

LOOKING AFTER AUNTIE:

WHAT CAN THE DEBATE ABOUT TV LICENSING TELL US ABOUT THE WIDER CHALLENGES OF DECRIMINALISATION?



A CREDIT SERVICES ASSOCIATION REPORT

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A. EXECUTIVE SUMMARY

- i.** Fundamentally altering the payments model for any public service from a criminal framework to a civil one creates significant policy issues. What may happen in relation to TV Licensing is ultimately a matter for Parliament and it must debate and decide the relative merits of decriminalising TV licensing evasion. While this discussion paper does not focus on the advantages of either position, at the Credit Services Association we believe there are important considerations that policymakers need to weigh in the balance as they evaluate the consequences of a decriminalised approach.
- ii.** Funding public service provision often involves a complex balancing act – keeping the cost of the service low to all those who use it, while protecting revenues and minimising the cost of collections and recoveries. Criminal sanctions can play a key part in achieving that, so what happens to the wider service provision if those sanctions are removed? What are the unintended challenges and consequences?
- iii.** Those underlying questions, and others, are complex ones which this discussion paper begins to consider. What challenges might be faced and how might these be overcome? What steps can be taken to keep costs down, income flowing, good customer outcomes and a continuing public service provision?
- iv.** This report explores some of the underlying considerations for the routine collection of fees and levies when there is a shift from a criminal to civil enforcement arrangement, and some of the challenges in recovering unpaid sums. The degree to which the loss of a potential criminal penalty can be offset depends on a number of factors. Some of the issues we highlight here include:
 - the psychological effects of decriminalisation that undoubtedly will impact on revenue streams
 - the potential for evasion to increase the cost to those who do pay or a loss/reduction in service
 - proving a debt is owed varies on the visibility of evasion
 - the ability to recover is affected by a change in priority in terms of negotiating repayments following decriminalisation
- v.** Part of the design of any future ‘civil’ approach must include planning to invest in alternative customer relations, such as effective early engagement, good communication and supportive practices,.
- vi.** Whatever path is chosen for TV licence collections or any of the many other public fees and levies, we hope that this discussion paper draws out some of the wider, but no less critical, considerations that policymakers must contemplate when examining the contemporary relevance of retaining criminal sanctions for debts.

B. INTRODUCTION

1. The idea of being imprisoned for being in debt is a persistent one in the public mind and unsurprisingly so. Dickens spent time in a debtor's prison as allegedly did some of the individuals who signed the US Declaration of Independence. The phrase 'in the clink' is reputedly a reference to the medieval Clink Prison in Southwark, where a person could be committed for failing to make payments due to the Bishop of Winchester. Similarly, to be 'stoney broke' is claimed to be either a reference to a debtor's entrance to Clink Prison said to be on Stoney Street or a reference to an Irish adventurer named Stoney who was apparently imprisoned for his debts, depending on your preference (and Google settings).
2. The loss of liberty for non-payment of a debt, whether by imprisonment, servitude or slavery, has been with civil society for centuries. So deeply ingrained into the public psyche is the concept that, when publishing guidance on debt collection practices, the Office of Fair Trading (OFT) as the then regulator felt it appropriate to expressly warn firms against exploiting that belief when pursuing outstanding sums. Specifically, it stated that '*falsely implying or stating that failure to pay a debt is a criminal offence and/or that criminal proceedings will be brought*' was an unfair business practice.¹
3. The OFT's choice of words was significant, however. While it might be unfair to falsely state that non-payment was a criminal offence, the corollary to that was that, however unpalatable, it would not be unfair to make such a statement where it was actually true. Many may find it surprising that, in the 21st century, there are still instances where non-payment of a debt could ultimately result in criminal prosecution – council tax, fishing licence evasion, non-payment of road fund fee when on the road.
4. TV licence evasion can also ultimately result in criminal prosecution but, for some years now, the question has been asked: should it? While much of the material available considers that question in the context of the funding structure for public service broadcasting, the most recent consultation by the Government sought to consider decriminalisation largely independently of funding arrangements.

5. The purpose of this paper is not to enter the debate about whether it is morally acceptable to prosecute and potentially imprison individuals for evading debts in a modern society. Deciding what is or is not a criminal offence and the rationale for doing so is ultimately, and exclusively, the province of Parliament. For now, it does not appear that there will be any imminent changes to current arrangements. The Government has not chosen to decriminalise TV licence evasion following its recent consultation. It has, however, indicated that the matter will remain under consideration.
6. Instead, this short discussion paper seeks to consider ‘what if’ the Government did decide that decriminalising of TV Licensing evasion was appropriate **without also** addressing the design of the funding mechanism. How might licence fee payer behaviour change? What might some of the challenges in routine collection² or recovery be? What might that mean for BBC revenues and public service broadcast provision in the future? What might those changes mean for licence payers? How can public interest be balanced against fair and proportionate treatment of the individual? And, what might the answers to these questions mean for other types of debt attracting a criminal sanction?

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C. BACKGROUND

The BBC and the licence fee

8. The BBC is a public service broadcaster established by Royal Charter³. The Royal Charter sets out the BBC's mission as *'to act in the public interest, serving all audiences through the provision of impartial, high-quality and distinctive output and services which inform, educate and entertain'*. The Royal Charter elaborates further on public purposes (impartial news and information, supporting learning and so on), but the essence is that of an organisation that is geared primarily toward public service rather than conventional commerciality.
9. While a proportion of the BBC's income derives from commercial activities, as a largely public service the bulk of the BBC's funding derives from a licence fee⁴. In broad terms, if a household is watching or recording live TV programmes from any provider, or accessing or downloading BBC programming via iPlayer at a later date, a licence will normally be required. In effect, the BBC's public service function is primarily funded by the UK households that it serves or which otherwise consume live programming. It also does not matter what device is used to consumer live content. The modern notion of a 'licence fee' for watching television stretches back to 1946 and the resumption of television broadcasting post the Second World War.
10. A current TV licence, whether paid by direct debit over six or twelve months or in a single annual payment, currently costs £159⁵ though there are some concessions available. In 2020, this generated some £3.52 billion in licence fee income⁶ from the granting of just under 26 million licences.
11. It is estimated that there are some 31 million addresses which are potentially licensable. However, it is important to recognise that the apparent discrepancy between the estimated number of addresses which might require a licence and the actual number of licences issued does not mean that there are, for example, 5 million households evading the TV licence fee. A Parliamentary Briefing Paper⁷ stated that as at Q1 2020 the *'number of TV Licences was around 4% lower than the number of homes owning a TV in 2019'* or a difference of about 1 million. Estimates of evasion are lower.

³ [Cm 9365 Broadcasting Royal Charter \(bbc.co.uk\)](https://www.bbc.co.uk/royal-charter) - Accessed 20 May 2021.

⁴ [Learn more about what we do - About the BBC](#) - Accessed 20 May 2021.

⁵ There is, however, a small premium of if the licence is paid for quarterly. While small individually, BBC accounts suggest that this generated some £16 million in income.

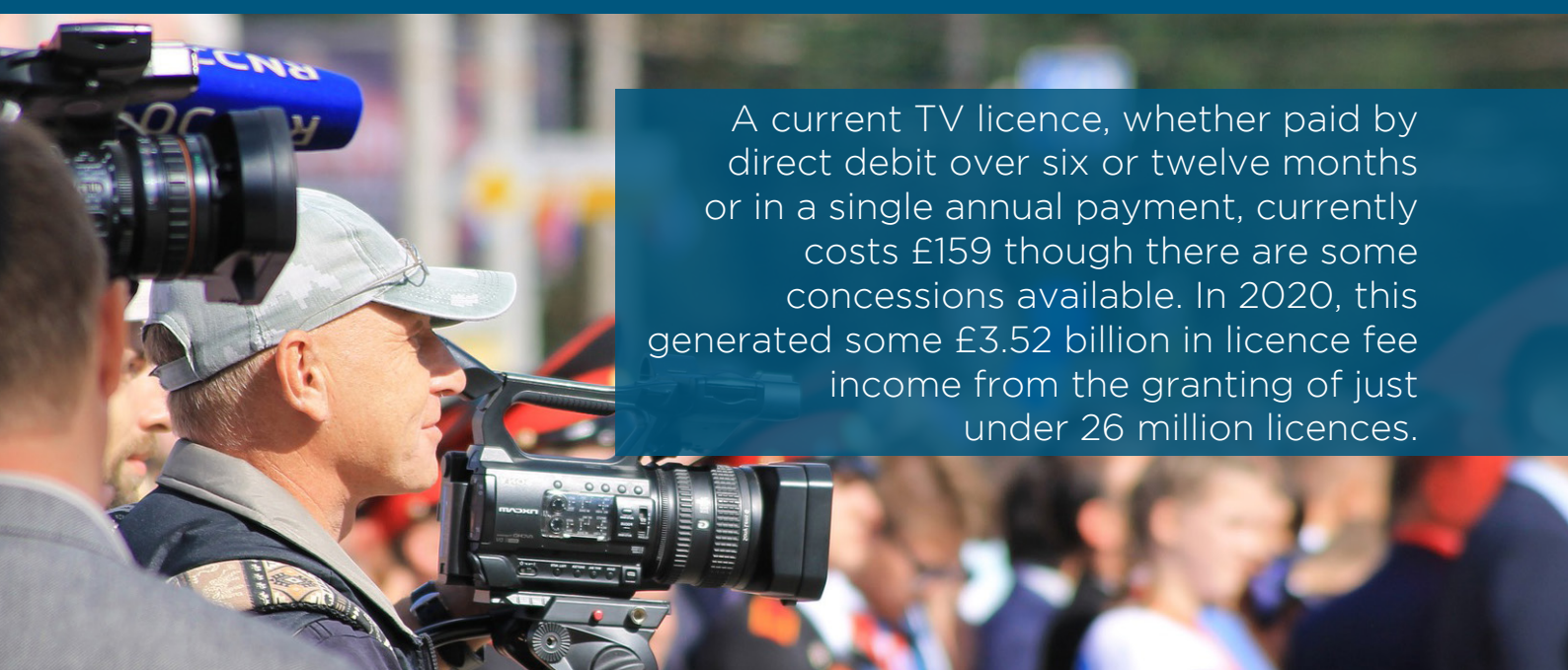
⁶ BBC [published](#) Group Annual Report and Accounts 2019/2020.

⁷ [TV Licence fee statistics](#) - House of Commons Library, CBP-8101, 27 January 2021.

12. The picture is further complicated by changes in the way in which television can be accessed and programmed content consumed. Technological advances mean that while a television is the most common mechanism for consuming live content, other devices such as PC, tablets, games consoles and smartphones are also (and possibly increasingly) used. Changes in viewing patterns⁸ also seem to indicate a rise in consuming on-demand content at the same time as a decline in live viewing.
13. As a result, no direct line can be drawn between the number of households⁹ and the number of licences actually granted. That in turn, makes evaluating the level of potentially evaded revenue difficult to determine, at least on the current criteria for determining the need for a licence.
14. Looking then at changing patterns of consumption, it will be recognised that there is a more fundamental question: for how much longer will the existing funding model be relevant if it increasingly becomes less able to sustain the BBC's operations in the public interest? How Government and Parliament ultimately answer that question will likely have a significant impact on how the narrower question of decriminalising TV Licence evasion is considered.

⁸ Or other premises requiring licences.

⁹ '[Buy a rod fishing licence](#)' - Accessed 20 May 2021



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Why is a criminal sanction relevant?

- 15.** As already touched on, TV Licensing is not alone in having criminal sanctions for a failure to obtain a licence when required. Freshwater fishing in England and Wales without the appropriate Environment Agency rod licence carries the potential for criminal prosecution as does a failure to ensure that a vehicle is appropriately insured and taxed before it is on the road to pick just two. A failure to pay council tax carries the potential for prosecution. In all of these cases, the revenue generated covers the costs of either providing services for the public (Council Tax supports the provision of local services) or funds continuing investment in the public interest (upkeep and investment in roads and waterways).
- 16.** In part, that is a reflection of the fact that a person can access the service whether they have paid for the right to do so or not, provided that they have the 'tools'. A person can drive on the road if they have a car, or fish if they have a rod without necessarily having obtained the licence first. Similarly, if they have the necessary receiver, they can access live television broadcast without having obtained a licence first. In other words, a person can take advantage of a public facility intended for the public good, without contributing to that facility to the detriment of those who do.
- 17.** Life is, of course, not that black and white and, as already set out, the purpose of this paper is not to judge the merits of criminal sanction but rather its effects. Criminal sanctions are, by their nature, designed to be coercive (or dissuasive) – the potential consequences of not paying are more onerous than paying in the first place – and punitive – those that evade pay the price for doing so, not users as a whole.
- 18.** A criminal sanction does have benefits. The threat of a potential sanction can reduce incidence of late or non-payment enabling a lower price point for the service as a whole, a benefit for public services which typically attempt to keep prices down while still investing in service provision. This compares favourably with commercial operations which in most cases will have to price for risk and set the product or service price at a level that assumes a degree of delinquency across the whole customer base, and where the only effective individual sanction is to share data on that delinquency with other potential creditors and adversely affecting that individual's credit record.

Funding Structures and Decriminalisation

- 19.** The future of public service broadcasting has been relentlessly debated for many years as has the funding model currently used. In the majority of instances, the question of decriminalisation has been cast within the context of the wider debate on funding arrangements.

David Perry QC Review

- 20.** The question of whether decriminalisation should occur is not a new one. In July 2015, David Perry QC presented his review of TV licence fee enforcement¹¹. The review had been conducted *‘as a result of concerns expressed by Parliamentarians and others that the criminal nature of the current regime represents a disproportionate response to the problem of licence fee evasion’*.
- 21.** The review was thorough and extensive, and this discussion will not attempt to summarise the complexity of all of the considerations that it explored. However, while the review did identify some structural weaknesses in the existing approach that could usefully be addressed to improve the system (such as exploring the apparent gender disparity in prosecution for evasion and inefficiencies in the way that visits were conducted) it did not recommend change. In summarising the principal conclusions of the review:

‘On the basis of the evidence available to the Review, it is concluded that many of the concerns expressed in relation to the criminal offence provide no compelling basis for change. In broad terms, the current enforcement is operated fairly and efficiently by TV Licensing and the BBC and has proved successful in reducing levels of evasion.’

- 22.** In essence, the review presented the position that unless the method of collection for fees changed, the criminal sanction should remain in place. Neither Government nor Parliament is necessarily bound to that conclusion, but as many of the same considerations that led the Perry review to that conclusion still apply, it begs the question: Can you decriminalise evasion without fundamental change to the licensing regime and its funding arrangements?

Further Government Consultation and feedback

- 23.** In January 2021, the Government announced following a public consultation¹² that it would not be proceeding with plans to decriminalise TV licence evasion and replace it with an alternative civil scheme. However, in its response¹³ and feedback to its consultation, Government made clear both that it still considered the continuing criminal sanction to be disproportionate and unfair, recognised the wider public support for decriminalisation, and that it would keep the matter under review.
- 24.** The caveat to that view was, however, recognised by the Rt Hon Oliver Dowden in his Written Statement to Parliament¹⁴ which accompanied the publication of the Government's response to the consultation. In particular, he drew out elements that the Government felt needed further exploration before a decision on decriminalisation was taken.
- A civil scheme might result in significantly higher costs and fines for those evading the licensing requirement.
 - The existing system is particularly efficient and as a result any new, civil, system was likely to have higher costs, and also costs associated with implementation.
 - Decriminalisation could have a negative effect on the collection of the licence fee.
- 25.** This neatly encapsulates the difficulty that faces the Government. On the one hand, having a criminal sanction for a debt is increasingly seen as incompatible with modern society but, on the other, the current system is efficient and effective in terms of protecting revenue for the UK's principal public sector broadcaster and controlling costs for users as a whole.
- 26.** The Government's consultation¹⁵ also, significantly, considered a civil approach to enforcement that largely mirrored the prosecution process. As such, it arguably understated the costs of recovery by overlooking the costs of the intermediate part of the recovery process. The general approach to enforcement via the courts is, as a matter of good practice, usually as a last resort. It follows therefore that between identification of evasion and recovery through the courts there would be a significant civil collections process, with an additional cost attached, in keeping with normal practice across the wider economy.


¹² The [consultation](#), conducted by the Department for Digital Culture, Media and Sport, closed on 1 April 2020.

¹³ [Government response to the consultation on decriminalising TV licence evasion](#) - Department for Digital, Culture, Media and Sport, 21 January 2021.

¹⁴ [Written Statement to Parliament](#) - Secretary of State for Digital, Culture, Media and Sport, 21 January 2021.

¹⁵ [Consultation on decriminalising TV Licence evasion](#) - Department for Digital, Culture, Media and Sport, 5 February 2020.

27. The biggest unanswered question when considering the impact of decriminalisation on recovery rates is whether the TV Licence fee remains part of the BBC's funding model. The Government's recent consultation suggests that its preference is to decriminalise evasion but retain the current licensing regime. However, that may simply reflect the fact that the existing Licence Fee system is enshrined under the Royal Charter until this is reviewed and renewed in 2027, and the Government have originally wished to move more quickly on the specific issue.
28. A Parliamentary Committee essentially gave the view¹⁶ that by leaving the question of decriminalisation somewhat in limbo, the Government created uncertainty as to the next steps or the potential consequences. This was felt by some to be particularly unhelpful given the apparent rise in non-payment, though it is unclear whether in this context non-payment is necessarily the same as evasion.
29. The Committee was clearly right to highlight the potential for confusion to create additional difficulties. The BBC's somewhat emphatic view to the Committee was that the current system is effective and that removing part of the mechanism risked undermining the whole¹⁷. By approaching a single aspect in isolation, the Government may have achieved precisely that.
30. A vast amount has been written in the last decade about the merits of both different methods of funding the BBC, while preserving the BBC's impartiality, and of decriminalising TV licence evasion. None of these have reached firm conclusions and in some cases the arguments about both have been passionate, to say the least, without necessarily presenting an alternative approach that has all of the key features and addresses all of the key problems. The only settled point amongst the various interested parties appears to be that decriminalisation should realistically only proceed as part of a broader package of reforms to the funding arrangements.



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¹⁶ [The future of public service broadcasting](#) – Digital, Culture, Media and Sport Committee, House of Commons, 17 March 2021.

¹⁷ Ibid.

D. IF YOU DECRIMINALISE, WHAT HAPPENS?

- 31.** As set out above, what happens very much depends on what the virtue of the current criminal sanction is and how it is replaced. In its 2020 consultation on decriminalisation, the Government suggested two possibilities¹⁸: a civil monetary penalty such as you would encounter in relation to parking fines, or a civil debt.

How relevant is the existing criminal sanction?

- 32.** The value in any criminal sanction is either as punishment or as deterrent (or both), depending on the nature of the offence and the nature of the sanction for it. But that 'value' is ultimately difficult to judge in as much as it is difficult to find evidence of offences not committed as a result. How can you prove the effectiveness of deterrence?
- 33.** TV licensing evasion does not itself carry imprisonment as a potential sanction. Rather the sanction is a fine of up to a maximum of a £1000 in addition to paying the outstanding sum owing in relation to the licence which should have been required. According to the 2020 consultation, 121,203 people were prosecuted, convicted and sentenced for evading the requirement to have a TV licence and the average penalty was £176¹⁹. As the consultation notes, how that penalty is collected can be nuanced to accommodate the individual's circumstances.

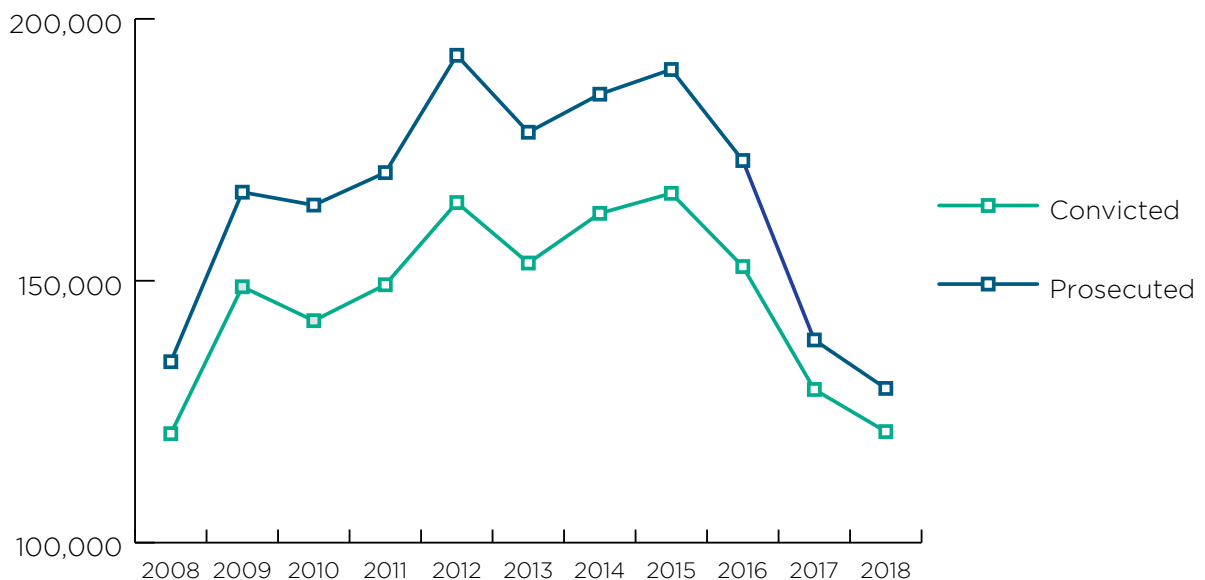


Fig 1: TV Licence evasion prosecuted and convicted 2008-2018.

- 34.** While 120,000 to almost 200,000 people being prosecuted is numerically significant across the years, this needs to be seen in the overall context of both the licensed population as a whole and the level of evasion estimated. In 2018, about 25.7 million licences were in force²⁰ of which almost 130,000 were convicted of TV licence evasion, equivalent to about 0.5% of the licensed population. Moreover, the estimated evasion rate for 2018/19 stood at 6.44%²¹ suggesting that only 7% of the total estimated evaders are actually prosecuted, or 0.47% of those that should have a licence.
- 35.** The statistics between 2008 and 2018 suggest that the number imprisoned for wilfully failing to pay is far smaller still. In 2018, only 5 individuals were imprisoned as a consequence of failing to pay the fine following conviction for TV licence evasion²².

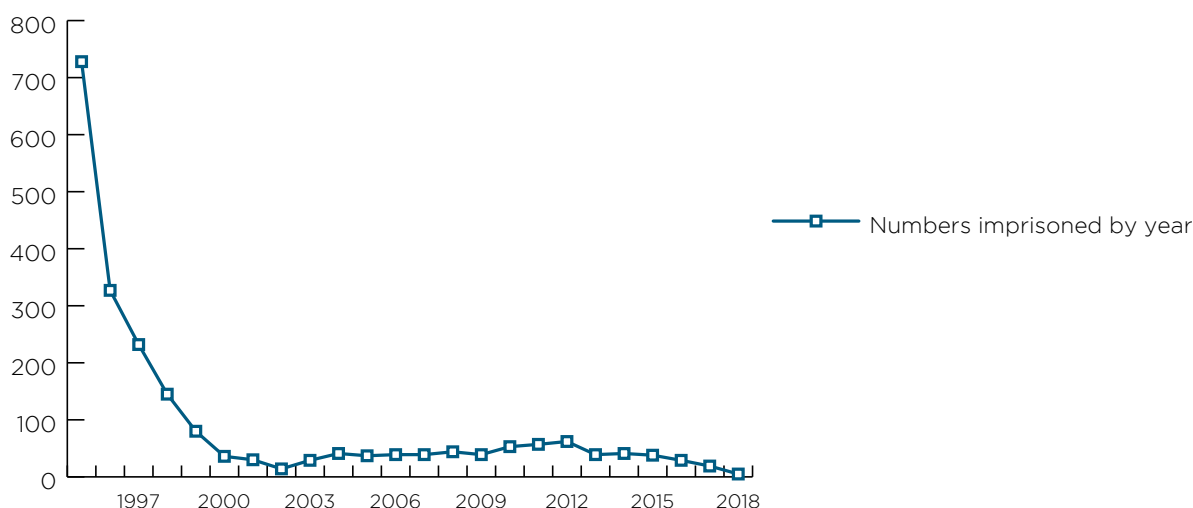


Fig 2: Number of convictions for TV Licensing evasion ultimately resulting in imprisonment 1996 - 2018

- 36.** Despite the hyperbole in relation to the continuing presence of a criminal offence, the reality appears that prosecution as a sanction is relatively lightly used. The likelihood of incarceration is far smaller still and appears intrinsically linked to the willingness, or rather refusal, to address the fine applied. Moreover, non-payment does not as the Government itself noted when consulting, usually result in a criminal record.

²⁰ [Licences in force](#) - TV Licensing website, accessed 20 May 2021.

²¹ [Television Licence Fee Trust Statement for the year ending 31 March 2020](#) - BBC.

²² [Parliamentary Question](#): Barry Sheerman MP to Ministry of Justice - answered 12 March 2020.

37. What is less clear is how far the mere existence of a criminal sanction acts as a deterrent against current or future non-compliance. How can you evidence a crime not committed as a result of a penalty that wasn't applied? It has not been possible to identify academic studies which explore this specific situation. While the criminal offence exists, it seems to be relatively lightly used given that TV Licensing estimates they identify about 1000 individuals a day watching TV without a licence, considerably fewer than this resulting in prosecution. On balance, it is reasonable to assume – though impossible to project the scale of – that the existence of a criminal sanction does deter individuals who might otherwise also evade the TV licence fee.

What do evasion rates look like, and how do they compare?

38. The BBC relies on modelling to determine the level of evasion²³. This is unsurprising in as much as it cannot know precisely how many households or other premises there are that might potentially require TV licences and, of those, how many actually do require one. In effect, and in much the same way as for freshwater fishing in England and Wales, actual evasion is only ever certain at the point at which the individual is effectively 'caught in the act'. The level of estimated evasion varies but seems to generally be between 6% and 7%. The figure for 2019/2020 is estimated at 6.44%.

39. That is not dissimilar to fishing licence evasion which, in a recent blog²⁴, the Environment Agency estimated as generally being 'around 5%'. However, it is markedly higher than the estimates of Vehicle Excise Duty (VED) evasion estimated by the Department for Transport (DfT). In a statistical release for 2019, the DfT estimated that the rate of unlicensed (ie untaxed) vehicles on the road stood at about 1.6% of vehicles in UK traffic, equating to about 634,000 vehicles²⁵.

40. That difference in estimated evasion rates may however be at least partially explicable by the nature of the evasion and how it is identified. Both the Environment Agency and the BBC do not **know** what the size of the relevant licensable population is. A licence for either is only required if the activity is actually being undertaken and that will generally only be known if the evader is caught at the time of a visit or inspection.

²³ See Page 6 of the BBC annual [Licence Fee Trust Statement for YE 31 March 2021](#) for a summary of some of the factors incorporated into the modelling.

²⁴ [EA reflects on a year of enforcement activity](#) – Environment Agency, accessed 20 May 2021.

²⁵ [Vehicle Excise Duty evasion statistics: 2019](#) – Department for Transport, 21 November 2019.

41. In the case of VED, however, not only does the DVLA have a clearer but not complete picture of taxable population size, but modern technology enables for far more widespread checking at scale. Automatic Number Plate Recognition (ANPR) cameras can automatically check registration plates against relevant databases meaning that it is relatively straightforward to determine both whether VED has not been paid on a vehicle and confirm that it is on the road without it. It is not simply a case of evasion being identified because a person has the misfortune to be stopped for something else but rather that the ability to check is more extensive and the likelihood of being caught higher.
42. Interestingly, DfT data suggests that the proportion of vehicles evading VED increased markedly between 2013 and 2017, before dropping back slightly by the time of the 2019 statistics. Although it may be a coincidence, this rise coincided with the removal of the requirement to display a paper disc in 2014. It is possible that this rise reflected a perception that the absence of a paper disc might make evasion more difficult to detect (or increased forgetfulness on the part of a driver), and to also speculate that the fall between 2017 and 2019 reflects a greater appreciation in the public mind as to the efficacy of the technology available to detect evasion.

Summary: evasion, criminal penalty and propensity to repay

43. In its submission²⁶ to the 2020 Government consultation, the BBC estimated that decriminalisation alone would raise evasion rates by 3% - 3.5% above the current level equating to some £285-£288 million lost in revenue²⁷. This is necessarily speculative since the effect of a criminal sanction on propensity to pay is uncertain. Research²⁸ commissioned by the BBC suggests that about 60%-66% of respondents rated the potential criminal sanction as effective (either very or somewhat) in deterring evasion.
44. This research was indicative rather than conclusive but it is reasonable to take the view that at least some evasion is deterred by the *potential* for criminal sanction. That in turn reduces the strain on the collections and recoveries systems, reducing the risk of the licence fee needing to rise for those that do use the service and do pay.

²⁶ BBC [Response](#) to the Government's consultation on decriminalising TV licence evasion – BBC, 31 March 2020

²⁷ Ibid. Paragraph 53.

²⁸ Ibid. Paragraph 49.

45. Where prosecution for evasion is used, the evader (and tangentially licence fee payers as a whole) benefits from a relatively streamlined system of recovery which reduces costs. There is a relatively clear policy on prosecutions²⁹ anchored on straightforward evidential and public interest considerations, and the court process is also streamlined by using the Single Justice Procedure meaning that court costs are also restrained. These are important considerations given the growth in younger demographics choosing not to access licensable BBC content in favour of alternative platforms.
46. Whatever the benefits and disbenefits of decriminalisation, and this paper takes no position, it seems that the current system is largely effective in addressing evasion while at the same time controlling costs for the given funding model. Indeed, while scope for improvement (for example, in communications) has been identified over time, the collections and recoveries systems have been described as efficient and effective in treating individuals fairly while, crucially ensuring revenues for public service broadcasting are controlled. So, could a civil system maintain that without accompanying changes to the funding model as a whole?

Whatever the benefits and disbenefits of decriminalisation, and this paper takes no position, **it seems that the current system is largely effective** in addressing evasion while at the same time controlling costs for the given funding model.

E. IF DECRIMINALISATION IS LIKELY TO RESULT IN AN INCREASE IN EVASION, COULD A CIVIL COLLECTIONS STRUCTURE COMPENSATE?

General

47. In most markets, the rationale for non-payment broadly falls into one of three categories: *forgot, can't or won't*. All of them impose a downward pressure on financial flows meaning that the value of the payment itself declines over time in proportion to the amount of additional effort required to obtain it. Those who forgot will often require a reminder at the very least, for example.
48. It is worth remembering that some commercial business models can, to a limited degree, mitigate this by 'pricing for risk' – setting the base price for the good or service at a level which assumes a level of delinquency and spreads that cost across business activity as a whole. However, this is not necessarily the case for public services which are often priced for cost not commercial gain. Thereafter, it is common to find a clause or contractual provision that allows for reasonable costs in pursuing a debt to be recovered from those who do not pay to avoid penalising the whole.
49. Contrary to popular belief, the most common cause of customer non-payment in many consumer markets is not predatory practice by firms, though poor practice in handling financial difficulty can certainly exacerbate matters, but rather as a consequence of income shock. Low financial resilience coupled with something like an unexpected bill, illness or loss of income can tilt a financial position from stable but stretched, to being in difficulty relatively quickly.
50. Depending on how the consumer reacts at the first sign of difficulty can be the difference between finding a relatively straightforward solution or accessing assistance that can lessen the impact, and a spiral into further difficulty. While the financial difficulties that arise are often, but not always, temporary, how fast the individual recovers depends on how quickly and effectively the individual engages constructively with those they owe money to.
51. There is then the matter of the individual that has no intention of paying what is owed ('general evasion'). That might be in terms of withholding payment as a result that some dispute remains; deliberately delaying payment as a means of evasion or simply that there is no intention of making payment under any circumstances.

52. TV licensing has an additional challenge in those refusing payment on ‘ideological’ grounds (‘ideological evasion’), such as considering that the content produced by the BBC is not of sufficient quality to justify the charge or perhaps that the BBC should be funded in much the same way as other channels and rely on subscriptions or advertising. The internet is replete with examples of those opposed on quality or partiality grounds, but on various platforms, others appear simply to be advocating for non-payment but are unclear whether this is because they do not use the service and simply fail to understand that they merely need to notify TV Licensing of the fact, or simply a blank refusal coupled with a ‘what are they going to do about it?’ approach.

Can’t Pay

53. Arguably the treatment of ‘can’t pays’ set out by TV Licensing would remain largely unchanged by decriminalisation. The process would remain broadly consistent with the approach taken in relation to other types of debt in as much as the core would revolve around finding an equitable approach for both parties, while having regard to the individual circumstances.

54. There are, however, two potential points of difference that are perhaps worth noting in the context of changing patterns of collection.

- First, a debt in relation to a TV licence is currently treated as a priority debt due to the potential consequences of non-payment. Priority debts are those which have the most serious consequences for non-payment so will normally be dealt with sooner than other debts. Decriminalisation would arguably change that, meaning that recovery of even small sums might take considerably longer.
- Second, a licence is annual so the individual will have the arrears (what is already owed and needs paying) and potentially also the continuing payments for future use if the individual wishes or needs to continue to use the service.

55. While the general approach to recoveries from ‘can’t pays’ is likely to differ relatively little from the current norms, it is reasonable to expect that the change in priority coupled with the nature of the licence would potentially mean that recovery takes longer and costs more than at present.

Won't Pay

- 56.** 'Won't pays' will present an interesting challenge. In principle, the recoveries stage can be expected to remain largely unchanged. The real challenges will arise in dealing with the potential for increased volumes and that the enforcement stages via the courts would change under both models proposed by Government.
- 57.** General evasion might be expected to increase but the size of the increase, and the resource needed to deal with it, is an imponderable. Also unknown is how a move from a criminal procedure to a civil one might affect the degree to which recoveries can be enforced, or enforced at the same cost.
- 58.** Naturally, the creditor would still be required to 'prove the debt' which means that, to all intents and purposes, TV Licensing would still need to be able to show that the person was engaging in activities for which a licence was required and did not have one. Undertaking visits to establish this should not change under a decriminalised system where allowed access, but what of situations where access was prevented, whether on principle or for some other reason?
- 59.** This is an important question because in framing both of its proposals³⁰, the Government did not elaborate on how a requirement for a licence might be proved for the purposes of establishing the existence of a debt. The examples used for civil monetary penalties, those relating to parking or unpaid congestion charges, are unhelpful in this regard since neither require access to private premises. Repeal of the offence, without ensuring a corresponding ability to access premises if necessary to establish whether or not a person should have a licence would be a significant lacuna when dealing with those which if they are consciously evading a licensing requirement are unlikely to allow access for TV Licensing to prove otherwise. And if the debt cannot be 'proven' to exist, how realistic would any civil enforcement approach using the courts actually be at a fundamental level?
- 60.** Put another way, it is relatively easy to prove that car was parked unlawfully or that a vehicle entered a congestion charging zone as the vehicles would be in a public place and it is simple to use cameras to prove the fact. This is not the case if all a TV Licensing official could do was ask to enter or perhaps peep through the window, both of which have their own drawbacks.

- 61.** If it can be proven that the debt exists, then either option may be workable. However, it would seem likely that the cost of pursuing such debts would be substantially higher than the original debt and it is by no means certain that those costs would necessarily be awarded or automatically recoverable even if they are. Moreover, the comparative slowness of the County Court system, partly as a consequence of its own workload, in comparison to the Single Justice Procedure is likely to increase costs to the court service.
- 62.** Increased cost and delay in obtaining judicial satisfaction will undoubtedly weight heavily on the decision to use the Courts. Unlike parking fines or congestion charges, an unpaid TV licence charge is a direct loss to the BBC and therefore licence payers as a whole. Similarly, given the cumbersome nature of the civil courts, the relatively small size of the debt might well disincentivise the use of the courts as a solution leading to a decrease in licence fee revenue to the detriment of the public service and the wider licence paying population, as well as encouraging future evasion. There are ways in which these risks could be mitigated but they would require a change in the licence fee model.

A potential positive?

- 63.** One possible positive, albeit small, of changing to a civil penalty model is that a County Court Judgment (CCJ) will appear on the Register of CCJs. As such, the existence of a CCJ would almost certainly appear on a person's credit file. Given the wider importance of credit reference data to personal transactions, this risk might counteract the loss of the criminal penalty's deterrence factor to a small degree.

A further unknown

64. It is tempting to think of evasion as something that changes relatively slowly or over a relatively small range; that the percentage of the population inclined to flout the law or obligations is relatively static. However, there are a few reasons for exploring whether that is in fact the case here:

- Does the perception of a diminished likelihood or risk in being caught contribute to an increase in evasion?

The DfT statistics on VED evasion referred to earlier would certainly appear to suggest so. DfT statistics for car compliance with speed limits³¹ shows an interesting pattern for speeding by cars as well, specifically that a greater proportion of speeding appears to occur between midnight and 05:00hrs. True, the roads will often be quietest between those times, but how much does the perception that the chance of detection is also lower contribute to that pattern?

- Can social media accelerate propensity to evade?

A simple internet search yields multiple sites and videos with content where individuals argue for non-payment of the TV Licensing fee and in some cases why it is possible to do so. It is unclear whether these individuals are advocating for non-payment where a licence is unnecessary or alternatively simply refusing, much of the content is curiously ambiguous. Significant behavioural shifts arising from online communities is not a new phenomenon, but it does appear that there is an increasing propensity for people to unquestioningly accept opinions and 'insight' presented through those channels in greater numbers irrespective of the lack of evidence. One might simply point to the irrational QAnon-esque phenomenon which has bizarrely achieved almost mainstream standing.

It is, therefore, perfectly possible that such behaviours (or ability to influence behaviours) could radically alter behaviour within a specific community, especially if linked to some form of perceived grievance such as disliking BBC content but not recognising the wider value.

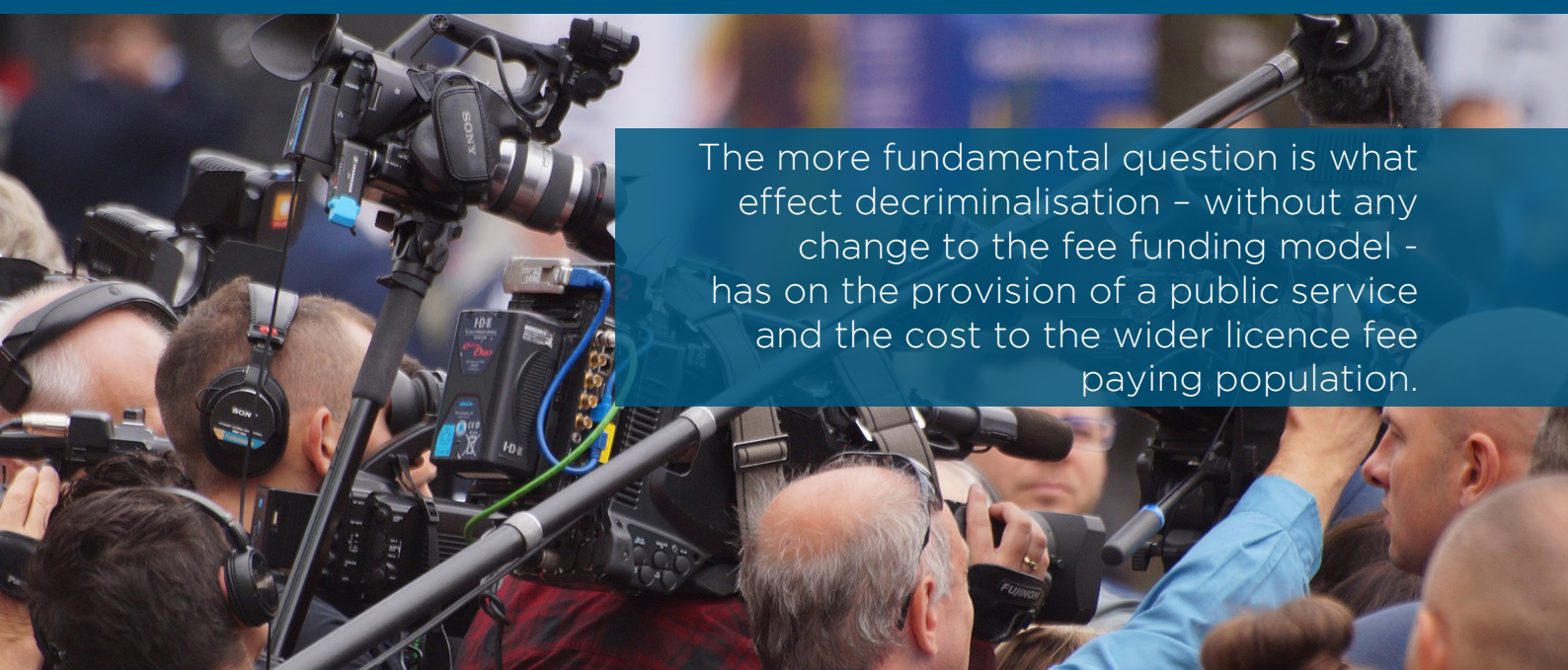
³¹ [Vehicle Speed Compliance Statistics 2019](#) Figure 4 - Department for Transport, September 2020

Could a civil scheme replace a criminal scheme?

- 65.** In many respects, the mechanics of collections and recovery would likely be unchanged. Forbearance could be shown where appropriate; repayment plans could be considered and accommodated where this was suitable. Much of those mechanics are already 'civil' in nature as is clear from the TV Licensing and related websites.
- 66.** Where the challenges will arise in a recoveries context are in dealing with those that choose to evade, the scale of non-payment and whether a civil process markedly increases the cost of recovery, which seems likely. How do you 'prove' that a debt is owing? Would a civil recoveries process result in higher costs and could these realistically be recovered? How would the inevitably longer civil process affect the cost of recovery? At present, these and many other questions are impossible to answer.
- 67.** Those questions look predominantly at the practical and logistical considerations. The more fundamental question is what effect decriminalisation – without any change to the fee funding model – has on the provision of a public service and the cost to the wider licence fee paying population. To take the three charges identified:

	TV Licensing	Fishing Licence	Vehicle Excise Duty
Evasion rate (estimate)	6.44%.	Circa 5%.	Circa 1.6%.
Action	Watching or recording live TV, or downloading from BBC iPlayer.	Fishing without a rod licence.	Driving without up to date vehicle tax.
Takes place	Out of public view.	In public.	In public.
Proof of debt	Relies on demonstrating that a TV was being watched without a licence when one was required. Search warrant may be required.	Person identified as fishing and not being licensed.	Various including ANPR camera and Police checks. Potentially detection can occur anywhere and at any time when the vehicle is on the road.
Cost of licence (no concession)	£159.00 (annual).	£30 (annual).	Variable, depending on emissions, fuel type and first or second tax payment, for example.
Potential penalty on prosecution	Fine of up to £1,000.	Fine of up to £2,500.	Fine of up to £1,000.

- 68.** The above suggests that there is not necessarily a correlation between the cost of the licence or tax and evasion rates. VED is in many cases more expensive than either of the other two, but has a lower evasion rate. Similarly, a fishing licence costs less than a TV licence and yet also has a lower evasion rate. While the likelihood of being detected varies between the two, in both cases detection will take place in public so it is far easier to 'prove the debt' as there will be either a witness statement or photographic evidence, for example.
- 69.** By contrast, proving that a person is evading the TV Licensing fee rests on being able to show that they were undertaking a licensable activity but where that activity takes place away from the public view. To 'prove' that a debt exists in a civil context would rely on admission or being able to see what is taking place in a private environment. Presumably the ability to obtain a search warrant would fall away with decriminalisation, so it is reasonable to assume greater difficulty in establishing grounds for a civil penalty or collection as a civil debt.
- 70.** A wider and perhaps more fundamental question is whether these changes might have a negative effect on the provision of a public service or whether this might result in higher licence fees to compensate for losses elsewhere.



The more fundamental question is what effect decriminalisation – without any change to the fee funding model – has on the provision of a public service and the cost to the wider licence fee paying population.

F. WHERE NEXT? WHAT DOES ANY OF THIS MEAN FOR DECRIMINALISATION?

71. Much has been written about TV Licence evasion and whether it should be decriminalised. Ultimately, whether or not it should be is a question for Government and Parliament. But in a sense, this debate is one that could be had in a number of different contexts; at what point does a criminal sanction for evading a debt become a disproportionate response? As importantly, if you do decriminalise, what are the sort of pitfalls that may affect income streams for what is essentially funding public services?
72. What is clear, is that the decision to decriminalise any of the various extant criminal offences relating to evasion of public sector liabilities raises many of the same issues, and few of these seemingly receiving any wider consideration in the debate:
- **Proof:** The ability to recover a debt in a civil context rests on being able to demonstrate that the debt exists in the first place. The more difficult it is to establish the basis for a debt claimed, the less likely recovery will be successful and the higher the cost, meaning either higher prices and/or lower collections and recoveries as proving liability becomes more difficult.
 - **Priority of debt:** When determining how to prioritise creditors for repayment, priority is inevitably given to those that carry the most serious consequences for non-payment. A civil debt will inevitably have a lesser priority than a criminal one which will have profound implications for collections and recovery rates relative to the existing position. If the consequences of non-payment or reduced payment are less than currently, repayment levels on arrears/debts will be slower in places meaning that income models relating to the decriminalised liability will need to be adjusted to allow for longer recovery periods and higher administrative costs.

- **Psychological effect:** The potential for criminal sanction will undoubtedly have a deterrent effect but how significant that effect might be in terms of propensity to evade is unclear. Criminal sanctions do, however, have some deterrent effect even if it is not readily quantifiable. It is also clear, though not by how much, that the risk in getting caught influences the deterrent effect. It is reasonable to speculate that if there is little chance of being caught and a difficulty in proving the existence of a liability/debt, the rate of evasion is likely to increase markedly.
- **Efficiency of the system:** Decriminalising any liability will require the body that is entitled to the payment to significantly reframe the way they model both collections and recoveries. Late payment as well as evasion will increase meaning that the resource required to address either will have to increase accordingly. Longer, more resource intensive enforcement (ie through the courts) mechanisms will also need to be factored into a new model as would the likelihood of costs being recoverable. With that in mind, even a system described as efficient and effective such as TV Licensing would have to factor increased costs and decreased receipts into their models, and then decide what implication that has for the cost borne by fee payers as a whole.
- **Spreading the risk:** Decriminalisation raises the potential risk that licence or fee payers as a whole could potentially have to pay higher costs to compensate for non-payment by others. In a press release³² in 2016, DfT highlighted the point with the Rail Minister Paul Maynard quoted as saying '*Fare dodgers cost the railways £240 million every year **and this bill is picked up by honest passengers in the form of higher rail fares.***' In other words, even with a potential criminal sanction, losses are inevitably incurred by those that abide by the rules. In a decriminalised environment, thought will need to be given to how a risk of even higher evasion can be modelled in relation to the budget for service provision.

- 73.** None of this is to suggest that decriminalisation is a bad thing. There may indeed be areas where it is appropriate and it would be sensible for Government to undertake a more extensive review of such offences and whether they are proportionate and appropriate. Rather it is to suggest that decriminalisation is only a small aspect that needs to be considered and understood in the context of the whole process that it supports. Policymakers must recognise that, however superficially appealing, simply tweaking one part in isolation might have profound effects on a wider public service.
- 74.** If decriminalisation is likely to result in increased evasion and a reduced ability to address that, then whatever public service those funds originally supported will need to be scaled back accordingly. If the BBC faced a 10% cut in funding, what would service provision look like? If the Environment Agency had 10% less contribution from licence fees, what would that mean for investment in watercourses? And so on.
- 75.** The various reviews and investigations in relation to both BBC funding and decriminalisation of TV Licensing have stressed the efficiency and effectiveness of the collection and recoveries process, and those conducting the activities on the BBC's behalf. However, it does not follow that this would necessarily be the case if decriminalisation were to occur for a different service, fee or charge.
- 76.** As such, it will always be important to recognise that part of the design of any future 'civil' approach to any formerly criminalised debt will benefit from planning to invest in aspects such as effective early engagement, good communication and supportive practices, nudging and following up on relationships and losses in contact with customers, in line with good practice. Effective collection strategies, drawn from existing recovery specialisms and specialists, and anchored in good practice, can be the difference between smoother recoveries and increased losses which, for public services, will be critical to ensuring the service continues to be provided.

G. WHAT NEXT?

- 77.** This is ultimately a question for Government and Parliament to determine. It seems clear that focusing primarily on a single isolated aspect – decriminalisation – substantially misses the wider considerations. If the view is that a public service broadcaster is an important facet of life in the UK, particularly one with obligations in relation to education and impartial commentary, both of which are increasingly vital in modern society, then arguably decriminalisation should be considered only in the wider context of the funding model as a whole.
- 78.** Certainly it would seem that the mechanics of recovery are unlikely to change not least because, as various commentaries on the system have noted, although there is inevitably room for improvement the current system is fair, efficient and effective. Arguably, it is also likely to be less costly than a civil system. A more expensive recovery system, particularly one that would almost certainly take longer to recover outstanding sums and have less likelihood of obtaining the additional costs is likely to need those costs to be transferred elsewhere in the system whether to licence payers or in reduced budget for the BBC.
- 79.** It is also important to consider practice rather than theory. On paper, a civil system based on the County Courts certainly could work effectively in this context and does allow for a range of options should recovery progress into enforcement. But the civil system is already under significant pressure, is much slower which pushes costs higher, and the creditor inevitably has to take a view as to whether enforcement is really commercially viable.
- 80.** At the end of the day, decriminalisation will have little impact on wider society other than to encourage evasion. Imprisonment is increasingly rare, prosecution lightly used and almost certainly less costly to the individual pursued than the County Court would be, and would not have a potentially prolonged effect on other economic activity as a result of appearing on the register of county court judgments. That is not to say that a criminal sanction is not arguably out of step in a modern society, but rather that it is important to take a balanced view of the whole and recognise that the nature of the penalty for non-payment is only one piece of the jigsaw in the wider approach to public service broadcasting finance.

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ABOUT THE CSA

The Credit Services Association (CSA) is the only National Trade Association in the UK for organisations active in the debt collection and debt purchase industry. The Association, which has a history dating back to 1906, has over 300 member companies which represent 90% of the industry, and employ approximately 11,000 people. At any one time its members hold up to £67 billion for collection, returning nearly £4 billion in collections to the UK economy per annum. As the voice of the collections industry, our vision is to build confidence in debt collection by making the entire process clear, easy to understand and less stressful for all those involved.







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..this short discussion paper seeks to consider ‘what if’ the Government did decide that decriminalising of TV Licensing evasion was appropriate without also addressing the design of the funding mechanism.