** is the latest indicator:  
“periods of suspension in excess of 3 years are likely to be excessively long and so unlawful”

The Woolcock decision endorses the findings of:

- ❖ R v Newcastle-upon-Tyne ex parte Devine (1998)
- ❖ Soor v LB Redbridge (2016).



Be informed about the potential means of the debtor, to legitimise the number of years / level of debt you pursue at committal.



# Length of Repayment:2



## ❖ **Gibbons v CMEC [2012] EWCA Civ 1379:**

Gibbons appealed a prison sentence of 21 days, suspended for 11 years, for non-payment of £2,895 child maintenance, issued on 3 August 2011

The Appeal Court reasoned that throughout that repayment period Gibbons would have the threat of imprisonment hanging over him and decided this to be an unreasonable and disproportionate penalty

The Court acknowledged legislation prescribed no upper limit of the length of suspension of the committal order but referenced case law that found “a period of 3 years might not be excessive...”

Court reasoned that as s. 40B of the CSA Act 1991 provides as an alternative sanction that the liable person should not be disqualified from driving for more than two years it was reasonable to conclude “that the upper limit of the period of suspension (in the criminal courts) should rarely exceed 2 years.”

“Nothing prevents the Commission from applying for a further commitment to recover any arrears still outstanding thereafter.”

# The Means Enquiry



- ❖ A full means inquiry should take place in the debtor's presence. The purpose of the inquiry is to identify whether or not non-payment is due to the debtor's culpable neglect or wilful refusal.
- ❖ When making this decision in Council Tax matters, the Court must consider the debtor's conduct throughout "the whole of the period from the date of the first instalment to the date of the committal hearing."
- ❖ Where several debts are being dealt with at one hearing, all the relevant periods must be examined individually
- ❖ The outcome of this inquiry will determine the options available to the Magistrates. If an order to pay is to be made, the Magistrates should set this having consideration of the debtor's present means.
- ❖ The role of the Magistrates Clerk in such proceedings was confirmed in *R v Corby Justices ex parte Mort (QBD) (1998)* where it was determined that whilst the clerk must not adopt an adversarial or partisan role in any proceedings, there should be no objection to the clerk, at the express or implied request of the justices asking questions of the debtor relevant to his or her means for the purposes of a means inquiry.

# Separate Means Enquiry (1)



- ***R v Leeds Justices ex parte Kennett (QBD) 1995: HELD*** - an order committing the debtor to prison for 42 days for sums owed on 3 separate liability orders should be quashed as the question of culpable neglect should have been considered **separately for each year**. It was further stated that the debtor should have been allowed an opportunity by the court to put evidence concerning unemployment and his financial position through the granting of an adjournment.
- ***R v Derwentshire Magistrates Court ex parte Gallimore (QBD) 1996: HELD*** - an order committing the applicant forthwith to prison for 9 days in respect of 1991/92 and for a consecutive period of 80 days in respect of 1992/93 was quashed because an **inadequate means inquiry** was made into her means since (a) it should have been obvious that she had more expenses than those mentioned at the hearing. It omitted to include travel costs or clothing and as the defendant was aged 22 years with learning difficulties and was not legally represented, it was incumbent on the magistrates to ask her for more information to make a decision based on all the facts. Secondly the magistrates had **failed to consider the two relevant periods separately** as they should have done as the case concerned Community Charge (taking precedent from the decision in Kennet).
- ***R v Sheffield Justices ex parte Broadhurst 2000***  
In committing a debtor to prison for non payment of community charge and Council Tax the magistrates' had erred in their failure to make separate findings in respect of each liability orders.

# Separate Means Enquiry (2)

- ***Aldous v Dartford Magistrates' Court & Gravesham BC 2011***

This was a judicial review of a decision by Dartford Magistrates' Court to commit Mrs Aldous for the maximum 90 days imprisonment for failure to pay about £7,000 Council Tax in respect of eight liability orders for several addresses from 2003-09. The judge found several flaws with the original process:

- A failure to conduct a separate enquiry for each year of liability
- Insufficient enquiry into Mrs Aldous' ability to pay each individual year's debt
- No determination as to whether failure to pay was due to wilful refusal or culpable neglect.



## The Wandless Case 2009-12

### R (on the Application of Wandless) v Halifax Magistrates' Court & Calderdale MBC (QBD) 2009



- ❖ The High Court quashed an order for committal for 90 days after Mr Wandless had served 34 days, finding:
  - Total failure to enquire into the claimant's means
  - Uncertainty whether the Magistrates' Court sought proof that the amounts owed were indeed due
  - No consideration of alternative remedies to prison
  - Uncertainty why a payment offer of £10 per month was rejected
  - Committal seen as a punitive measure and inability to pay was no reason for committal
- ❖ The case was returned to the Magistrates for reconsideration
- ❖ Wandless appealed to the European Court of Human Rights 2009 claiming a breach of his Human Rights and **WON!!**
- ❖ Government reached an amicable settlement with Wandless in 2012 via the European Court, paying him 5,000 Euros in damages and £3,700 legal costs.



## Karoonian v CMEC [2012] EWCA Civ 1379

- ❖ Proceedings found to be inconsistent with the ECHR Article 6 requirement of right to a fair trial
- ❖ No detail within the case to indicate that the possibility of disqualification from driving as an alternative to imprisonment was considered by the Court
- ❖ Karoonian entitled to know why the option of disqualification was rejected and why imprisonment was preferred.
- ❖ The failure to consider the viability of alternative sanctions was a serious error as Courts need to explain why alternative means of sanction are inappropriate and the defendant should have both an opportunity to challenge the evidence and understand why imprisonment is considered more appropriate.
- ❖ Court critical of the proceedings whereby CMEC was not called upon to provide any evidence of its own actions or to investigate into the means of the defendant.

## The Woolcock Case 2016

### R (on the Application of Woolcock) v Bridgend Magistrates' Court & Bridgend CBC (AC) 2016



- ❖ The High Court quashed two orders for committal for 84 days after Ms Woolcock had served 40 days, finding:
  - Insufficient failure to enquire into the claimant's means
  - Failure of the magistrates' court to seek evidence of income & expenditure
  - Insufficient consideration of alternative remedies to prison
  - Failure to consider whether inability to pay should have warranted (part) remit
  - Repayment periods of over eleven and six years for orders were too long
  - Failure at final committal hearing to consider varying the orders
- ❖ National newspaper headline reporting the Woolcock case:  
**“Depressed single mum unlawfully sent to jail for 40 days”**

# The Woolcock Case 2016



- There are **no new precedents** emanating from this case. It is the apparent lack of cognisance by the courts of previous decided cases that resulted in the overturning of the Magistrates decision.
- The case notes show two hearings. At the initial hearing, there are **no notes to indicate that the claimant's means and conduct** at the time of the liability was examined. Despite this, culpable neglect was found and the claimant was committed to prison for 35 and 50 days respectively.
- A **show cause summons** was issued and the claimant failed to attend and, in her absence, the warrant of commitment was issued.
- As long ago as 1976, in the case of ***R v Liverpool jjex parte Lanckriet***, it was established that the means enquiry must be sufficient to establish whether the failure to pay was culpable or not.
- In ***R v Newcastle Upon Tyne jj ex parte Devine 1998***, a committal order suspended on terms which lasted **three and a half years** was considered **excessive**.

# The Woolcock Case 2016



- In ***R v Highbury Corner jj ex p Uchendu 1994*** held to be excessive. These cases would suggest that suspended terms lasting 11 years and six years respectively are excessive as was a sentence totalling 85 days, without stating why such a sentence be imposed?
- There appears no consideration of the power to remit part or all of a debt at any stage.
- So far as the ‘show cause’ hearing is concerned, the Claimant did not attend. The magistrates could have issued a warrant for her arrest in order to force her back to court to explain why she had not paid, or indeed to consider whether the original order should be varied.
- In ***R. v. Leicester Justices ex parte Deary 1994***, Brooke J stated that “The court has now repeatedly made clear that the purpose of the powers of the court ... are not the powers of punishment for past misdeeds, but powers to ensure future payment of past liabilities.”
- Not taking the opportunity to make enquiries as to why a debtor has not complied with a previously suspended order, even where they do not attend voluntarily, forgoes the main intention behind the remedy.



# Soor v Redbridge (2016)

- Soor imprisoned for 90 days (suspended order) for £100 pm on £7k debt
- Delays determining liability involving HMO decision - went to High Court
- Unsubstantiated claim made at hearing that he was bankrupted in 2006 and that his ownership of the property attracting council tax liability was in the capacity of a trustee rather than beneficiary

## The High Court found:

- Original means enquiry at committal hearing complied with s47 A&E Regs although complicated by degree of debt that should be included due to bankruptcy claim
- Soor demonstrated long history of avoidance and unreliability further evidenced by claim he earned only £500 pm working for a relative
- Soor known to own several other properties where rent paid in cash



# Soor v Redbridge (2016)



- Soor's appeal upheld
- Original decision unlawful as repayment terms too long
- Decision duly quashed
- Case remitted to the magistrates' court for rehearing to:
  - ✓ Establish when Soor was discharged from bankruptcy
  - ✓ Determine what liability arose from that date in Soor's capacity as a trustee of the property
  - ✓ Decide whether failure to pay the amount calculated was either refusal or neglect and resolve whether to impose a fresh commitment order

# Achieving an Effective Means Enquiry

- Only take forward appropriate size and age debts, do your homework.
- Issue documentation to capture income and expenditure for each relevant period, with all committal correspondence.
- Seek proof of income and expenditure, particularly relevant for current means.
- Complete in advance of the hearing or before defendant goes into court.
- Play your part in Court to ensure effective means enquiry takes place.
- Provide full EA case notes history with the EA nulla bona report, which will help prove wilful refusal or culpable neglect.
- Enquire diligently into the debtor's domestic circumstances



# Woolcock & Beyond – the Impact on Courts

- ❖ Woolcock's solicitor (Mr Genen) researched and identified further committal cases with procedural defects
- ❖ Initiated judicial review proceedings against DCLG and MoJ in relation to commitment for default of CTAX.
- ❖ Genen seeks a declaration that the system of CTAX enforcement is incompatible with the right to a fair trial due to the errors being made by courts in dealing with commitments.
- ❖ Heightened expectation on billing authority staff "to provide evidence to initiate the proceedings, in particular to prove the debt, the failure of other forms of enforcement, and any evidence they have gleaned on the defaulter's means".

# Woolcock & Beyond – the Impact on Courts

- ❖ Justices Clerks' Society is the professional society for solicitors that advise magistrates. Their best practice recommendations are that Courts need to:
  - ✓ Remember commitment is not a punitive measure but a means to encourage payment
  - ✓ Show how findings of wilful refusal / culpable neglect are determined
  - ✓ Justify commitment forthwith when dependants feature in the debtor's circumstances
  - ✓ Set realistic repayment plans utilising the commitment calculator and not exceed two years;
  - ✓ Remember regulations allow remit and a postponed (suspended) sentence as a finding, but not remit and commit
- ❖ HMCTS use a checklist to inform committal decision making:



HM Courts  
& Tribunals  
Service

### COUNCIL TAX ENFORCEMENT – CHECK LIST

Issues to cover to be in compliance with the legislation, case law and EHCR before IMPOSING A TERM OF IMPRISONMENT IN DEFAULT, IMMEDIATE OR SUSPENDED



Name <input type="text"/>	Date: <input type="text"/>
Has the debtor been offered legal representation? <b>Name of rep:</b> <input type="text"/> If the defendant was not represented, why not? <input type="text"/>	
Has the court applied the CRIMINAL (or high civil) <u>STANDARD</u> of proof to its deliberations? <i>R v South Tyneside Justices, ex parte Martin</i> <input type="checkbox"/>	
Has the council proved:  The liability order (or orders if more than one) Reg 47(1) <input type="checkbox"/> Tried and failed seizure of goods Reg 47(1) <input type="checkbox"/>  <i>The Council is also at liberty to provide evidence as to the reasons for default and ability to pay.</i>	
Has the court considered its powers to REMIT all or part of the debt? <i>Regulation 48(2) Council Tax (Administration and Enforcement) Regulations 1992</i>  <input type="text"/>  <b>Payment should not take more than 2 years to pay</b> <i>Karoonian v MEBC</i> Note that the court can not remit if it imposes a term of imprisonment	
Finding of wilful refusal <b>OR</b> culpable neglect? Give reasons in full (avoid formulae such as "had money, not paid")  	



<p>If making finding of wilful refusal or culpable neglect did the court consider all the measures available to the LA to collect the debt under the liability order i.e:</p>	
Attachment of Earnings	<input type="checkbox"/>
Deduction from benefits?	<input type="checkbox"/>
Seizure of goods?	<input type="checkbox"/>
Other?	<input type="checkbox"/>
<p>Has the court considered each liability order and each year of liability separately? <input type="checkbox"/></p>	
<p>Bearing in mind that the powers of imprisonment in these circumstances are designed to be coercive and not punitive has the court satisfied itself that the debtor has the means to clear the debt and that imprisonment would be an effective means to compel payment? <i>R v Leicester Justices ex parte Deary</i> and <i>R v Leeds Magistrates ex parte Meikleham</i>.</p> <p><b>Explain why</b></p>	
<p>Where the debtor has young/dependent children, what consideration has the court made of the consequences of imprisonment upon any of their family in accordance with Article 8 of the ECHR and what information has the court obtained to allow it to judge whether the case justifies the separation of the child and its carer? <i>R (on the application of Amanda Aldous) [2011] EWHC 1919 Admin</i></p>	
<p><b>Any other information, reasons etc</b></p>	

# Requirement for a Further Hearing

- ❖ Where a debtor defaults on the terms set in their suspended sentence, a further hearing must take place of which the debtor must be notified. Service of notices should once again be by recorded delivery (*R v Hyndburn Justices ex parte Woolagan (QBD) 1994*) or by hand, advising of the date, time, and place of the hearing. In theory this would involve another £245 committal application fee but you may wish to talk to the clerk to avoid increased costs.
- ❖ The practice of issuing warrants of commitment in the absence of the debtor is getting more difficult to substantiate even where proof can be provided that notices to attend were delivered. This was confirmed in *R v Doncaster Justices ex parte Jack 1999*
- ❖ However where the opportunity to attend has been given, a debtor may be committed in their absence. In *R v Thanet JJ ex parte Schuster 1999* it was found that notice of application to issue a previously postponed committal order can be served on someone living in the house of debtor with the onus being on the debtor to prove non-receipt.
- *R v Northampton Justices ex parte Newell (CA) 1992* was a Community Charge case involving postponed commitment where the Order was not kept leading to the issue of a Warrant at a Further Hearing in the debtor's absence. On appeal the issue of the warrant was upheld since notice had been served on the debtor advising him of the second hearing.
- ❖ Therefore in such circumstances the hearing can proceed as the person had been given the opportunity to attend and Magistrates were within their rights to commit in their absence without undertaking a repeat inquiry into the person's current means.

# What should happen at the Further Hearing?

- ❖ In the event of the terms of a suspended order being breached the justices are empowered and obliged to examine the events which have taken place since the term of imprisonment was fixed and the issue of a warrant postponed.
- ❖ The billing authority should detail in its case carefully the degree of failure to which the Order has been subjected, referencing all attempted contact by phone, mail etc and the explicit nature of what actions were required of the debtor.
- ❖ The Magistrates should consider the matters raised before either:
  - Committing the debtor, or
  - Further postponing on terms if it is considered the circumstances justify this

# What should happen at the Further Hearing?



- *Harrogate Borough Council v Barker (QBD) 1995* held that once a term of imprisonment has been fixed, or a warrant of commitment has been issued, at a future hearing the Magistrates **do not** have the power to remit all or part of the monies.
- *Teignbridge v Saunders (QBD) 2001* held that when considering the activation of a suspended committal order imposed upon a person for the wilful refusal to pay council tax, the justices **did not** have the power to rescind the committal order and remit a large part of the debt even though it had been discovered that the defaulter would have been entitled to full council tax benefit during the period of non-payment.
- ❖ Therefore, whilst the Magistrates can amend the terms of a postponed order with regard to the rate of payment due, they are **NOT** allowed to adjust the term of days on which an order has been set, or remit any part of the charges due under the warrant.

# Right to Compensation & Legal Aid

## ❖ *R v Poole JJ ex parte Benham (QBD) 1991*

- This case concerned outstanding community charge for 1990/91:
- Mr Benham was 24 years of age and had 9 O levels
- He had left a job in March 1990, voluntarily as he did not like it
- He was not eligible for income support and stated he was a self employed writer but had had nothing published
- He had no income and assets and had failed to pay anything towards his community charge, and stated he did not agree with it
- HELD - the Magistrates were of the opinion that his failure to pay was due to his culpable neglect as he had the "potential to earn" and was committed.
- ON APPEAL - it was found that culpable neglect could not be shown as there was no evidence to show that Benham had been offered work and refused it.
- *Benham v The United Kingdom (1997)*
- HELD - that he should have been entitled to legal aid due to the possibility of deprivation of liberty (ie) imprisonment if he so wanted



# The Effect of Bankruptcy and ...

- ❖ Where a debtor is made bankrupt, all proceedings to enforce payment after this event are stopped (**Lewis v Ogwr B.C (1994)**).
- ❖ Best practice is to withdraw committal action and include the committal amount in the proof of debt for the purposes of s.382 Insolvency Act 1986.
- ❖ However, if a debtor is made bankrupt after being committed to prison, they will be required to serve the sentence imposed in full.



# Payment after Warrant of Commitment

- ❖ Reg 47, A&E Regulations 1992 S.I 1992/613 provides that:
  - Where a warrant is issued after a postponement on terms, and since the term was fixed but before the issue of the warrant the amount due has been reduced by part payment, the period of imprisonment shall be reduced in the same proportion as the part paid bears to the total amount.
  - So if 50% of the total amount is paid the term would be halved)
- ❖ Likewise, the impact of any part payment after the debtor has been committed to prison will have the same effect of reducing the period of sentence to be served “by the number of days, less one”, in the same proportion to the amount paid to the total amount.
- ❖ However, any costs incurred in taking the committal action should be ignored in any calculation. Payment in respect of a sum less than the committal costs will result in **NO** days being offset.

# Liability after Imprisonment & J&S

- ❖ Reg 52(1) SI 1992/613: Although the outstanding monies are not legally remitted on imprisonment, a Billing Authority cannot enforce the debt again through the courts () Therefore it is good practice to write off the monies as irrecoverable. (Also see Council Tax Information Letter 1/2008)
- ❖ Reg 54 S.I 1992/613: Where distress/TCoG has been attempted against those persons who are jointly and severally liable, but no, or insufficient goods were found against all of them, then the Billing Authority may make an application for a warrant of commitment against all those persons. Separate warrants should be issued for each in accordance with the **Magistrates Courts Act 1980 and Rules 1981**.
- ❖ However a decision as to which person appears at court must be made as only **ONE** person can be committed for **ONE** debt and no further action can be taken against the other person(s) if a person has been committed to prison.
- ❖ If proceeding against one J&S debtor who then absconds, there is no issue with starting proceedings against the other debtor.

## The Effect of IVAs

- ❖ An individual voluntary arrangement (IVA) is a legally binding formal agreement for debtors to repay their creditors at an affordable rate.
- ❖ Once the final payment is made any remaining debt is written off.
- ❖ Once debts are included in an IVA creditors can't pursue them separately.

So in relation to committal action, what happened when?

- If the debtor is in the process of applying for an IVA then committal proceedings involving a means enquiry should continue
- If the debt was included at the creditors IVA meeting it will remain part of the IVA subject to the payment terms agreed
- If the creditors meeting is yet to occur the best pre-emptive remedy is to attend the creditors meeting, object to the inclusion of CTAX due to the pre-existing suspended committal order and have the debt specifically excluded from any agreement.
- Ensure you receive notice of IVA hearings from Insolvency Practitioners!

# Appeals?

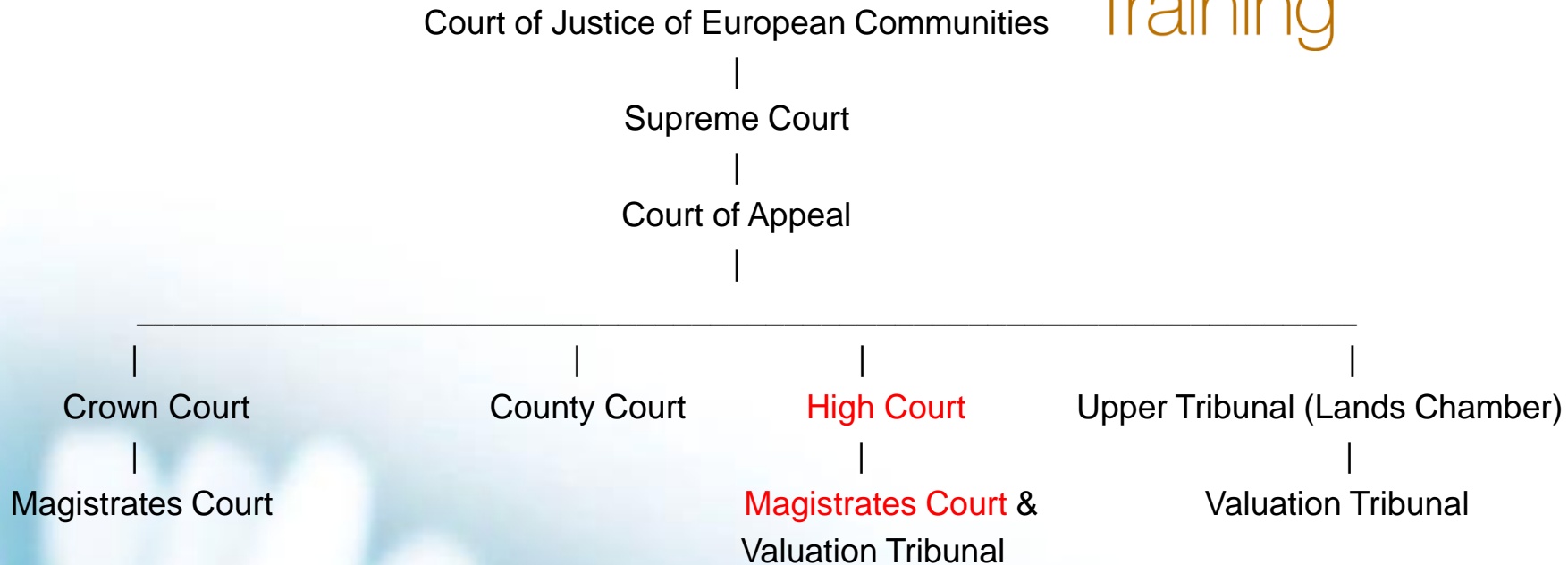


- ❖ If a party disagrees with a Court's decision:
  - Any party to the case aggrieved by the Justices' decisions may ask for a **"Case to be Stated"** for the opinion of the High Court under **Section 111, Magistrates Court Act 1980**, within **21 days** of the court decision, or as is more common by using the Judicial Review process.
  - *In R (on the application of Morgan) v Basildon Magistrates' Court 2007*, a decision of a magistrates' court to refuse to state a case relating to the applicant's council tax liability was entirely understandable because the applicant's complaints save one were irrelevant.

“Judicial review is the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties ... Judicial review is concerned with **reviewing** not the merits of the decision in respect of which the application for judicial review is made, but **the decision making process itself** ... The duty of the court is to **confine itself to the question of legality**. Its concern is with **whether a decision making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal could have reached or abused its powers.**”  
**Halsbury's Laws of England, Fourth Edition, Volume 1(1) at paragraph 59**



# GENERAL PROCEDURES (JUDICIAL SYSTEM)



“It has often been emphasised that the court is not a court of morals, but of law. If the outcome of this case is seen as unacceptable then it is for the legislature to determine whether further reform is needed.”

*R (Makro Properties Ltd) v Nuneaton & Bedworth Borough Council* [2012] EWHC 2250 (Admin)

# How to get what you want from the Court

- – Knowledge
- – Confidence
- – Be in control
- – Keep up-to-date with case law & legislation
- – Develop your skills
- – Presentation skills
- – Communication

# AND FINALLY...

## Q & As?

