

**IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT**

B E T W E E N:

THE REVEREND PAUL NICOLSON

Appellant

and

GRANT THORNTON UK LLP

Respondent

LONDON BOROUGH OF HARINGEY

First Interested Party

TOTTENHAM MAGISTRATES' COURT

Second Interested Party

Witness statement

(Neil Gilliatt)

STATEMENT OF TRUTH

Statement of: Mr Neil Gilliatt, of 35 Grosvenor Crescent Grimsby

This statement is true to the best of my knowledge and belief.

Dated this 4th day of May 2016

Signed:



ANNEX A

Statement of reasons for witness statement

1. The legislation concerned with the collection and recovery of council tax is the Council Tax (Administration and Enforcement) Regulations 1992 (the “**Regulations**”). A council tax payer failing to make payments as scheduled in the demand notice will be sent a series of statutory notices to prompt payment. If failing to pay the outstanding amount or come to an agreement with the council, a summons may be issued for the person to appear before the court to show why the sum outstanding has not been paid. At this stage the council tax payer has lost the right to pay by instalments and the full year’s council tax has become due.
2. The debtor may incur costs for the issue of a summons to appear before the Magistrates’ Court. The Regulations provide that if, after the summons has been issued, the outstanding balance and an amount equal to reasonable costs incurred is paid or tendered to the authority, the application shall not be proceeded with.
3. The Regulations are therefore formulated such that a person issued a summons may (by settling liability before the hearing date) incur a lesser amount of costs than would otherwise be incurred if the application were made and liability order obtained.
4. If the balance is not paid in full prior to the court hearing date then the debtor is required to attend court. The authority will request that the court grant a liability order for the unpaid balance for which the debtor will incur a further cost. The law provides that the

costs added to the debtor's account at both stages should cover the costs that are reasonably incurred by the authority.

5. The remainder of this Annex records samples of what have been found to be typical ways authorities manipulate costs for the purpose of generating income, to act as a deterrent or used as a penalty etc. etc.

Front loading and manipulating composition of summons/liability order costs

6. Billing authorities have been discovered (when reviewing costs) to take the opportunity of manipulating the composition of the two charges which invariably involves front loading some or all of the cost so that a higher charge (or all of it) affects the defendant at the summons stage. Evidence suggests this is done with a view to meeting particular objectives, for example influencing behaviour.

Newham Borough Council (NBC)

7. NBC made a decision to change the composition, and increase its overall costs which had prior to its 1 April, 2006 review all been charged to the second stage. The charges increased from £0.00 for a summons and £75 for a liability order application, to £20 for a summons and £75 for a liability order, total £95.
8. In its 2010 review it maintained the £95 total but changed the composition so that the summons increased by 225% to £65 whilst reducing its liability order accordingly to £30.
9. The Magistrates' court agreed the proposed changes (apparently) to bring Newham's costs in line with other London Boroughs that had already weighted theirs heavily in favour of the summons. The "Officer Key Decision" report made it known that the council viewed manipulating "**court costs**" as an instrument it could take advantage of to influence behaviour.

“Changing the composition and front loading the charge will deter customers from defaulting at this stage and will improve earlier cash collection.

....

The financial implication of this is to retain the overall charge for enforcement of council tax payment at £95.00 but to front load the costs so that a higher charge affects the customer at the summons stage. It is anticipated that this would deter tax payers from defaulting at this stage but rather resolve non-payment earlier and thereby improve the council's cash flow.

.....

The increase in initial costs is likely to impact only on those residents who fail to pay their council tax at the appropriate time and then settle the amount in full after the issue of a summons but before the court hearing date..... For those unable to pay in full, the total cost of court action remains unchanged.

.....

Finally where an appropriate repayment schedule is made and met we can withdraw the associated court costs if the resident's circumstances warrant and officers have the discretion to do so. The Council Tax collection rate and the proportion of recovery costs which are collected will be carefully measured to monitor the impact of this change."

10. The threat to incentivise prompt payment has without doubt been the motive behind why these costs have been reassessed in favour of applying all the costs of the procedure in respect of issuing the summons, rather than applying costs in accordance with the regulations.

(Records of previous year's cost levels)

11. The Chartered Institute of Public Finance and Accountancy ("CIPFA") holds records, beginning 1997/98 and subsequent years relating to the costs applied at each or one or the other stages. Data shows that in 1997/98 many councils applied court costs only if a liability order was granted. For example St. Helens, North Lincolnshire, Durham, Pendle and Woking council's all charged £0.00 for a summons and £30.00 for a liability order application but by 1998/99 all these councils had front loaded the costs so that all the charge affected Council Taxpayers at the summons stage, i.e., £30.00 for a summons and £0.00 if a liability order was granted.
12. Some councils which applied costs similarly in 1997/98 delayed or made the shift more gradually. For example it wasn't until 2002/03 that Ribble Valley applied all its costs on serving the summons, whilst North East Lincolnshire Council made incremental changes until it had done similarly by 2011/12."

More costs income is generated from defendants incurring disproportionate costs (those who settle liability before the hearing date) due to costs being raised by councils in respect of expenditure they have not incurred.

Where majority of costs are incurred

13. Chiltern District Council gives a general idea of the stage in the recovery process at which most costs are incurred. In its review of charges to achieve budget savings of 10% over 4 years, it was acknowledged that most of the costs arise from the application for a liability order at Court and the work to secure payment once having obtained it. Therefore to introduce costs for the summons that would, after 4 years of proposed increases, see it making up the majority charge does not fit in with its view of where most of the costs are incurred (See also §§69-74 this Annex).
14. Regulations provide that expenditure may be recharged to the defendant “*in respect of an amount equal to...the costs reasonably incurred by the applicant in obtaining the order.*” Despite this, Chiltern implied that costs increases needed to boost annual income from £76k to a forecasted £173k by the fourth year intended covering additional expenditure it incurred in pursuing payment once having obtained the liability order.

Haringey, North East Lincs and Wycombe Councils set costs level as deterrent

15. It has been shown in the case of Newham that increasing the level and manipulating the composition of costs can be used, in addition to raising revenue, as a way of encouraging behaviour for example by acting as a deterrent in order to encourage prompt payment. Recorded documents relating to Haringey, North East Lincolnshire and Wycombe councils show similar motives behind why they had reviewed costs levels.

Haringey Borough Council (HBC)

16. Haringey had discovered other councils obtaining agreement to raise Court Costs significantly to act as a deterrent and fund improved recovery measures. On what appears to have been based on these criteria, Haringey’s Review Panel recommended that it ensured seeking the highest possible level of Court Costs were charged.
17. Haringey Council’s 2004 Audit and Finance Scrutiny Panel Review of Income Collection, details at paragraph 6.11 the relevant matter, as follows:

6.11. Court Costs

6.11.1. The Review Panel found that other councils had obtained agreement to raise Court Costs recharged to non-payers by a significant level. This charge is intended to act as a deterrent to both late and non-payers and enables councils to fund improved recovery measures. The Review Panel concluded that the Benefits and Local Taxation Service could improve performance by ensuring that it agrees the highest possible level of Court Costs to be charged to non-payers

Recommendation B2. “Court Costs”

That the Benefits and Local Taxation Service ensure the maximum amount possible is charged for Court Costs and to review the charge at regular intervals subject to any guidance/legislation governing Court Costs.

North East Lincolnshire Council (NELC)

18. Similarly NELC was aware of approaches taken by other authorities to encourage behaviour. In this case it was noted that others were increasingly charging more costs in Business Rates cases than for Council Tax. The reason being that the level of costs (the penalty) had been so small in comparison to the amount that might be owed that the extra cost was seen as a way of encouraging prompt payment.
19. Following the trend of other councils by charging more in respect of Business Rates, it was forecast that charging three times more for what had been identical costs would also improve cash flow with the overall effects of the review potentially generating additional income of £38k per annum. North East Lincolnshire Council’s report of the Director of Finance to the Cabinet Committee (Review of Recovery Costs 6 April 2001), details at paragraphs 4, 5 and 6, the relevant matter, as follows:
 - "4. The proposal would be to increase by £2.50 to £35, the amount charged for a Liability Order for Council Tax debts. However, with regard to Non-Domestic Rates, the Summons cost would rise from £10 to £30 in addition to the £2.50 extra for a Liability Order.
 5. The decision to charge more in respect of Non-Domestic Rates is one which other local authorities are taking in increasing numbers. (There are two in this

region currently, Bradford and Sheffield.) The reasoning behind this is that it is believed that some businesses deliberately delay payment of Rates as the penalty for late payment is so small in comparison to the amount that might be owed. The extra cost is seen as a way of encouraging prompt payment.

6. If the proposal is accepted, then based on the number of Summonses issued and Liability Orders obtained in the current year, an extra £38,000 of additional cost income would be generated bringing the total to approximately £390,000.”
20. The cost of issuing a summons should only take into account the administration involved and not a “deterrent” element, as there is nothing in the legislation to support an increase in costs on this basis. Whether it was an effective measure to improve cash flow was immaterial because regulations make no provision that a penalty may be imposed. The law only provides for the billing authority to claim costs which have been reasonably incurred.

Note: It was held on judicial review, *R v Highgate Justices ex parte Petrou* [1954] 1 ALL ER 406 that costs should not exceed the proper costs incurred and should not be a penalty. (See §183, this Annex).

Wycombe District Council (WDC)

21. Details were set out in 2011-12 of plans to raise additional court cost income by keeping what it currently charged the same overall but changing the way its total costs were split between the different recovery stages. The Equality Impact Assessment (EIA) stated that it charged £20 for the issue of a summons and £60 on obtaining a liability order. The EIA emphasised that only 25% of the overall charge was generated as income if a defendant paid on receipt of a summons whereas if no payment was made the taxpayer would incur Liability Order costs and generate an income of £80.
22. This split in charges changed to £30 for a summons and £50 for a liability Order which was estimated to generate an additional £33,000 annual income. No figures were provided to support that an equal amount of additional expenditure had been incurred by WDC to justify the composition change of the two charges. A short statement setting out its objectives was simply for it ‘to act as a deterrent for taxpayers not to leave payment until late’ as it was ‘unfair to the majority of taxpayers who pay on time and who bear

the cost of recovering unpaid taxes', adding that *'the additional income....helps to keep overall costs down.*

23. The EIA showed no evidence that WDC had considered the legal implications; for example, raising income inappropriately through court costs or intending them to penalise the taxpayer as the term *'deterrent'* implied. If WDC was mindful of the judgment in *Regina v Highgate Justices ex parte Petrou* there would have been concerns raised regarding a risk of being challenged on the grounds that costs should not exceed the proper expenditure incurred and should not be a penalty.
24. The EIA also clarified that it was the intention to further increase summons costs and reduce Liability Order costs each year for the following 3 years at the rate of £10 a year.
25. The EIA corresponding to this matter but relating to 2013-14 is available on WDC's website and states that at that time, it charged £40 for the issue of a summons and £45 on obtaining a liability order. There is no publicly available assessment relating to 2012-13 but it is reasonable to assume that its policy of year on year shifting the composition between the different recovery stages also incorporated an overall increase of £5 which was added to the charge for a liability order. It is likely therefore that the assessment (if it exists) would have set out that its split in charges changed to £40 for a summons and £45 for a liability Order which was estimated to generate an additional £XX,000 annual income and would have added that there was an overall increase in the total value of court costs of £5 from £80 to £85.
26. Returning to the 2013-14 assessment, it set out that its split in charges changed to £50 for a summons and £35 for a liability Order which it estimated would generate an additional £40,000 annual income adding that there was no overall increase in the total value of court costs. It did state that it intended to further increase summons costs and reduce Liability Order costs each year at the rate of £10 a year up to and including 2014/15, however, the costs currently stand at £50 for a summons and £35 for a liability order so it would seem that there might have been opposition to a further shift in the split between the different recovery stages.
27. Over the period detailed, WDC has shifted the split between the two stages so that the summons charge, which represented only 25% of the overall costs, finished up making up almost 60% of the total. The additional income generated due to shifting the

composition of the two stages is more significant if it is taken into account that in 2009-10, WDC levied no charge on the issue of a summons and costs were only applied for on making an application for a liability order. In that year, only those taxpayers who had not paid their liability by the hearing date incurred costs which were then £76.

28. There is no evidence that the policy had taken into account the legislative restrictions, though WDC did, in addition to deterring late payment and raising income, justify the decision by the opportunity it provided to gain favour with the majority of its ‘customers’ who were not affected by recovery. The inference was that WDC would be advantaged by the divisive effect that was inevitable from increasing the up front charges of recovery so that those ‘customers’ who pay on time would benefit from an overall reduction in the cost of the service. The relevant parts of the EIA (2013-14) giving a sense of this are provided as follows:

“...88% of customers pay their Council Tax before court proceedings commence. The cost of recovering unpaid council tax falls on all taxpayers. Increasing the up front charges on summonses acts as an added incentive for customers to pay on time. It can be assumed that those customers who pay on time would prefer the increase in summons costs as it reduces the overall cost of the service to all customers.

In reality only 12% of customers are affected by the change, and a further 1% of those already reach Liability Order stage, so only 11% customers are likely to be affected and have cause for complaint. As such the savings to the majority far outweigh the cost increase of the few...”

.....

“It is envisaged that this policy change, which aims to deter late payment, will work to improve relations between WDC and all taxpayers who pay on time....by reducing the amount spent by WDC on recovering the unpaid taxes of a minority. The additional annual income (estimated at £40,000) will help to keep overall costs down. The intention is to further increase Summons costs & reduce Liability Order costs...in 2014/15 to more accurately reflect the actual costs of recovery at each stage. In cases of financial hardship, particularly customers with a low income existing guidelines allows for costs to be withdrawn on a case by case basis so allowing WDC to ensure customers are treated equitably and fairly.”

.....

“The combined summons and liability order costs are unchanged. This change will only impact on those customers who leave payment until a summons is issued....

In overall terms this change will benefit all council tax payers as it will generate additional income for the service, contributing to an overall reduction in costs that

is passed on to all council tax payers who fund recovery action through the council tax they pay.”

29. It is implied that the greater expenditure incurred by WDC arises at the summons stage in support of its drive to shift greater weight in respect of the summons costs. However, it has been confirmed by Chiltern District Council (See §§69-74, this Annex) that the majority of costs it incurs arise from the court hearing to obtain the order and the additional work required to secure payment thereafter.
30. Though logically, expenditure would vary in proportion to the authority’s size and may be affected by economies of scale, that would have no bearing on where in the process it is incurred and it would be expected that one authority would incur recovery expenditure in much the same way as another.

Eastleigh Borough Council (EBC)

31. Records are held of two court costs reviews for EBC, one in relation to 2004, resulting in estimated additional income of £67,000 annually and the other in 2010 where this was put at £73,000. The council made a decision to change the composition, and increase its overall costs which had prior to its 9 September, 2010 review totalled £40 with £30 (75%) charged for issuing a summons and £10 (25%) at the liability order stage.
32. The 2004 review saw the overall court cost increase by 75%, taking the combined summons and liability order charge from £40 to £70. The composition which was heavily weighted in respect of the summons became more evenly split with 57% (£40) of the cost falling to the summons and 43% (£30) added where it was necessary to apply for a liability order.
33. In 2010, in order ‘*to maximise income and thus avoid the cost of taking recovery action being passed onto the majority of other Council Tax payers who pay on time*’, EBC increased its costs and changed its method of charging so that all the charge was front loaded to the summons stage. The summons costs had increased by 138% from £40 to £95, but the additional charge in obtaining the liability order was no longer levied.
34. In terms of the overall costs, this increased from £70 to £95 (all applied at the summons stage). The net effect of the changes has been that a defendant against whom a liability

order is obtained incurs a 36% increase whilst a person against whom complaint is made but no liability order sought, is affected by a summons cost increase of 138%.

35. In both reviews the council stated as one of the reasons justifying increasing costs that its charges fell short of what was needed to cover the true cost of the work that had arisen because of an increase in recovery activity. The 2004 and 2010 reports, which also supported the increase on the basis that it would avoid the cost being borne by the taxpayer as a whole is detailed at paragraph 3, as follows:

"3. It is apparent with the increase in the actual time spent in the preparation work, the time spent in court and with customers, the current charges are insufficient to cover the true cost of this area of work and therefore a review has been undertaken to avoid this cost falling on those majority of taxpayers who pay their bills on time."

36. The increase in the actual time spent etc., could only realistically have been attributable to increased volumes of court applications that would, in any event, have generated additional income from court costs. It appears due to a selective oversight that the supplementary income would not have been deemed sufficient to at least offset its additional expenditure with its current charges, especially when accounting for economies of scale.

37. The reviews relating to 2004 and 2010 used similar formats with much the same content. For example paragraph 7 (2010 review) alerted members that a percentage of costs were written off and paragraph 12 estimated the additional income after the element of bad debt had been factored in as follows:

"7. Members should also be made aware that on average 15% of court costs raised are later written off under the Council write-off procedures."

.....

12. The increased net income (after external costs and bad debt provision has been taken into account) is estimated to be in the region of £73,000 based on 2009/2010 levels of recovery action taken."

This implies that the standard costs include an element to cover bad debt, meaning more than is reasonably incurred is being claimed against those whom court action is taken and costs are NOT written off. (See §101, this Annex).

38. With exception to only the date and paragraph number, the following also appears word for word in both reports. The 2010 review states as follows:

"19. Members are asked to approve the revised Court Costs charges from the 1 October 2010 as detailed in paragraph 11 above to ensure that the cost of recovery of Council Tax and NNDR payments does not fall on the majority of taxpayers who pay their Council Tax and NNDR on time."

39. Additionally in the 2010 review, a section was included to assist members understanding of the implications of equality and diversity issues that the changes would have on charge payers. Paragraphs 15 to 18 dealt with the issues under the section heading, 'Equality and Diversity Implications' as follows:

"Equality and Diversity Implications

15. The charges made will no doubt have an impact on those charge payers who fail to pay their Council Tax and NNDR by the due date."
16. In order to be fair to all charge payers the costs of the recovery action should not fall on the majority of charge payers who pay their Council Tax and Business Rates on time.
17. Also, where there are genuine reasons why the charge payer has not made payment by the due date and it is a one-off ie no summonses have been issued in the past, discretion can be used to write off the charges made as a gesture of goodwill provided the tax payer arranges to pay the full debt in a mutually acceptable time.
18. Each case will be individually assessed, where representation is made about the costs charged, to ensure that all our charge payers are treated fairly and with due regard to their personal circumstances."

The above (para 16) suggests that in addition to recovering allowable costs incurred in the court application, the proceedings are being used to recharge all the cost of recovery through liability order applications (See also §§171-177 this Annex).

Expenditure in respect of work in preparing and issuing summonses in cases where discretion is used to waive costs is not recovered from the defendant summonsed (para 17). It is apparent therefore, with none of this cost falling on the general council tax payer (para 16), that those against whom court proceedings are brought and costs paid, must be subsidising work done in respect of proceedings brought against those for

whom costs are waived. Incidentally, this cost must be more significant due to additional work being necessary to negotiate mutually acceptable payment arrangements, plus the monitoring thereof.

You can deduce from the equality and diversity issues (and the report in general) that standard costs have been set at a level to cover a broad estimate of overall expenditure which includes bad debt, waived costs, subsidising costs of court hearings, setting up payment plans, dealing with queries etc. This is all expenditure incurred by the council which is subsidised by those individuals who straightforwardly settle liability without causing this work. The report implies (para 18) that if an individual took up his right to challenge the standard sum under these circumstances, i.e., where liability is straightforwardly settled, it would assess them as being less than standard (See also §164, this Annex).

Westminster City Council

40. The question of whether there is justification in differentiating between the level of court costs for council tax and business rates is documented in Westminster City Council's 2003 proposal to increase court costs.
41. The authority stated that the administrative processes for Council Tax and NNDR Liability Order applications were identical and as such would be difficult to prove a difference in administration costs. It therefore decided that an application to the Court to increase costs may require a breakdown of administrative costs and so recommended that it would not differentiate between the level of court costs. The 8 August 2003 Cabinet report details at paragraphs 4.1 to 4.3, the relevant matter, as follows:
 - "4.1 It has been identified that some local authorities have a higher level of court costs for Non-Domestic Rate than Council Tax. It appears to have been accepted by their local courts that the increase was more in keeping with the larger sums involved for NNDR, therefore the higher level of costs would be more of a deterrent. However, the cost of issuing a summons should only take into account the administration involved and not a "deterrent" element, as there is nothing in the legislation to support an increase in costs on this basis.
 - 4.2 It would appear that the Legal Forum for London has agreed that it is acceptable to have different levels of court costs for Council Tax and NNDR within the same authority. However, in view of the above, legislative restriction it is assumed that this would only be acceptable in instances where

an additional administrative cost could be proved in relation to an NNDR Liability Order application.

4.3 An application to the Court to increase the level of costs may require the City Council to provide a breakdown of administrative costs. The administrative processes for Council Tax and NNDR Liability Order applications are identical and as such it will be difficult to prove a difference in administration costs. It is therefore recommended that the City Council does not differentiate between the level of court costs for Council Tax and NNDR.”

42. However, despite acknowledging that the administrative processes were identical, the report’s summary in its May 2005 review to increase costs stated in paragraph 1.1 the following:

“1.1 This report recommends that the Cabinet Member approves a proposal to increase the level of court costs for Council Tax Liability Order applications from £55.00 to £85.00 and for NNDR applications from £55.00 to £100.00.”

43. In its 2003 review, the authority reported that the Legal Forum for London had agreed upper limits for court costs of £85.00 for Council Tax and £100 for NNDR. However, it was thought certain that if those levels were sought it would require evidence to support the additional administrative costs which would prove particularly difficult to substantiate. By the 2005 review the Legal Forum for London had agreed revised upper limits for court costs of £88.00 for Council Tax and £160.00 for NNDR.

44. Westminster’s change in stance from earlier deciding not to differentiate between the costs appeared down to the council having more confidence that it would not be asked to provide evidence, as suggested in paragraph 5.5 of its May 2005 review:

“5.5 It is perceived that Horseferry Road Magistrates Court are likely to accept the proposed increase without requesting a substantial amount of additional supporting evidence. Although the increase represents a significant increase on the current level, it would mirror the level set by our neighbouring boroughs.”

45. Previous concern that costs should only take into account the administration was apparently no longer relevant. Neither did it maintain recognition of the legislative restriction preventing it from increasing costs on the basis it would act as a deterrent. Paragraph 4.1 and 4.2 of its 2005 review testifies:

"4.1 The City Council currently has the same level of costs for Council Tax and NNDR Liability Order applications. It has been identified that some local authorities have a higher level of court costs for Non-Domestic Rate than Council Tax. It appears to have been accepted by their local courts that the increase was more in keeping with the larger sums involved for NNDR, therefore the higher level of costs would be more of a deterrent.

4.2 In last year's report recommending an increase in the level of Council Tax and NNDR costs, it was recommended that the City Council did not differentiate between the level of costs for Council Tax and NNDR. However, the Legal Forum for London has recently agreed that it is acceptable to have different levels of court costs for Council Tax and NNDR. It is therefore proposed that the City Council approaches Horseferry Road Magistrates Court with an application to increase NNDR costs to a higher level than that set for Council Tax."

46. In the reports financial summary it estimated that the proposed increase in court costs would generate approximately £320,000 additional revenue in a full financial year above its 2004/5 Actual. This sum was, it stated, £200,000 in excess of its 2005/6 budget. Paragraphs 12.1 to 12.3 of the May 2005 report outline its reasons for the decision:

"12.1 The recommended increases will generate additional income for the City Council. The increased level of costs will also provide an additional incentive for the borough's Council Tax / NNDR payers to keep up to date with their instalment payments.

12.2 The alternative options would be to leave the court costs at their current level or to increase to a level below that set by the Council's neighbouring boroughs. This would result in the Council not maximising its potential income in this area.

12.3 An alternative option would be to increase the level of NNDR court costs to the maximum level set by the Legal Forum for London (£160.00). This level would however be out of step with our neighbouring Inner London boroughs and represent a 190% increase in relation to the current level of £55.00. It may also be difficult to obtain the agreement of Horseferry Road Magistrates Court to such a large increase."

47. Paragraph 5.6 of the 2005 report details that it was prepared to exploit the "deterrent" element of increased court costs, something it was previously reluctant to do:

"5.6 It is anticipated that the proposed increase in court cost will act as an incentive to the borough's Council Tax and NNDR payers to ensure that their instalment payments are kept up to date. It is planned to "advertise" the increased level of costs within the Council's Council Tax and NNDR reminder notices (the notices sent prior to court action)."

48. By the 2010 review, the London Revenues Group, over the previous couple of years failed to gain agreement from the London Courts to an increase which would set new maximum levels of costs that could be charged by any London Council. They were advised to approach their local Magistrate's Court to agree maximum level of costs. The 18 June Cabinet report stated at paragraph 3.5:

"3.5 The last increase to Westminster's court costs was in 2006, when Horseferry Road Magistrates Court (now Westminster Magistrates court) agreed to increase the level of costs for Westminster Liability Order applications to £95.00 for Council Tax and to £165.00 for NNDR. This increase was based on the London Revenues Group pan-London maximum levels agreed in 2005."

49. Cabinet Member approval was sought to increase the level of court costs for from £95.00 to **£105.00** for Council Tax and from £165.00 to **£185.00** for NNDR. The figures were based on inflation since the previous increase was agreed in 2006 by the London Revenues Group.
50. It was hoped (as the previous review) that the increase in court costs would act as a further incentive to Council Tax and NNDR payers to ensure that their instalment payments were kept up to date. Similarly is estimated that the proposed increase would generate additional income (approximately £130,000 annually) that could be utilised to offset against the overall cost of the administration of Council Tax and Business Rates.
51. By the 2013 review, Cabinet Member approval was sought to increase the level of court costs from £105.00 to **£115.00** for Council Tax and from £185.00 to **£205.00** for NNDR. The figures were based on inflation since its previous increase in May 2010 and moderated by review of other authorities' charges.
52. Up until the 2003 review the level of court costs for both Council Tax and Business rates Liability Order applications were £40.75. By the 2013 review they had risen to £115 and £205 respectively, an increase of 182% and 403%. Business Rates costs therefore had risen to a sum 78% higher than the level of Council Tax, even though it

had been stated the administrative processes for both applications were identical and would be difficult to prove a difference in costs.

53. There has been no clear evidence that any of the costs increases corresponded with higher recovery expenditure. The reports referred predominantly to the “deterrent” element and generating additional revenue which could be offset against the overall cost of the administration of Council Tax and Business Rates.
54. The 2005 review forecast that the annual sum generated additional to its 2004/05 level would be £320,000 of which £200,000 was quoted to be in excess of its 2005/6 budget. This coincided with the authority’s decision to impose costs in Business rates cases at a level 18% higher than Council Tax. It is therefore reasonable to assume that all or at least a proportion of the increased revenue (implied as profit) would be attributable to the council’s decision to introduce a “deterrent” element.
55. Evidence suggests that Westminster council viewed court costs and their manipulation as a mechanism for maximising income (as opposed to a means for recharging relevant incurred expenditure to the defendant). It appeared misconceived in its view as to why powers are conferred on billing authorities to enable them to make complaint in the Magistrates’ court.

A liability order is simply the vehicle empowering a billing authority to make use of a range of enforcement measures to pursue monies owed. Costs therefore arise out of the authority’s legal obligation to obtain authorisation to engage in further recovery. The court grants permission by way of the order, for which a prescribed fee is charged in respect of each account listed on the council’s bulk complaint. This forms an element of the costs which are recharged to the debtor.

It would be exploiting the legal power if proceedings were turned into an opportunity to coerce payment. For example, it would be an abuse if the costs were set at a level considered sufficiently punitive that the threat of a summons acted as an incentive for people to meet their liability, rather than set to reflect the expenditure incurred.

In other words, the court should not be seen as a vehicle to perversely raise costs (for example to penalise the debtor). It is vitally important to remember that the court is engaged because the billing authority is statutorily obliged. To that end, costs are incurred as a consequence, rather than the purpose of the application.

Court proceedings should not, but appear to be entered into with the intention of exploiting the costs element for the purposes of both penalising the defendant and to act as a threat to encourage prompt payment.

West Somerset District Council (WSDC)

56. WSDC's fees policy formed the basis of its decision to implement new levels of charges for Council Tax and Business rates court costs. One of the policy's objectives relevant to the decision was to achieve full cost recovery; the other being the deterrent element that had been factored into the increase.
57. The "*draft fees policy*" and the adoption of its principles played as much a part to incentivise prompt payment as the additional income that increasing the charges intended to generate. Under the heading, *Ability to Charge*, the fees policy sets out how the council might achieve certain objectives, including 'influencing public behaviour':

"Charges do more than just raise income. They have a role to play in the achievement of council objectives; controlling access; funding investment; responding to competition; and influencing public behaviour."

58. The review of court costs (N^o SC100/10) leaves no doubt that an entitlement to claim litigation costs is exploited by WSDC for the purposes of penalising the debtor. Paragraph 4.14 of the report dated 4.8.10 is as follows:

"4.14. As well as covering the Districts Council's costs it is envisaged that the increased level of Summons Costs and the introduction of the Liability Order fee will act as a further incentive for Charge payers to ensure that their instalments are kept up to date. This is also in accordance with the draft fees policy as it is designed to 'encourage behaviour'.

59. WSDC seems unaware that costs are incurred as a consequence, rather than the purpose of court applications from the fact that it had taken advantage of factoring a deterrent element into the increase. This is compounded both by the council's view that the principles of its fees policy, i.e. to deter / incentivise behaviour applied, and that the revenue generated from court costs was included along with other budgeted income from fees and charges.

60. It is also apparent that the person responsible to the council for the proper conduct of its financial affairs considered it good practice to take advantage of manipulating court costs to use as a threat to influence behaviour. The section 151 Officer stated as far as is relevant at paragraph 6.1 of the report as follows:

"6.1. This is one example of the practical application of the fees policy. Without that document to act as guidance, it is nonetheless good practice to recover costs in respect of court action from those 'driving' the level of activity, and to encourage payment with a deterrent."

61. The following is also quoted from the fees policy and evident that it has influenced the decision to increase costs both from an angle of encouraging behaviour and to 'at least recover cost'.

"Contribution to corporate priorities

- There may be circumstances where income generation is not the key driver for the way in which prices are set, for example, where the council wishes to manage demand, deter or incentivise certain behaviour, such as encouraging recycling or reducing car use. In this context, the principles of pricing should apply and in particular that any charged activities, enforcement etc. must at least recover cost."

62. The report's costings suggest that its overall 44% increase in its charges would achieve more than full cost recovery. The summons would be increased from £50 to £61 and an additional charge introduced for the liability order of £11, taking its total charge from £50 to £72.

63. Its combined Council Tax and Business Rates budget for 2010/11 was £44,500 which compared with £58,050 costs raised in 2009/10. £3,483 was paid to the Magistrates' Court in fees, but even if not budgeted for, the council would still (if collecting all costs raised) have a £10k surplus.

64. The increase in Summons Costs and introduction of a Liability Order fee was estimated to generate an additional £19,500 annual income. With the indication being that before the increase it was exceeding its budget by £10k, it would with its estimated additional income bump up the annual surplus to almost £30k.

65. Paragraph 4.13 of the report sets out the basis upon which the council estimates the cost per case which factors in an allowance for unrecoverable costs:

"4.13. The estimated cost per case for both Council Tax and Business Rates is calculated by dividing the total number of estimated summons by the overall costs (factoring in reduced numbers of Liability Orders following the introduction of a charge and a bad debt provision)."

66. Even factoring in a 10% bad debt provision which the council states is the average of court costs written off under its write-off procedures; before the increase, the council would still have had a £4,262 surplus. The admission however, that the standard costs include an element to cover bad debt is confessing to claiming more than is reasonably incurred in respect of those against whom court action has been taken and costs are NOT written off.
67. In respect of this 'bad debt' element it is evident that those incurring costs are subsidising the work done in respect of the court action that is taken against those from whom costs are unrecoverable (See §101, this Annex).

Barking and Dagenham Borough Council (B&DBC)

68. From the examples detailed up to now it is obvious that liability order expenditure has either in part, or all been front loaded to the costs charged for issuing a summons. In the case of B&DBC however, it has been stated explicitly in its list of Fees and Charges for 2015/16 that from 1.4.15 it has included the cost of a liability order in the costs charged to the defendant for issuing a summons. Reference numbers 988 and 989 (last page) of B&DBC's list of Fees and Charges for 2015/16 states as follows:

"Increases Council Tax court costs fees at the point of summons to include the cost of a liability order rather than charging extra at the liability order stage of collection. Effective from 1/4/15 as Academy cannot be amended until year end."

Chiltern District Council (CDC)

69. A Cabinet report (16 March 2010) set out how CDC could achieve a 10% saving on its Revenues Service budget by increasing court costs for late payment of council tax without the need to make cuts in staffing levels. Prior to the review, CDC levied no charge on the issue of a summons and costs were only applied for on making an

application for a liability order in the Magistrates' Court. Consequently, only those taxpayers who had not paid their liability by the hearing date incurred all the £83 standard costs.

70. The report set out how, over a four year period, it could raise additional income of an estimated £49.5k in the first year rising to nearly £97.4k by the fourth based on recovery activity projected over that period by introducing costs on the issue of summonses and incrementally increasing the overall amount over the four years. CDC has gone from levying no charge on issuing the summons to charging £65 which is 52% of its current total £125 costs for obtaining a liability order in the Magistrates' Court in council tax cases.

71. Meeting budget cuts by manipulating income generated from court costs raises concern because the basis upon which the level derives is plainly not from the amount of expenditure incurred. It is also unlawful to account for cases that proceed to court and recharge that expenditure to defendants who have received a summons but settled their liability before the date of the hearing. It is similarly unlawful to recharge expenditure (either summons or liability order) incurred arising from the additional work required to secure payment once having obtained the liability order. However, the following is revealed in paragraph 4 of its Cabinet report:

“4. The level of costs should be realistic but reflect the fact that we do not believe in principle that it is fair to pass on the costs of recovery from the few people who default on payment of Local Taxes to the vast majority who do not. Most of the costs the Council incurs arise from the application for a liability order at Court and the additional work required to secure payment once we have the liability order.”

72. The preceding paragraph in CDC's Cabinet report describes the steps taken to obtain a liability order prior to the review where there were no costs applied on the issue of a summons. There it confirms that the reference to an '*application for a liability order at Court*' refers explicitly to the court hearing at which the application is made, thus removing any doubt that it may possibly refer to instituting the complaint (application for a summons). Paragraph 3 of the Cabinet report states, so far as is relevant, as follows (emphasis added):

“3.if payment is still not forthcoming the Council will serve a court summons on the debtor to appear before the Magistrates Court. At the hearing the

Council applies for a liability order which gives further powers to recover the debt. On making the application for a liability order the Council may ask for a contribution towards the costs of the action.....”

73. CDC apparently admits that although there are legislative restrictions it nevertheless justifies using the application as an opportunity to claim (in court costs) all expenditure attributable to recovery. Also, despite admitting to incurring most of the expenditure in respect of the court hearing and thereafter, it has manipulated the composition so that the majority of its costs are levied in respect of instituting the summons as a budgetary measure to plug a gap in its finances by achieving a 10% saving on the Revenues Service budget.
74. If in the case of CDC, most of the costs incurred arise from the application for a liability order at Court and the additional work required to secure payment once obtaining the liability order, then it is likely all local authorities will incur costs similarly. The report therefore provides a persuasive case to question the legitimacy of councils giving greater weight to the cost of issuing a summons; however, those that front load the costs entirely in respect of instituting the summons, the case is even greater. The more questionable practice highlighted by the report seems to be that it is likely that post liability order expenditure, which may not lawfully be included in court costs, is in fact recharged to the defendant.

Adding costs to defendants’ accounts prior to the court hearing the case

75. It is probable most, if not all billing authorities, increase the defendant’s indebtedness by a sum equal to its standard Summons charge before an application to the Magistrates’ court has been made for a liability order.

Brent Borough Council

76. Members considered a report as part of the Council’s 2015/16 budget setting process seeking approval to changes to its recovery policy for council tax. Item 5 of Appendix H(ii) detailed its proposed summons and liability order costs for council tax and NNDR where it was made clear that costs are added prior to the court hearing. Paragraph 5.1.1 and 5.1.2 of the report state as follows (emphasis added):

“5.0 Liability Order Costs

5.1.1 Summons costs are applied for when the Complaint is laid and the costs debited to the account when the issue of the summons has been agreed. Both the summons and the summons insert give details of these costs. These summons costs will only be cancelled if the summons is withdrawn or in special circumstances where the costs are waived. Summons costs for Council Tax are £90 and Non-Domestic Rates £145.

5.1.2 Liability Order costs for council tax is £30.00 and for non-domestic rates £25.00. They are incurred when a Liability Order is granted. These costs can be asked for at Court even where the remaining balance outstanding relates to costs only. Taxpayers who therefore pay before the hearing date without settling Summons Costs may incur further costs. Liability Order Costs will be applied for in all cases where a balance remains outstanding on the Court list.”

77. An application for an award of costs is made at each court hearing for the Benches consideration. The authority may not itself add an amount to the outstanding liability in respect of instituting proceedings, yet it states that ‘Summons costs are applied for when the Complaint is laid and the costs debited to the account when the issue of the summons has been agreed’.

78. The case at this stage has not been heard (only complaint made) so adding court costs, despite there being no court order, pre-empt the bench awarding the amount applied for. The power to award costs lies with the Court on hearing the complaint. Section 64 of the Magistrates’ Courts Act 1980, provides so far as is relevant, as follows:

"(1) On the hearing of a complaint, a magistrates' court shall have power in its discretion to make such order as to costs—

(a) on making the order for which the complaint is made, to be paid by the defendant to the complainant;

(a)

as it thinks just and reasonable...

(2) The amount of any sum ordered to be paid under subsection (1) above shall be specified in the order, or order of dismissal.....”

79. It may be that defendants are notified of the amount that will be claimed in advance of the hearing in the Summons but there is no legal basis for adding costs to a defendant’s account prior to the court hearing the case. It is understood that costs follow the event

and the determination is a matter of judicial discretion and so requested in each application for a liability order (See also Annex C).

Oxford City Council

80. A document setting out the Council's procedures in relation to the recovery of unpaid council tax detailed within it the sequence of events with respect to summons and liability order costs for council tax and NNDR. The report entitled 'Council Tax Debt Recovery Procedure 2014' is unambiguous in stating that costs are added prior to the court hearing. Paragraph 5.1.1 and 5.1.2 of the report state as follows (emphasis added):

“3.5 Summons

.....the Council will apply to the Magistrates' court for a liability order to be issued.

A summons to appear at a liability order hearing at the Magistrates' Court will be sent to each person named on the bill and summons costs will be added to the account. These costs are reviewed annually.

A summons will always be issued with at least 14 days between issue and the court hearing date.....

If a taxpayer pays the amount of the summons including the £65.00 costs prior to the court hearing, then the application will not proceed and we will not obtain a liability order. If a taxpayer does not pay the summons amount including costs in full prior to the hearing, the hearing will proceed and we will ask the Magistrates to grant a liability order plus additional costs of £45.00.....”

81. It is admitted that that the authority adds the summons cost to the defendant's account at least 14 days before the case is heard. However, it goes on to acknowledge that if the debt is not settled prior to the hearing, the Magistrates will be asked to grant a liability order plus additional costs of £45. This raises concerns about why a distinction is drawn between the initial costs (£65) which the authority determines and adds itself to the defendant's account and the additional £45 it considers is necessary to ask the court to award.

Basingstoke and Deane Borough Council (B&DBC)

82. A Freedom of Information request made to B&DBC (FOI 717/14) asked for the cost incurred by the authority of issuing a summons. It was emphasised that the expenditure

should be in relation specifically to a Taxpayer who simply received a summons and settled the outstanding debt before the hearing (as distinct from the total cost of obtaining a liability order). Among the various responses to the request dated 23.12.14, it stated as far as is relevant as follows:

“I should remind you that the £60 costs are added to an individual's account when the summons is issued, not when the case is due before the magistrates at the Liability Order Hearing”

Public consultations / budget savings / budget targets

83. A number of councils, in their budget setting processes, have included options to raise income from reviewing court costs. Where proposals have been a matter for public consultation, and such options have been offered, respondents have in effect been able to influence the level of court costs. It is also evident that councils have budgeted income streams for court costs as published outturn forecasts, showing variances for this income, often show under spends that subsidise other budgets.
84. In some cases, proposals have been put out to consultation for the public to have their say on which they would like to see implemented, including increased court costs income.

Great Yarmouth Borough Council (GYBC)

85. As part of its budget setting process to save £1.5m in 2015/16, GYBC suggested in a public consultation that it could save money by increasing the fees for court summons. This was one of a number of possible ways it could save or increase income to plug a £0.4m gap existing between the savings of £1.1m already identified for having no negative impact on public services, and its £1.5m target figure.
86. An Eastern Daily Press article (July 29, 2014) reported on the challenge describing it as the council's biggest public consultation in years, for which residents were called on to have their say and suggest their own money-saving or income-generating ideas. Details were provided on how the consultation could be completed which included a link to the website for doing online.

87. The questionnaire listed money saving options that would have an impact on services, totalling just over £0.6m but because only £0.4m was needed from the changes in 2015/16, the council sought the public's views to guide it on which should go ahead. Respondents were therefore asked at section C – “*How could the borough council save money?*” to click on one box (see below) for each of the suggestions to indicate how willing they would be for the borough council to make the changes:

- Very willing
- Quite willing
- Neither / nor
- Not very willing
- Not at all willing

The last of eleven suggestions was to increase the court costs:

“To increase the fees for court summons for people who have not paid their council tax – estimated extra income £26,000.”

88. It is not in question whether the consultation was conducted properly; the concern is that it should never have been open for public consultation. The costs incurred by GYBC in respect of issuing a Summons had either increased or they hadn't and therefore not appropriate that the public were asked its opinion.

89. The published details don't match up with a report presented to Cabinet earlier in the year detailing the proposed amount of additional revenue the increase would generate per annum. Further papers obtained give more detail of the increase which puts the estimated additional income (stated as being a prudent costing) at more than double the £26,000 annual figure. The report stated that the proposed increase from its £60 standard summons costs to £75, based on known volumes of Liability Orders obtained would generate additional annual income of £56,000.

90. The discrepancy between the figure presented to the public and the sum recorded in the report is one matter; another is the disproportionate amount of the total gross cost of Council tax administration which GYBC attributes to court costs. The report to the Cabinet, together with a calculation supporting the level of costs reveals just how much of its budget is accounted for by residents incurring summons costs.

91. The report explains that a Liability Order gives Councils various options to recover outstanding Council Tax, such as attachment of earnings, deductions from benefit or the

use of enforcement agents and that the law allows it to charge reasonable costs for the issue of a Summons to obtain the order.

92. The regulations are then interpreted by GYBC to mean that any additional expenditure incurred due to recovery activity may be recharged to the defendant in respect of instituting the summons. The defining boundaries for which the regulations clearly confine costs are given no recognition. This is corroborated under the report's 'Background' information (paragraph 1.2):

"1.2 Reasonable costs are not defined in the regulations, but should reflect the cost to the Council of the recovery notices, IT systems and staff time in obtaining the Liability Order and recovering the debt, if required thereafter."

93. Under the heading "Requirements for change" it virtually confirms that the council takes the view that its budget for collection and recovery should be met by defendants incurring court costs. Those relevant paragraphs of the report state as follows (emphasis added):

"3.1 As there has not been an increase for six years in the amount charged for a summons, there needs to be an increase to reflect the true cost of the collection and recovery of Council Tax and Business Rates.

3.3 From analysis carried out using current costs of collection and recovery of Council Tax and Business Rates the Council would be able to substantiate reasonable costs in the Magistrates' Court, as being up to £75"

However, the report briefly details the proposal, worded in a way that suggests its costs refer only to expenditure incurred in connection with those against whom court action has been taken. Paragraph 5.1 is as follows:

"5.1 To increase the Court Costs for people summonsed to Magistrates' Court for non-payment of Council Tax and Business Rates, to reflect the cost of collecting and recovering these amounts"

Though unclear what costs GYBC seeks to recover, it at least intends including expenditure for work done after an order has been obtained. Even if not funding the entire collection and recovery operation, expenditure falling outside that for which the law provides is accounted for to be recovered through court summons costs.

94. Further misrepresentation of accounts arise from figures used to estimate additional revenue from costs increases being based on Liability Orders. There are fewer of these obtained than complaints made by virtue of the fact that the application shall not be proceeded with, if, after a summons has been issued but before the application is heard, the debt is paid. All of the costs are applied at the summons stage, and to that end, the estimated increase should be based on this number which would make the returned sum for the estimated revenue generated greater.
95. The extent of the error can be seen under the ‘Costings’ heading of the report where it shows the estimated increase in revenue for two proposed increases. One an increase by £10 to £70 and another by £15 to £75. Paragraph 4.1 is as follows:

"4.1 The table below shows a prudent estimated increase in revenue for various proposed increases in costs, based on known volumes of Liability Orders obtained:

Court Costs (£)	Increased Revenue (£)
70	37,000
75	56,000

96. Firstly, incorrect data has been used to estimate its increase; summons volumes need using rather than Liability Orders obtained. Secondly, the figures imply that the estimate has been based on around 3,700 Liability Orders; much lower than the 4,949 quoted in a spreadsheet supporting its costs. The discrepancy may be attributable to additional revenue being conservatively estimated, for example, in cases of severe financial hardship costs may not always be granted or may be waived, the report states.
97. There is of course an issue arising if a defendant asserted his right to challenge the council’s claim on the grounds that the standard costs being applied for in his case included an element that subsidised work which was otherwise unrecoverable. This could be due to costs being waived for the reasons described in the example, or as is often found, the authority factors in an allowance for bad debt. In the face of such a challenge, the Court would require satisfying that the amount claimed by way of costs in his particular case was no more than that reasonably incurred by the authority. On being presented evidence in support of the standard costs being inflated to subsidise bad debt for example, the court would have no justifiable reason to award the standard sum as

plainly the standard costs applied were more than that reasonably incurred by the authority in his individual case.

98. There are a couple of other obvious examples where it would similarly be valid for a defendant to challenge costs on the grounds that in his individual case they were more than that reasonably incurred by the authority. One would be where the defendant settles all outstanding debt on receipt of a summons without engaging the council further in respect of making the application for a liability order. This is because, like many other authorities, it is policy for GYBC to incorporate this element of expenditure into the standard summons costs.
99. The other involve defendants whose cases, even if proceeding to a court hearing, would not have engaged staff in activities in respect of work which is attributed to dealing with customers. Those activities typically involve making payment arrangements, monitoring those plans, telephone and email enquiries etc. They tend to make up the majority of the standard costs and those costs are incurred by all individuals served a summons, regardless of whether in those cases there was need to correspond with the council.
100. The law cannot have been enacted with the intention of giving billing authorities powers to increase costs in respect of one debtor from whom collection is easy in order to subsidise another's costs whose payment is more difficult to obtain. Neither would the same be intended to entirely fund those defendant's costs who simply don't pay them, perhaps because they're waived for example.
101. The disparity can be no better illustrated than comparing two account holders, who after being served summonses, respond differently as follows. One having contacted the billing authority enters into a payment arrangement and by doing so has his costs waived; the other simply settles his liability, including payment of the standard costs, in accordance with the demand.

The individual who escapes paying all costs has clearly caused the authority the majority of extra work in respect of dealing with the enquiry, setting up a payment plan and the ongoing monitoring of that account. On the other hand, the individual who straightforwardly settles the debt without causing this work is left standing the losses that arise from staff negotiating favourable terms for the authority that see the defendant's costs waived.

102. Turning to why these costs are being analysed (which is to focus on the disproportionate incurred expenditure) the figure used in the spreadsheet calculation for the number of summonses issued is 5,883. If this figure was used in its estimate then the £15 increase of the summons to £75 would raise additional costs of over £88,000 per annum.
103. Other Norfolk councils are offered up to draw comparisons with the amount charged as standard court costs. Those relevant paragraphs of the report state as follows:

"3.2 The table below shows what some other councils in Norfolk charge for the granting of a Liability Order"

Local Authority	Amount (£)
South Norfolk DC	70
North Norfolk DC	75
Kings Lynn and West Norfolk DC	75

3.3 It is recognised that the costs may not always be granted or may be waived, for example in cases of severe financial hardship"

104. Though the amount charged is "for the granting of a Liability Order", in two cases the amounts are in fact for the issue of a summons. Only South Norfolk District council (SNDC) apply costs in accordance with the regulations; that is they are applied initially at a lesser sum than the total in respect of instituting the summons and a further sum on being granted the liability order. The other two authorities both apply costs in the same way as GYDC, that is with them all applied at summons stage.
105. Revenue statistics give more information and state that SNDC's £70 cost comprise of £50 for issue of a summons with a further £20 added in cases where the liability order is granted. A less misleading comparison would therefore be between GYBC's proposed summons costs of £75 and SNDC's £50 summons costs, not SNDC's aggregate costs of £70.
106. The calculation requires a brief mention because an obvious error presents itself on viewing the spread sheet in that the calculated cost of the summons is a lesser sum than the reported £75 proposed figure. This is because the proposed sum takes in expenditure

attributable to additional work after the summons has been issued in respect of obtaining the liability order.

107. A closer look highlights the inclusion of expenditure falling outside the defining boundaries for which the regulations clearly confine costs to the summons for example, and distinguish those costs from the additional work to obtain the Liability Order.

Note: It is evident that the spread sheet has been produced from a template though slightly modified in its format from other examples that are publicly available.

The model is devised to facilitate fine-tuning of the input data to return the approximate sum required to support the costs claimed. The template provides a ‘*range of possible percentages*’ relating to a particular category of expenditure from which is applied the ‘*appropriate percentage for [the] particular authority*’. For example, the costs may be influenced to a greater or lesser degree by applying 15% or 5% from a possible range of 5-15%.

The template’s format implies that for each authority, the range from which the appropriate percentage is estimated would be identical. In practice this is not the case and the range offered also varies. For example, Croydon Borough Council, which has its calculation based on the same template, is offered a range of possible percentages that differ from GYBC; similarly the expenditure category descriptions are inconsistent. A note therefore, highlighting the differences (where relevant) is added for clarification.

108. The spread sheet initially presents a figure of around three quarters of a million pounds, described as the “*Total gross cost of Council tax and Business Rates operation*”. The supplementary note describes all the expenditure which is included in the gross costs:

Calculation of the reasonable costs in work involved in obtaining Council Tax and Business Rates liability orders	
1. Total gross cost of Council tax and Business Rates operation	£776,989.20
This amount includes all costs, direct staffing, staffing on-costs (pension and NI), support costs, accommodation, all relevant recharges (legal, finance, director, policy, committees etc), front and back office, computer costs, apportionment of debt charge – Customer Services proportion	

109. This sum is then split into categories to separate expenditure considered attributable to the summons / liability order and which work it could not attribute to court costs. Fifty per cent of the total gross cost is estimated as the summons costs whilst five per cent the additional work for obtaining the Liability Order.
110. Over £388k (50% gross total) is divided by the number of summonses issued (5,883) to determine an individual £66 summons cost. £39k (5% gross total) is divided by the number of orders granted (4,949) to determine an individual £8 liability order cost.
111. The previously mentioned discrepancy highlighted between the £66 summons cost justified by its calculation and the £75 proposed sum is not all the error. The spread sheet accounts for expenditure which falls outside the boundaries defined by the regulations.
112. To highlight how disproportionately expenditure has been attributed in terms of the two stages, and activities for which the regulations make no provision, these separate categories already briefly mentioned will be explored further.
113. Administration activities are split into five categories, three of which (the first three) deduct percentages from the gross total which are deemed sums which can not be re-charged to the debtor in respect of expenditure.
114. The first category (item 1) is headed “*General costs of operation in respect of customers that pay as due*”. It attributes 30% to this category taking into consideration the levels of staff required if enforcement was not necessary, including billing, dealing with changes of circumstances, considering reliefs etc.

	Range of possible percentages	Appropriate percentage for particular authority
1. General costs of operation in respect of customers that pay as due	5-30%	30%
What levels of staff would be required if enforcement was not necessary? Include billing, dealing with changes of circumstances, considering reliefs etc		

Note: Croydon’s ‘*range of possible percentages*’ narrows to between 5-20%, from which the appropriate percentage is estimated at 18%.

115. The second category (item 2) is headed “*Cost of dealing with customers that progress to reminder / final but do not progress to liability order stage*”. Only 5% is attributed to this category.

	Range of possible percentages	Appropriate percentage for particular authority
2. Cost of dealing with customers that progress to reminder / final but do not progress to liability order stage	5-15%	5%

116. Item 3 accounts for costs attributed to work for which the law makes no provision. In this category it considers deducting a percentage from the gross total which is deemed a sum which can not be re-charged to the debtor in respect of expenditure incurred after obtaining the Liability Order. Item 3 is headed “*Cost of work post liability order after Attachments, Bailiffs and Arrangements*”. The note accompanying the entry in the spread sheet prompts the assessor to consider how activity is financed, i.e., whether bailiffs, committal and insolvency action are self-financing or covered by charges:

	Range of possible percentages	Appropriate percentage for particular authority
3. Cost of work post liability order after Attachments, Bailiffs and Arrangements	2-10%	10%
Consider whether bailiff activity is financed by bailiffs retaining fees and therefore self-financing Is insolvency action self-financing? Are committal costs covered by charges?		

The range of possible percentages offered is narrow and unrealistically low given that Chiltern District Council state that the work to secure payment once having obtained the liability order is one of the activities from which most costs arise.

The 10% upper limit has been entered as the appropriate percentage, however, on being offered a wider range there is a realistic possibility the assessment would have been higher. The category’s heading is key to this assertion as it deviates from the template’s description written simply as the “*cost of work post liability order*” (see later note comparing Croydon).

The heading used in GYBC's spread sheet may have been modified to compensate for an unrealistic percentage range (2-10%). Editing the description would function as a way of aligning the low proportion estimated more credibly with the restrictive percentage range for that category. With it headed "*cost of work post liability order after Attachments, Bailiffs and Arrangements*", the scope to do this was much greater. However, GYBC is showing to be recharging costs in respect of work carried out post liability order and there is no mistaking that the law makes no provision for this.

Although the maximum has been entered, it still only represents 10% of the gross total cost. Therefore, this one amount taken out of the calculation which accounts for neither the summons nor liability order element comes only to around £78k.

The individual standard summons is inflated because of the under-accounting in this category. The cause of this being that expenditure is included erroneously for work beyond which the regulations permit and not helped by the template's restrictive percentage range of between 2-10%. The law makes no provision for any expenditure to be attributable to court costs which is incurred after securing the liability order; any incurred from that point onwards should be excluded. However, costs are accounted for in respect of making attachment of earnings, attachment of allowances, instructing bailiffs and making payment arrangements – all which involve work carried out after a liability order has been secured.

To include this costs element (even to determine a broad estimate of overall expenditure) has no lawful justification – less so in cases where individuals straightforwardly settle liability without causing this work.

The described error highlights that this category has been underestimated. A truer proportion would be one noticeably higher than 10%, if in accordance with the law, the post liability order expenditure described was excluded. If a correctly estimated increased percentage was deducted from the total gross cost, a lesser sum from which to calculate the costs would remain. With the remaining sum then split between the number of defendants on the complaint list, the costs individually would be accordingly a lower.

Note: Croydon offers the same percentage range but GYBC estimates 10%, as opposed to Croydon's 5%.

Of more significance is the difference in item 3’s description for which Croydon merely labels it as the “*Cost of work post liability order*”. The category relates to excluded expenditure, giving the impression that the law, which makes no provision for recharging this to customers is being complied with.

Croydon’s description omits the words “*after Attachments, Bailiffs and Arrangements*”, which are in GYBC’s case tagged on to the heading. This suggests that Croydon, in theory, calculates its costs in accordance with the law. However, it is confirmed in a document supporting the calculation that expenditure is recharged in respect of “*action that may be required after a liability order is obtained*”. It therefore appears that the function of these breakdowns – which are in practice merely arbitrary sets of figures – is simply to attach authenticity to a billing authority’s claim of costs.

117. The remaining 55% of the total gross cost (after subtracting items 1 to 3) is subdivided into two further categories forming the summons and the liability order expenditure. The split appears arbitrary with a disproportionate 50% attributed to the summons and only 5% the liability order.

There are two immediately obvious reasons why so much of the gross total falls to the summons. Firstly, the work attributed to the liability order is likely to be grossly underestimated. Secondly, the proportion would be significantly less had the 10% deducted (item 3) included the substantial volume of work, post liability order, that the law makes no provision for re-charging to the debtor.

Both are feasible bearing in mind the admission made by Chiltern District Council concerning most costs arising from the application for a liability order at Court and the work to secure payment once having obtained it.

118. The sum deemed re-chargeable to the debtor in respect of expenditure incurred regarding the summons is headed in item 4 below. The note accompanying the entry in the spread sheet prompts the assessor only to consider all activities from billing to summons stage:

	Range of possible percentages	Appropriate percentage for particular authority
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4. Cost of work involved in all activities in respect of those customers where it is necessary to make complaint, issue summonses, obtain LO's and do attachments, arrangements and referrals to bailiffs	50-70%	50%
Include all activities from billing to summons stage		

If the above has been misinterpreted to include the cost of all the work it lists, it would explain why the estimate disproportionately accounts for half of the total gross cost of the Council tax operation. In fact the only activity relevant is for issuing the summons; all other work should not be accounted for and is merely identifying which customers the costs are in respect of. The note accompanying the spread sheet entry verifies this as it states that the costs should only “*include all activities from billing to summons stage*”.

There is only relevance to costs for defaulters who are served summonses so the other work listed gives rise for potential (and probable) misinterpretation by the person carrying out the assessment. All the other activities are dependant on the authority proceeding with recovery once the summons has been served. Essentially the other work (obtaining Liability Orders, doing attachments, arrangements and referrals to bailiffs) is not undertaken in every case where a summons is served and so irrelevant to the summons costs.

Expenditure in respect of attachments, arrangements and referrals to bailiffs, as mentioned falls outside recoverable costs, leaving only legitimate expenditure incurred for activities in-between summons issue and liability order hearing. However, for the purposes of attributing costs to the summons it plainly can not include that listed for obtaining Liability Orders.

Note: Croydon’s template offers between 45-65%, which is the same range but shifted slightly lower than GYBC (50-70%). However, GYBC has elected to use the 50% lower limit for calculating the summons whilst the maximum 65% limit applies in Croydon’s breakdown.

As in the previous category, item 4’s description (with respect to Croydon’s template) presents less ambiguity for the person carrying out the assessment. The heading is shortened to the “*cost of work involved in all activities in respect of those customers where it is necessary to make complaint and issue summons*”. Like GYBC’s template,

the note clarifies that the expenditure must only include “*activities from billing to summons stage*”.

119. The sum (5%) deemed rechargeable to the debtor in respect of expenditure incurred regarding the liability order is presented in the remaining category. Item 5 below is headed as the “*cost of activities between summons and liability order hearing*”. The note accompanying the entry in the spread sheet prompts the assessor to consider activities in respect of the 2/3 weeks between summons and liability order:

	Range of possible percentages	Appropriate percentage for particular authority
5. Cost of activities between summons and liability order hearing	2-10%	5%
In respect of the 2/3 weeks between summons and liability order		

Although only 5% has been estimated as the appropriate percentage, it is this period (along with after the liability order has been obtained) when most contact is expected will be made by individuals querying their accounts. Accordingly, staff will be engaged with those debtors taking telephone calls, corresponding by email/letter etc., and making payment plans likely to involve setting up direct debits. With this in mind – and Chiltern District Council admitting that the application for a liability order at Court is one of the activities from which most costs arise – the percentage estimated appears unrealistically low.

Notwithstanding this expenditure being estimated at 5%, the calculated cost of the summons (first mentioned, see §110), is a lesser sum than the reported £75 proposed figure. The spread sheet confirms that the reported £75 proposed figure is the approximate aggregate of the summons estimate of £66 and the liability order of £8.

Though the composition of the costs is likely to be random, the breakdown nevertheless demonstrates that the costs are made up of the two elements for which the regulations distinctly make separate provisions. With it clearly evident that both costs have been consolidated and applied to the summons stage it is questioned whether this is in accordance with the regulations. GYBC is knowingly increasing the costs for debtors being served summonses who settle their liability before the case goes to court, in order to subsidise the cases that do progress to a hearing.

Finally, in respect of the summons data entered into the spread sheet, it is observed that by front loading all the costs, it raises in excess of the aggregate attributable to the summons and liability orders. Of the total gross cost, it estimated 55% (£427,344) could be recharged to debtors. However, raising £75 costs in respect of the 5,883 summonses brings the figure to £441,225 which is £13,881 more than GYBC's estimate.

North East Lincolnshire Council

120. The public and interested groups were invited to participate in a budget consultation exercise during November 2010 prior to the presentation to Cabinet of the 2011/12 draft budget and medium term financial plan for the period 2011-2015. The process included an interactive budget simulator on the council's website where respondents could move sliders to adjust funding up or down and/or tick boxes to select the options according to their preference for where savings could be made.
121. An introductory explained that the council must save £29.7 million over the next four years. This was the headline figure displayed on the Simulator and the sum after which selection of the various money saving options would reduce correspondingly.
122. The various budgets/saving options were split into groups, for example, the first category, 'where we spend money' allowed respondents to adjust spending by setting sliders to the appropriate level. The second, 'how we can bring money in', offered two options to obtain additional revenue, which respondents could apply by ticking the box of the relevant tab.
123. One of the two proposals to bring money in was to 'Increase court costs for summons and liability order for Council Tax and Business Rates debtors'. Selecting 'read more' from the tab provided information necessary for the respondent to make an informed decision, as follows:

“Where a case of non-payment of Council Tax or Business Rates requires a court summons the debtor is charged for summons issue (£32 for Council Tax summons, £47 for Business Rates equivalent), then a further charge of £25 if a liability order is obtained.

Latest national information shows that the average cost charged by other unitary councils for Council Tax summons is £57, the average liability order cost is £21.

For Business Rates the average cost per summons is £81, liability order £35

Our charges for Liability Order are above average but this is outweighed by our low cost of summons.

In 2009/10 11,700 Council Tax summons and 1100 Business Rates summons were issued.

We could increase summons cost to £70 with no costs for liability order, bringing NELC into line with similar Authorities across the country.”

124. It appears NELC justified its proposed increase based on the level other authorities charged rather than on administrative costs that could be proved were additional. The cost of issuing a summons only takes into account the administration involved meaning the amount recharged to the defendant may not be manipulated to balance budgets in a way ‘fees and charges’ might. Neither is it justified to match other council’s levels as there is nothing in legislation to support an increase in either case.

125. To assist the respondent make an informed decision, the potential disadvantages for bringing in money in the suggested ways became available after selecting the option ‘consequences’ on the tab. In the case of increasing summons cost the information revealed was as follows:

“Likely increase in complaints and may affect people who already have financial difficulties (i.e. those who can’t rather than won’t pay).

However, the number of summons issued has reduced over the last 2 financial years due the work that is being done to make more flexible arrangements with debtors at an early stage.”

126. If the measure intended bringing in additional money then it must have relied on maintaining the number of people summonsed at or around a certain level. However, the statement made in the second paragraph (in mitigating the first) is in direct conflict with this idea because of the effort put in to reducing the number of summonses issued. This would seem not only to fail in its objective but bring about extra work for staff in respect of arranging/monitoring payment plans and subsequently dealing with queries when arising.

127. The drive to reduce summonses therefore brings about increased recovery expenditure for the council. Ironically then, as the taxpayer who would have defaulted now benefits

from having payments rescheduled and avoids a summons, those costs are not recharged to the debtor who faced difficulty and caused the work.

128. Though undeniably better to have policy that prevents increasing the indebtedness of those facing financial difficulty, it is another matter that the additional recovery expenditure must be funded elsewhere. It would be consistent with how other administration is funded if absorbed by the ratepayer in general, like for example staff processing housing benefit claims. If however, the work is funded by the council claiming a greater level in court proceedings, then those who are summonsed would incur costs that were increased to subsidise work assisting others avoid court. As costs must be incurred in respect of the court application, and by virtue of flexible arrangements, applications are not made in those cases, then none of this expenditure is incurred in respect of any of the debtors who are summonsed (See §67, this Annex).
129. Like GYBC (See §89, this Annex), NELC also presented a much lower estimate to the public than it did Cabinet in respect of the additional revenue that increasing summons costs would generate.
130. The annual figure put forward to Cabinet in respect of additional revenue was £188k, so in the four year period the total equivalent budget saving was estimated at £752k, however, the budget simulator indicated savings of £247k. It would have been reasonable to assume the figure represented annual savings and so selecting the option would reflect a £988k reduction on the Simulator's counter. It would be feasible that an allowance, roughly 25%, had been factored in for bad debt by the time members convened that accounted for the £752k put forward to Cabinet and the implied £988k that the simulator indicated would be saved.
131. The £247k figure was in fact the overall savings made over 4 years (not annually) according to the simulator, confirmed by the balance reducing only by that amount after selecting the option, i.e., from £29.7m to £29.453m. The 4 year savings presented to the public was underestimated by more than half a million pounds than the more realistic figure put forward to Cabinet.

Newcastle City Council (NCC)

132. An option to 'increase court costs' was included in NCC's public consultation (part of its 2015-16 budget setting process). The council also intended setting costs at a higher

level and loading more at the summons stage to act as a deterrent (See previous examples §§15-30, this Annex). Page 6 of its Integrated Impact Assessment (dated 6.11.14) documents the relevant matter, as follows:

“Increase Court Costs

In line with our tougher approach to dealing with debt recovery we propose revising our court costs for summons and liability orders. As shown in the table below, we propose to front load costs at Summons stage to incentivise debtors to settle their debts at an earlier stage in the recovery process. A combined charge of £100 is inline with Tyne and Wear neighbours.

Charge	Current	Proposed
Summons	£42	£60
Liability order	£42	£40

This will need to be agreed by the Magistrates court, and will generate an additional £70k per year (in addition to any increased recovery of debt).”

Gateshead Council

133. The public were consulted on choices available to make savings as part of the budget setting process for 2014/15 and budget planning for 2015/16. It was proposed in the report that Gateshead council could generate additional income by increasing Council Tax and Business rates court costs. Page 31 of its 15 October 2013 report to Cabinet documents the relevant matter, as follows:

"(ii) *Income* – the Council could increase its charges in relation to court costs and the recovery of Council Tax and Business Rates monies. This option could generate income of up to £100,000.”

Another document (Comprehensive Impact Assessment 2014-16) added that the savings would be made by increasing its current charge for court costs by £15 from £70 to £85.

Blaby District Council

134. Blaby District Council viewed court costs as a source of income. In its General Fund Revenue Account – Budget Proposals 2011/12 (21 February, 2011) it included this as one of the ways it could generate additional income:

Additional Income

The Council has also examined the potential to generate additional income, thereby reducing overall costs by identifying new sources. A total of £346,086 has been identified through this process and these are set out in the table below:

Additional Income	£
Refuse and Recycling income	167,599
Planning Pre–Application Advice	50,000
Council Tax Summons Costs	53,909
Leisure Centre Contract	37,762
Three Oaks Homes – Vehicle Service Level Agreement	20,514
Street Cleaning	16,302
TOTAL	346,086

Nuneaton & Bedworth Council

135. It was reported in its ‘General Fund Revenue Budget and Capital Programme 2011-2012’ that by raising summons charges by £10 it could contribute £22,500 to the £749k it needed to meet the current deficit:

“The report of the Assistant Director – Finance and Procurement submitted a report on the draft General Fund revenue budget for 2011/12 and the Capital Programme and Financing for 2011/12 and made final recommendation before submission to Council for approval.

RESOLVED that

(a) That the General Fund draft revenue budget 2011/12, attached as Appendix A to the report be recommended to the Council for approval and the current deficit of £749,000 (para 4.13) be funded as follows:

	£
(5)	
(6) By increasing Council Tax summons	22,500

charges by £10
(7)

Dartford Borough Council

136. Dartford Borough Council's 2003/04 Commentary on the General Fund (Appendix A) describes how it used a surplus of costs income to meet other expenditure, which in this case was to offset an overspend on benefits.

“CENTRAL SERVICES

Benefits

This service includes expenditure budgets of some £8.8m and income of £8.3m. Net expenditure on Council Tax Benefits and Non HRA Rent Rebates is up on budget as at the end of August. However, this is offset by reduced net expenditure on Rent Allowances, with a net overspend of approximately £40,000 predicted.

Court costs awarded in respect of Council Tax arrears are up on budget, with an estimated income position of £142,000 forecast against a budget of £130,000, offsetting to some extent the projected net overspend on Benefits.”

Note: In 2013 the High Court ruled against Barnet Borough Council budgeting for a surplus of income from residential parking schemes to be used to meet other transport expenditure; *Attfield, R (on the application of) v London Borough of Barnet [2013] EWHC 2089 (Admin) (22 July 2013)*

Durham County Council

137. Similarly it is evident from a Cabinet Report 19 March 2013/14 (Forecast of Revenue and Capital) page 8 & 9, that court costs are used by Durham to offset other budgets with what it states is £0.384m, primarily from increased court cost fee income:

“.... The balance comprises a forecast over recovery of income of £0.384m, primarily from increased court cost fee income relating to council tax and business rates recovery.”

Haringey Borough Council

138. Paragraph 5.10 (second to last bullet point) in Haringey's Budget Monitoring report 2014/15 dated 16 September 2014 documents that court costs income props up other council expenditure (customer services) by offsetting an otherwise greater overspend:

“£400k overspend in customer services predominately due to slippage in delivery of the 2014/15 savings (£660k) partially offset by forecast over achievement of court costs income.”

Item 2 (page 15) of Haringey's Financial Outturn 2011/12 details that an overachievement of court costs income lessened the impact of over spends on salaries and postage costs:

“**Revs, Bens & customer services Management Costs** - the underlying cause of this over spend is the higher than planned demand for services particularly around benefits. This has led to notable over spends on salaries and postage costs. These pressures have mitigated down by an overachievement of income from reimbursement of court costs incurred during recovery activity.”

Page 5 of Haringey's explanation of variances from budget (Outturn 2013/14) documented that it had over achieved with court cost income therefore part of an under spend of £446k which contributed to an under spend of £1.32 million Revenues, Benefits & customer services budget. Incidentally, the council saved, rather than used funding given it by the government to pay council tax benefit claimants:

“**Revenues, Benefits & customer services - Management** - the funding and responsibility for local welfare provision (Support Fund) transferred to local authorities from April 2013. Haringey along with many other authorities has significantly underspent this grant (£877k) and proposes to transfer it to a reserve for drawdown in the future. This is particularly important as the government has confirmed that funding will cease from 2015/16. The remaining under spend (£446k) is due to over achievement of court cost income and receipt of one-off grant funding largely in support of the changes to welfare and universal credit.”

Canterbury City Council

139. Canterbury City Council acknowledges that its court costs are a source of income with it expressing that the downside of fewer individuals getting into arrears was a shortfall of income from council tax recovery. This is documented in the Council's Agenda 16 “*Revenue Budget Monitoring Report*” incorporated into the March 5, 2009 Document pack (Agenda to the Executive) on page 58 as follows:

“Council Tax – costs recovered

This represents the recovery of summons costs and liability orders. The revenues division has been extremely successful in maintaining a high collection rate for council tax (highest in Kent). Additionally, there have been several award winning direct debit campaigns that have effectively reduced the number of council taxpayers that get into arrears and subsequently face summons or liability order costs.

The high collection rates and earlier direct debit dates means the city council’s cash flow is enhanced substantially, resulting in additional investment interest receipts. The negative side of all this is that with fewer individuals getting into arrears the costs recovered are diminishing, and a £53k income shortfall is now predicted.”

However, in its 2009/10 General Fund Revenue Account it distinctly referred to its court costs “target”. The above was reiterated almost word for word except for the last sentence which it substituted with the following:

“However, the offset against this is that the anticipated level of receipts from court costs did not reach the target and a shortfall of £52k exists.”

North East Lincolnshire Council

140. A report of the Audit Committee (Final Accounts 2004/05) leaves it in no doubt that NELC has a budgeted income stream for court costs. Due to exceeding its income target for that year in respect of summons cost, a surplus of £0.125 million was made available for other budgets. Appendix 2 of the report of 28.7.05 documents this on page 15 as follows:

“Finance Restructure resulted in vacancy savings (£597K), additional benefit subsidy income arising from changes in subsidy rules and grant received on benefits overpayments (£1,004K) Revenues and Benefits also exceeded their income target in respect of Council Tax and NNDR summons income (£125K) and housing benefit overpayments (£116K)”

Hull City Council (HCC)

141. A report by HCC (see §§178–184, this Annex) considered the impact proposed changes would have on the estimated £200k surplus to its 2013/14 budget for revenue generated

from court summons costs. The report details the relevant point at paragraph 5.5, under heading 'Financial implications', as follows:

"5.5 It is inevitable that there will always be some people that will default on their Council Tax leading to the issue of a summons. Therefore, in the Council's budget there is an estimated income line for the income from summons raised. That line is currently £1.313m and which is currently set to remain the same for 2014/15. It is estimated that the actual income from costs raised in 2013/14 will be circa £1.5m therefore creating a surplus this year which has been used to offset other budget pressures"

Accounting inconsistently for interest in respect of recovery

142. Some billing authorities have been found to add an element of costs which is recharged to the debtor in respect of delayed payment (attributable to lost interest or cost of additional borrowing). This approach is inconsistent as there is also a benefit in respect of early payment which should offset this loss but is never focussed on.
143. Where a summons prompts payment early because the facility to pay by instalments is withdrawn, the authority in fact benefits from the lump sum payment which ordinarily would have been spread over the year.
144. If a consistent approach was taken the interest on this capital, which the council benefits from sooner, would be accounted for and offset against incurred costs.
145. It appears reasonably consistent from a sample of councils that around 75% of summonsed accounts end up with liability orders being granted. The ratio gives an indication to how many accounts are settled early. Where an account is summonsed, but does not subsequently result in a liability order, it is reasonably assumed that in most cases the balance of the entire council tax liability plus the costs have been paid prior to the court hearing. If around a quarter of these cases end in early settlement, the interest earned sooner, and the cash-flow benefits, must have a significant positive impact on the Council's budget. The degree to which the authority benefits in terms of these lump sum payments will of course vary to a lesser or greater degree, depending on how early in the year the bill is demanded.

Redcar & Cleveland Borough Council

146. A report to the cabinet (12 May 2005) sought Member's approval to increase Summons Costs from £11 to £26. It was claimed the required increase needed 'to offset the cost of the overall additional administrative burden in recovering unpaid Council Tax and NNDR, and the loss of interest incurred by the Authority on monies unpaid'.
147. A summary of estimated costs incurred by the Council for the area of recovery was referred to in the report. Based on its then current Summons cost of £11, it showed that the loss of revenue associated with unpaid debt was costing the authority £83,000 and to offset the loss, costs would need increasing to £26. Appendix 1 of the report is below:

Appendix 1

ESTIMATED SUMMONS COSTS CALCULATIONS BASED UPON 2004/2005 ACTIVITY

Summary	£
Stationery Costs Council Tax	10,213
Stationery Costs NNDR	1,019
Lost Interest on Revenue	62,500
Labour Charges inc. oncosts	<u>68,960</u>
Total	142,692
No of Summons issued (CTAX & NNDR)	5,369
Cost per Summons	£26.58p

(Note:- Value of Summons issued in 2004/2005 was £3,094,912)

148. It should be pointed out that the majority of the £3.1 million, noted as 'the Value of Summons issued' related to householders for whom the right to pay by instalments was lost and liable for the full year's Council Tax bill. As such, a significant proportion of that figure would relate to capital which was available to the authority sooner. It appears then that the 'value of summons' had been misrepresented as capital for which it could attribute lost interest in its estimated expenditure.
149. It is extraordinary that of the total annual incurred costs for the summons, it had attributed close to half of this to lost interest.

Leicester City Council (LCC)

150. All billing authorities in Leicestershire and Rutland charge standard costs which are applied on the issue of a summons. Calculations produced by four of the authorities (Leicester, Rutland, Charnwood, and Oadby & Wigston) are averaged at £70 and taken to represent the costs of all nine councils.
151. Each of the calculations includes an element of expenditure which is attributable to loss of interest. This appears under the category, ‘Cash Flow Adjustment - borrowing for late and non payment’. Though the amount is negligible compared with Redcar & Cleveland, these calculations are similarly inconsistent as the interest gained due to early payment is not accounted for.
152. LCC responded to queries about the interest which was a benefit to the council’s finances due to instalment withdrawal but not accounted for in a way consistent with that which it considered a loss. LCC explained it was not factored in because of the difficulty in calculating it. The same difficulty arises however calculating an element with respect to lost interest, so appears due to a selective oversight that a figure in respect of instalment withdrawal is not estimated similarly.
153. A comment, seeming to defend the reasonableness of its costs, made a comparison to the fines for non-payment of the television license which was stated can also be significantly more for debt which is much smaller. The fact that it associated its expenditure with a fine showed a fundamental misunderstanding that costs should not exceed the proper expenditure incurred and should not be a penalty (*Regina v Highgate Justices ex parte Petrou* [1954] 1 ALL ER 406).
154. However, the bigger misrepresentation in Leicester’s calculation is in the way it accounts for staff time and then doubles that expenditure. The hourly rate for staff dealing with recovery (2011/12) was calculated at £13.94 (including employment costs) then doubled to £27.88 and applied as the hourly rate in respect of the time attributed to recovery work.

Scale 5 - per Annum	£21,519
Scale 5 - per hour	£11.15
Employer Cost - 25%	£2.79
	<hr/>
	£13.94
	<hr/>

Cost of employing staff to do the "day work"
while staff are dealing with recovery work

£13.94

£27.88

155. The above is justified on the basis that the cost of employing staff to cover for non-recovery work whilst staff are dealing with recovery work is considered to be an additional cost attributed to recovery. However, the fact remains that for each hour that was claimed to be spent on staff's wages in respect of recovery, it successfully convinced the court it paid two.
156. Pay scale 5 staff activity which was attributable to recovery totalled 23,196 hours (£646,711). Making no account for any other errors, if half of that sum, which was the falsely accounted £0.32 million, was wiped off, the overall total expenditure of £0.945 million would have been reduced to £0.62m. The error just this one element represented was 34% of the overall total estimated expenditure.
157. The same calculation justifying its 2011-12 court costs detailed only 65% (£41.25) of its overall expenditure was attributable to the summons, which in that year was £63. The remaining expenditure (£21.72) accounted for additional work incurred by the council in respect of obtaining the liability order, though in spite of this the aggregate £63 was applied on issuing the summons.
158. With the breakdown recording two distinct costs elements relating to the summons and liability order, it was evident, by the aggregate £63 being applied at summons stage, that expenditure had been front loaded in breach of the regulations.
159. A subsequent calculation (2014-15) had been reformulated so that the summons and liability order costs were no longer separately identifiable, but both obviously still accounted for. It is evident that unjustified costs in respect of the court hearing and post liability order had been included in estimating the level recharged to defendants via the summons.
160. A letter dated 21.2.14 on behalf of the Leicestershire Association of Local Authority Treasurers Revenue Practitioners Group sought approval from the Justices' Clerk of Leicester Magistrates' Court regarding revised court costs. It proposed summons costs from April 2014 of £70 per summonsed account to be charged by all billing authorities

in Leicestershire and Rutland based on the average costs of the four authorities mentioned.

161. The proposal set out several reasons for justifying the increase and also clarified its position regarding the application of costs as follows:

“No authorities in Leicestershire and Rutland will be raising additional costs at the time of the application for a Liability Order.”

162. It is implied that additional cost could be justified in respect of the liability order application but for whatever reason are not applied for. The calculations however make it clear that additional costs are already accounted for and front loaded to the summons. A Freedom of Information request was made asking for data relating to historical summons and liability order costs. In response to the request, which also asked for the composition of charges, it was stated that the amounts are made up of summons costs only. The response (FOIA 5872) dated 11.6.14 stated as far as is relevant as follows:

“All the amounts are made up of summons costs only.

Costs are set at the same level for all the Leicestershire Authorities and are authorised by the Leicester Magistrates’ Court (Nick Watson, Justices’ Clerk and the Chairman of the Bench). The base calculation takes place every third year and for the other two years the increase is in line with inflation. The base calculation is taken as an average from four of the Leicestershire Authorities: Leicester City, Oadby & Wigston Borough Council, Rutland and Charnwood Borough Council. Details are only available for 2011/12 and 2014/15, which are attached for Leicester City only.

163. LCC also provided details of its last approval for costs from 10.3.14. The Justices' Clerk stated as far as is relevant as follows:

“I am pleased to say that I have now heard from the Chairman who is happy to approve your costs. Of course it will be open to those against whom you proceed to challenge the application in individual cases.

.....

Justices' Clerk and Secretary to the Lord Chancellor's Advisory Committees for Leicestershire & Rutland, Lincolnshire and Northamptonshire”

164. The Justices' Clerk indicates that the court accepted the costs as an amount reasonably incurred by the council as a broad estimate but was mindful that they would vary from

one case to another. Appreciating that, and ensuring all defendants were treated with due regard for the law it was reinforced that where representation is made about the costs charged, those relevant cases would require individually assessing.

Note: If on being served a summons (where debt is simply settled) an individual took up his right to challenge the standard level of costs, a proper assessment could only determine them as less than standard. There could be no other logical outcome as the standard costs have been set at a level to cover a broad estimate of overall expenditure which includes bad debt, waived costs, subsidising costs of court hearings, setting up payment plans, dealing with queries etc.

Inconsistencies in calculations produced by the four authorities

165. Breakdowns were obtained for each of the four Leicestershire Authorities that were used to form the base calculation for 2014/15. It was noted that different approaches had been taken to calculate the costs, presumably in order to return an individual cost of roughly £70. Charnwood and Oadby & Wigston in the same way as Leicester accounted for staff time twice, i.e., the hourly rate for staff dealing with recovery of £14.12 was doubled to £28.24 (See §§154–156, this Annex). Rutland on the other hand accounted for staff time differently.
166. Rutland’s breakdown listed a range of hourly rates it applies to various aspects of recovery relating to the pay grade of the relevant employee(s) involved in the activity. The rate in respect of its Senior Recovery Officer aligns with Leicester’s Revenues & Benefits Officer (£14.12) but where Leicester, Oadby & Wigston and Charnwood double the hourly rate, Rutland simply applies the rate to each hour it estimates is attributable to recovery work.
167. It is known from the letter (See §160, this Annex) seeking approval of court costs that the calculations were sent to the Justices' Clerk:

“Details of the calculations are attached with a summary and I would request that you keep this information confidential.”

It also stated as one of the reasons justifying the rise that an increase in recovery activity had affected the costings:

“The costings have been affected by at least a 50% increase in recovery activity due to the change in Council Tax Benefit to a Local Council Tax Reduction Scheme and this has had an impact on resource levels.”

Safeguards in the judicial process were lacking for the obvious anomalies highlighted in the calculations not to have been picked-up on. The court must also have given little, if any, consideration for the increase in court costs income that would, due to economies of scale, outweigh how costings were affected from the impact on resource levels. This undermines the credibility of the judicial process because an opportunity clearly exists for local authorities wanting to balance their books to claim costs in excess of legislative restrictions.

View held that costs in respect of the court application should extend to all expenditure attributable to recovery and enforcement

168. Many billing authorities express a view that rechargeable costs in respect of applying for a liability order should extend to cover all expenditure which is considered attributable to recovery and enforcement. Interpreting the law this way is seemingly justified by the fact that it serves to keep the financial burden on the general taxpayer to a minimum, even though the law in fact provides only for application costs.

Wigan Metropolitan Borough Council

169. The extent to which liability order court costs fund council tax administration is clearly documented in a response to a request for Information made to Wigan council (ID 6534) asking for the amount claimed in costs for issuing summonses. The council stated so far as is relevant, the following (emphasis added):

“The level of costs is calculated to reflect the cost of taking action against each individuals who does not pay in accordance with their bill. It is a calculation of the staffing and administration costs, legal fees, stationary, printing and postage, IT systems, telephony, office accommodation costs and other costs incurred in the processes of issuing reminders, final notices and summonses, negotiating and monitoring payment arrangements, chasing non payment of arrangements, tracing and contacting debtors and determining and implementing the next course of action until a case is paid. These costs are recoverable from the debtor, thus minimising the financial burden on taxpayers of the authority in general.”

The council clearly considers expenditure in respect of activities carried out beyond having secured the liability order is recoverable, not because the law provides for this but because it feels a responsibility to the taxpayer in general.

Waltham Forest Borough Council

170. Similarly it was evident from a response to another request for information (Ref: FOI 2014-0879) that the relevant regulations providing for court application costs were not recognised, or the council interpreted them in a way that they were not written. The relevant response follows (emphasis added):

“...the court costs charged reflect not only the issue of the summons itself and the administration relating to the issue of the summons but also to the on-going enforcement action carried out within the Revenues Department. This will also include staffing, IT, accommodation and other central support costs.

The recovery of Council Tax debts continues after the issue of a summons in order to secure payment of the debt through the various recovery methods available. The costs charged assist with funding these actions”

North East Lincolnshire Council

171. After what is presumed to be the combination of pressure from a legal challenge to the reasonableness of costs and the effects of the benefit reforms introduced in April 2013, the billing authority proposed that it reduce the summons costs. A report (Review of Council Tax court costs 17 February 2014) seemed to imply that the increased volume of court applications since April 2013 would put the authority at risk of exceeding expenditure with the additional income generated if the standard costs were not lowered. The report briefly outlined the risks of members opting either to levy a higher level of court costs than recommended or a lower level. It implied that the costs raised through the court application should cover all the additional costs incurred by the Council due to late or non-payment.

“Members may choose to levy a lower level of costs than that recommended, however, this would mean that additional costs incurred by the Council due to non-payment are borne by those Council Tax payers who pay on time in accordance with their instalment plan.

A higher level of costs would leave the council open to legal challenge over the reasonableness of its' charges under the Council Tax (Administration & Enforcement) Regulations.”

172. The court is being made use of to recover all administration expenditure through liability order applications, even though the law does not extend to such provision. Mindful that applying for court orders is discretionary, there is scope to minimise recovery work which can not lawfully be re-charged to the defendant through court costs. Administration could therefore be significantly reduced by curtailing the over enthusiastic use of the courts in unnecessary cases, for example, where there is unlikely to be a long term delay in payment.
173. Notwithstanding that the law makes no provision to recover all administration expenditure, it is normal within the way council services are provided that all residents, regardless of whether they benefit from a service, must nevertheless pay towards it. It therefore can not be justifiably argued that because the taxpayer as a whole might bear some cost of collection that the law be creatively interpreted so they don't.

A variety of administration activities are carried out within the Revenues & Benefits section. The Service is primarily responsible for Council Tax and Business Rates Billing, administering Housing Benefit and processing Council Tax Benefit Claims. Various other sections providing support make up the service including Customer Service teams, System Support/IT etc.

Employees are also required in an investigatory capacity, for example in Benefits, staff engage in the control and recovery of Housing Benefit Overpayments or where appropriate investigate and prosecute Benefit fraud. The Recovery Section sends out reminders, summonses and deal with court applications for late payers. Staff will be required to deal with account queries and where appropriate engage with debtors for re-scheduling and monitoring payment plans.

Further recovery expenditure is incurred by the council in respect of those persons against whom liability orders are made. Staff engage in activities ranging from notifying the debtor of possible further action to applying to the court for commitment to prison. Information must be obtained about the debtor's circumstances in order to assess whether accounts are more suitable for attachments of earnings, deduction from benefits or referral to bailiffs.

Where those measures fail to obtain payment then staff might engage in further recovery work, for example applying to the court for charging orders or instigating bankruptcy. Similarly to pre court action arrangements, terms of mutually acceptable payment plans might simply be agreed, albeit still requiring resources to correspond with debtors, re-schedule instalments and then monitor accounts until settled. For all stages, staff must be available for dealing with queries whether by telephone or written correspondence.

174. Clearly the additional expenditure incurred by the Council due to non-payment far exceeds that which the law provides may be applied for against defendants in respect of costs incurred by the council in court applications. However, NELC has set its standard summons costs at a level which ensures that the Council Tax payer as a whole pays none of these additional costs. There is because of this, the council's erroneous belief that the law is being complied with and would be legally at risk, only if levying a higher level of costs.
175. The costs are based on a broad estimate of overall recovery expenditure which disregards the law that provides only for recharging court application costs incurred, and further provides where debt is settled prior to the hearing, only summons costs may be sought.
176. Failure in recognising the regulation's further provision that a lesser amount than the overall costs incurred are sought in respect of the summons is admitted under the report's Risk Assessment.

“Failure to review the appropriate level of costs levied leaves the council at risk of levying costs which exceed the overall costs of making applications for Liability Orders. This could contravene government regulations and leave the council at risk of challenge.”

However, it is recognised from the above – together with the report earlier stating that it ‘has a duty to ensure that the level of costs does not exceed reasonable costs incurred in obtaining a liability order’ – that this does not extend to ‘additional costs incurred by the Council due to non-payment’.

177. NELC's commitment to ensuring no element of recovery administration costs is borne by the ratepayer as a whole appears to be the ends for which disregarding the law is

justified. This might be defended based on the idea that if everyone paid their Council Tax on time there would be no recovery costs.

If so argued it would highlight inconsistencies in the way services are funded. It would serve the same logic for an authority to state that if nobody owned motor vehicles there would be no public cost for road repairs. To that end, non-drivers should not have to subsidise additional costs incurred by the Council for those causing wear and tear to the roads. Therefore, in order for there to be consistency, the authority would need to ensure that no public services are funded from Council Tax of any ratepayer not using or benefiting from them.

It would require radical changes in the way public services are delivered to achieve consistent funding so that only services which a ratepayer uses or benefits from are financed through his Council Tax. For the foreseeable future, it remains that expenditure, however tenuously linked with recovery, is covered exclusively by ratepayers using that facility but another service, a public library to quote an alternative example, is funded by all taxpayers whether they use it or not.

Discriminatory costs based on level of outstanding debt / benefit claimants

178. Hull City Council's (HCC) Cabinet took the decision in February 2014 to reduce some of the costs charged to those who default on their Council Tax if the outstanding debt is paid in full plus a proportion of the costs before the court hearing date. Prior to the decision, £80 costs were applied as standard on being served a summons. Anyone who now receives a summons will have the £80 charge reduced by £50 if they pay the debt in full, i.e., plus £30 of the added costs before the court hearing date. This change was included as the part of option 6 – one of six proposals put forward to Cabinet members.
179. Members of the council's Anti Poverty Panel raised their concern regarding costs charged to those on low incomes with relatively small unpaid balances and asked for the charging of costs to be reviewed for 2014/15. The decision was made after the report put forward a range of options regarding the charges and after taking into account advice from the Monitoring Officer and the Section 151 Officer regarding legal and financial implications. The recommended option 6 was the proposal members decided to implement.

180. None of the 6 options included the initial consideration of a two tier costs system that some authorities had adopted, whereby a lesser sum was charged in respect of smaller balances or for those on Local Council Tax Support. All issues for consideration that included a discriminatory cost system were rejected upon advice of the Council's Monitoring Officer that the introduction of a scheme that charged lower costs to certain groups would not be lawful and could leave the Authority open to challenge. A large level of risk was considered removed by not presenting options of a two-tier costs system. Examples of the report which are particularly relevant follow.

Paragraph 13.4 makes the case for deciding against putting forward proposals of introducing a two-tier charge, despite other local authorities having already done so:

"13.4 Enquiries with some authorities who have adopted a system of two-tier charges to lower and higher balances or individual groups have established they have received no legal challenge to date. However, it is the opinion of Hull City Councils Monitoring Officer that such a system could leave this authority open to legal challenge and consequential financial risk. Therefore on the basis of that advice, options centring on a two-tier charge for lower and higher balances have not been put forward. Instead, options have centred on splitting the charge between summons and liability order or removing/reducing the charge for immediate payment upon receipt of summons."

Background for why the Monitoring Officer believed that having greater and lesser charges would be unlawful, and pointing out the financial risks associated with a successful legal challenge are detailed, so far as is relevant, in paragraphs 6.5, 6.6 and 7.7 of the report.

"6.5Concern was expressed by the Monitoring Officer regarding options presented that offered a two tier system of costs charged with a lesser charge for those with lower balances and/or those who are on Local Council Tax Support. After being advised that the cost of the work up to and including the instigating court proceedings is the same (regardless of the value of the debt) it was the opinion of the Monitoring Officer that it would not be lawful to charge a lesser level of costs to those with smaller balances and/or those on Local Council Tax Support, particularly as it could be viewed that others would be subsidising the lower charge for those groups. Appendix 2 to this paper demonstrates other Local Authorities that do this, but those decisions have been taken at an operational level without legal advice being sought. Whilst none of the Authorities operating such schemes have received a

challenge, the opinion of this Authorities Monitoring Officer is that the introduction of such a scheme by this Authority would not be lawful.

- 6.6 It was agreed that the splitting of costs across different stages of recovery work would be lawful; however regulations only allow costs to be split at Summons and liability order stage. The options now presented at 7.1 to 7.6 take into account the advice of the Monitoring Officer.

.....

- 5Adopting such a model could leave the authority open to legal challenge from those with higher balances who incur the full costs but whose ability to pay is the same as a minority of those with smaller balances. It would only take a challenge in one case to create the potential for case law which could leave the authority open to financial risk.....”

181. The report also considered how various proposed changes would impact on revenue generated from court costs. For 2013/14, it estimated that the actual income from court costs raised would be around £1.5m but as its budget was set at £1.313m there would be a surplus of around £187,000 available to offset other budget pressures. Option 1 for example, which was to make no change and continue applying £80 costs for a summons, would have resulted in income similarly exceeding the budget as it was set to remain at £1.313m for 2014/15.

182. By not presenting options of a two-tier costs system based on small balances etc., it was considered a large level of risk was removed. It was then left to consider how the proposed changes would financially impact on the departmental budget for summons costs income. Other proposals included splitting the costs, i.e. summons/liability order and reducing or completely removing them for anyone paying before the court date. For each option a figure was given in relation to an estimated surplus or shortfall against its current budgeted income of £1.313m. Option 6 was recommended partly on the basis that if implemented it was estimated to meet the budgeted income with a £24,000 surplus. However, there were additional risks highlighted in those options proposing to reduce or completely remove costs that the incentive could result in more people paying in full upon receipt of the summons.

183. The report referred to the powers for recovering costs in Council Tax proceedings as well as citing relevant case law, which together reinforced the decision that adopting a two-tier system of charges on the basis of small balances etc., would be unlawful.

Paragraph 8.1, under the ‘Monitoring Officer Assurance Statement’, details, so far as is relevant, as follows:

"8.1It was held on judicial review of a licensing case *R v Highgate Justices ex parte Petrou* [1954] 1 ALL ER 406 that costs should not exceed the proper costs incurred and should not be a penalty.

It is understood that the costs incurred in pursuing recovery action are the same for each respondent, save where respondents pay at an early stage in the recovery process. If a claim below actual cost is made the difference can only be made up by charging other non-paying residents more than actual cost, which would not be lawful, or by funding the costs incurred from an alternate revenue source. However, it remains open to the Magistrates Court to award a lower level of costs than that incurred on the basis of proportionality or ability to pay”

184. Though expressed that the costs incurred in pursuing recovery action are the same for each respondent, HCC’s understanding is misconceived as they vary significantly. This is verified in the report at paragraph 4.6 where elements making up the charge for the cost of recovery are itemised. The following are some of the elements included:

– Staff costs (Front and back office and recharges (Call Centre)

- Customer engagement/arrangements
- Court attendance/liaison
- Setting up attachments (Benefits/Earnings/Allowances)
- Liaison with DWP/Employers
- Monitoring of payments/arrangements

Though incomplete with regards the report’s list, the above expenditure is incurred by the council in varying degrees depending on the extent to which the authority engages with each individual. If for example, a person simply settles his liability in accordance with the summons, none of the above staff costs would be incurred by the authority. A person then charged standard costs would be justified in stating that in his case they were more than the authority had incurred. It could also be viewed, particularly as staff costs make up the majority of recovery budgets, that those having no cause to engage the council in the activities listed are significantly subsidising those defendant’s costs that do.

It should also be noted that within the staff costs, expenditure has been included which is attributable to activities normally carried out after a liability order has been obtained.

With perhaps the exception of Stationery and Postage, the other costs listed relate to expenditure that the authority would incur in any event (Software/ICT – Building costs – Equipment).

Billing authorities having two-tier system

185. There are a number of local authorities that do have a system whereby lower costs are applied in cases where debtors have smaller balances, despite the view taken by HCC that it would be unlawful to discriminate on this basis. Harlow, Nottingham and Rutland councils have adopted this system whilst Harrow, despite pressure to do so has resisted so far.

Harlow District Council

186. Steps taken in the recovery process are recorded in Harlow's Revenues and Benefits Recovery Policy. Costs are applied in accordance with the regulations, that is with an amount applied in respect of the summons and a further sum added on the court granting the order. Where the balance outstanding is less than £65, costs of only £5 are added. This compares with the aggregate amount of £95 if the debt is above £65. Page 6 of the report details this under the heading, Statutory Enforcement, as follows:

- A summons is issued to all those people who have not responded to the final notice. Costs of £50.00 are added at this stage unless the debt is less than £65.00 when only £5.00 costs are added
- A liability order is awarded at court and additional costs of £45.00 are added unless the debt is less than £65.00 when no further costs are added

Nottingham City Council

187. An equality impact assessment published 14/10/2013 set out Nottingham City Council's proposals to make changes to its Council Tax Collection Strategy. The report proposed changes of reducing the summons costs imposed for defaulters owing balances of less than £100 from £70 to £20 whilst continuing to apply costs of £70 for those whose balances were above £100. The report by HCC referred to in §§178–184 (this Annex) seems to confirm that the proposals were approved. A brief description of those proposals are detailed in the report as follows:

“Presently, in the event of non payment of the Council Tax a summons is issued that incurs costs of £70. A summons is only issued for debts of £50 or more. Due to the introduction of the Council Tax Reduction Scheme to replace Council Tax Benefit and the change to charges on empty properties we will see an increase in low level debts.

To ensure we can effectively collect these low debts, whilst not applying what may be considered as punitive costs, it is intended to introduce summons for debts between £20 and £100 with costs of £20.

This will have 2 opposite effects –

1. Taxpayers with debts of between £50 and £100 will now be charged lower costs and therefore benefit from this change
2. Taxpayers with debts between £20 and £50, who up to now escape being sent a summons, will now have costs of £20 applied. This will impact mainly on Citizen liable for part of the tax year getting Council Tax Reduction and owners of properties that remain empty for relatively short periods.”

Rutland County Council

188. Rutland’s most up to date charges (2014/15) detailed in Appendix D to its Corporate Debt Policy records that anyone against whom complaint is made having outstanding debt below £70 will incur only 4% of the standard £70 costs. The relevant part is detailed, as follows:

“3.0 COURT COSTS

- 3.1 The amount agreed with the Clerk to the Magistrates for the 2014/15 summons costs is £70.00.
- 3.2 Costs will be incurred by anyone against whom a Complaint is made and a summons is issued.
- 3.3 In the case of outstanding Council Tax liability balances below £70.00, these are processed separately and the costs incurred are £3.00 in each case.
- 3.4 All costs will be pursued if unpaid.
- 3.5 No additional costs are applied for at the liability order hearing.”

Harrow Borough Council

189. The November 2014 report from Harrow's Scrutiny Challenge Panel put forward recommendations aiming to lessen the impact of the Council Tax Support (CTS) Scheme and mitigate the impact that the proposed changes would have on some of its most vulnerable residents. An element forming a relatively small part of the overall recommendations was to reduce costs in respect of those receiving CTS. The third recommendation on page 35 of the report is as follows:

"3. That, considering the legal challenge to Haringey regarding their costs, the Council should reduce its unjustified (summons/liability orders) costs for CTS arrears to the actual court costs to the Council and defray other Council costs to the general fund."

It is likely that what is meant by 'the actual court costs' would be the Magistrates' court application fee currently £3 per case payable to the Ministry of Justice. The response to the specific recommendation of the Challenge Panel (Cabinet document 11/12/14) is as follows:

"Response

It is presumed that the reference to the legal challenge to Haringey, is a reference to the decision by the High Court to grant permission to hear a case brought by the Revd [Nicolson] against Tottenham Magistrates' Court.

Summons cost were increased on the 1st April 2014 to £130. This increase will be reversed on 1st April 2015. A further review will be carried out work to ensure that it is only recovering what it is legally permitted to recover. The award of costs is a matter for the Magistrates' Court."

The response suggests that any changes which may be made to the level of costs, other than reverting to the previous level (£125), are unlikely to include a two-tier system where the lower sum is applied in respect of those in receipt of CTS.

There is a sense however, that subject to legal requirements, the favoured criteria will be charging the maximum possible, over any consideration of the ability to pay of those who are on benefit. This appears to be mitigated with Harrow stating that 'the award of costs is a matter for the Magistrates' Court' – implying that the court has discretion to reduce the amount or refuse making an order for costs in hardship cases.

In practice though, the high volumes of applications prohibit individual cases being heard and so singling out hardship cases is an unworkable proposition. Nevertheless, with defendants having the right to be heard individually by the court (and theoretically possible) the council has the court to point the finger at in the face of legal challenge or criticism.

Though the response to the challenge panel implies that Harrow would not adopt a two-tier system, it was not indicated that the legality of imposing a lesser charge for CTS claimants was a consideration.

All authorities using the same Court having the same level of costs

190. It seems some Magistrates' courts prefer that each council using their services all apply the same level of costs in order to minimise the administrative burden. This undermines the credibility of the judicial process and is contrary to the interest of justice as it means costs are awarded with a view to streamlining the process, rather than consideration for the amount that the claimant incurs. Where a proper judicial process loses out in a trade off for convenience, there is potential for councils to profit hugely from what would be systemic injustice caused the defendants. Details following in respect of Fareham and Brentwood Borough Councils, document the concerns of the respective courts regarding standard costs.

Fareham Borough council

191. In a 'Report to the Executive' outlining proposals to increase Summons and Liability Order costs it was recorded that the Magistrates' Court used by Fareham Council preferred costs to be standardised across all councils using its service. The "Executive summary" of the report dated 16.12.02, states so far as is relevant, as follows

"This report seeks approval for summons costs to be increased in line with neighbouring authorities which use the same Magistrates Court."

Members were required to consider proposals set out in the report under 'Recommended Options', in terms of the additional income produced by each of the three proposals, and in relation to the level of other Hampshire authorities. Figures were given for the maximum potential increase for each option but was noted that the numbers of defaulters who pay court costs are not constant each year so the maximum income from

the increases could not be guaranteed. Paragraph 15 of the report sets out the court's position with regard to its preference for standardised costs:

"15. The Magistrates' Court used by Fareham Borough Council has indicated a preference for all authorities using the same Court to have the same level of costs. This provides the Court with a less onerous administrative burden and allows for a perception of consistency and fairness in the region."

Brentwood Borough council

192. It is recorded in a response to a Freedom of Information request made to Brentwood Borough Council that all Essex councils costs were standardised after the bench chairmen expressed disappointment at the wide variation in the amount of costs that were claimed. The response (February 2012 – FOI 3013 Domestic Rates) provides so far as is relevant, as follows:

“The average costs in Essex in 1998 for the issue of a Summons was £40.00 (the highest being £50.00 and the lowest £25.00) with the average cost of obtaining a Liability Order being £32.32 (the highest being £40.00 and the lowest £17.50) hence the average cost of a Summons/Liability Order was £72.32.

On the 17 November 1999 at the District Councils (Recovery Enforcement Officers) & Essex Magistrates' Courts meeting it was reported that “the table of costs in council tax enforcement proceedings had been presented to the Bench Chairmen's forum. The bench chairmen were somewhat disappointed at the wide variation in the amount of costs that were claimed”.

Detailed costings were produced and passed to the Magistrates. The consequence was that the Magistrates' agreed a reasonable sum for the costs of obtaining a Liability Order in Essex was £80.00.

Since that date and with the agreement of Her Majesty's Court Service costs have risen in line with inflation (details below).

Costs as at 01 April

Economies of scale

193. The level of costs imposed on each individual is determined by dividing an estimate of total expenditure by the number of summons applications. The standard sum is effectively dependent on the number of defendants between which the total cost is split.

194. Though the Court fee, postage and stationary costs increase in proportion with applications, the process is automated, so with economies of scale, when volumes increase, costs income logically outweighs expenditure. All papers served on the defendant in connection with the application are generated as a consequence of settings in the council tax software. Parameters are agreed in advance by the relevant manager and set in its Council Tax processing system relating to the number of days behind and the monetary value etc., and summonses issued on this basis. It is with knowledge of the automated council procedure and bulk court applications that it is understood how pro rata costs must decrease in a proportional amount to an increase in the number of cases.

195. Evidence that councils are mindful of economies of scale lies in the fact that some apply a higher level of costs for Business rates cases than for Council Tax. Far fewer summonses are issued for business rates which is the rationale behind why some councils that do make a distinction, justify a higher charge (See §196, this Annex).

Note: It has been detailed that some councils charge a higher level in business rates cases to act as a threat to incentivise prompt payment (See §19 and §§40-67, this Annex). To distinguish from those cases, justification to charge more for Business Rates on the basis of economies of scale, relies on the procedures (Council Tax and Business Rates) being accounted for separately.

Reigate and Banstead Borough Council (RBBC)

196. A Freedom of Information request made to RBBC asked for Court Costs amounts by year since 2000/01 in respect of Council Tax and Business Rates (NNDR). A second part asked (when increased) for justification, and an account describing the difference (if any) between the procedure in applying for Council Tax and NNDR liability orders. The response (FOI 3591/2012) dated 7.11.12, in relation to the first part, included a spread sheet containing the costs covering the requested period. Data from that spread sheet, as far as is relevant to where amounts changed, is as follows:

		<u>Council Tax</u>	<u>NNDR</u>
2000/01	Summons	£ 20.00	£ 30.00
	Liability Order	£ 30.00	£ 70.00
2005/06 (wef 1/2/06)	Summons	£ 40.00	£ 50.00
	Liability Order	£ 35.00	£ 60.00
2009/10	Summons	£ 45.00	£ 55.00

	Liability Order	£	35.00	£	60.00
2012/13	Summons	£	50.00	£	70.00
	Liability Order	£	40.00	£	50.00

As indicated, amounts charged have been consistently higher for NNDR than Council Tax, albeit to varying degrees, ranging from currently 33% higher to double for 2005/06 and preceding years. The following described the difference between the procedures:

“With regard to your second question, the basic differences are that there are two separate teams dealing with the issuing of Council Tax and Non Domestic Rates summonses. As there are fewer Non Domestic Rates summonses the cost per summons is greater than Council Tax.”

The above supports the view that with economies of scale, pro rata costs are reduced, which is the logic relied on by RBBC to justify claiming a higher level, i.e., there are fewer cases in NNDR applications. However, this is contradicted by RBBC with the opposite argued to support increasing costs in general in two of its reviews.

It is known from letters seeking approval from Redhill Magistrates’ Court to increase court costs that the basis on which RBBC relied to justify a higher amount was that it experienced an increase in recovery activity. Both letters dated 17.3.09 and 29.2.12 in relation to the respective reviews stated what looks to be standard content in these matters to support an increase (See also §35, this Annex):

“It is apparent with the increase in the actual time spent in the preparation work, the time spent in court and with customers, the current charges are insufficient to cover the true cost of this area of work and therefore a review has been undertaken to avoid this cost falling on those majority of taxpayers who pay their bills on time.”

It was clarified with regards the increase in time spent that this was as a consequence (contrary to its earlier logic) of experiencing increased volumes of summons & liability orders in comparison to a previous year, as it quoted below:

“At the time the letter in question was sent (March 2009) we had just experienced a 7% increase in the number of summons & liability orders issued in 2008/09 compared to 2007/08.

As a result the time spent in preparation work increased accordingly.”

The distinction between the amounts charged by RBBC in Council Tax and NNDR applications had highlighted that pro rata costs reduce with an increased volume of cases. It is therefore of concern that it would seek the courts approval to increase its individual standard charge with the justification for doing so being that it had experienced an increased volume of cases. A change in circumstances such as this would in fact justify a reduction with it accepted that expenditure incurred by billing authorities per unit decreases with economies of scale.

Note: Instead of applying to Redhill Magistrates Court wishing to increase its court summons costs it should have been informing it that the council had experienced a change in the number of summons which required a reduction of the standard costs. The court's approval indicates the ease with which Magistrates can be manipulated. Their unawareness of how automated council tax systems operate, together with an apparent inability to understand legislative restrictions has enabled local authorities to secure significant income streams for Revenues departments.

197. Despite their apparent ineptitude, it is ultimately the Magistrates who are responsible for awarding inappropriately huge sums in respect of costs, because although councils may notify the court of the costs they will apply for, it doesn't mean they're agreed in advance. When making an order for costs, the court must be satisfied that the sum it orders has been reasonably incurred by the council. Notifying the Court merely makes it aware of the level of costs that the Council would request at the hearing. The power therefore, as to whether costs are awarded and to the level, is always the Courts.

Pre and post Welfare Reform

198. Despite acceptance that expenditure incurred by billing authorities per unit decreases with economies of scale, there is no apparent reflection in the costs recharged to defendants. This failure has been highlighted by the 2013 Welfare Reforms (bedroom tax and council tax benefit cuts) which has been responsible for an upsurge in the number of people falling in arrears and being summonsed to court.

199. Ignoring these effects by failing to review costs as a measure against escalating volumes of applications, poses a risk of adding to what is already likely to be an excess of income over expenditure. It is with almost certainty however, that failure to revise amounts in such circumstances would result in a 'bad debt' element brought about by

defendants with no means to pay being subsidised by those from whom payment is more easily recovered.

200. Figures obtained from CIPFA's Revenue Collection Statistics, relating to the number of summonses issued and liability orders granted highlight the impact that the Welfare Reforms have had on benefit claimants and their ability to meet their council tax liability. A sample of local authorities taken at random provides a general idea of how dramatically costs raised have been boosted as a consequence of the reforms.

Nuneaton and Bedworth Borough Council (N&BBC)

201. Comparing the 2012/13 and 2013/14 figures indicates that the number of summonses issued after the reforms in 2013/14, almost doubled with a 95% increase. Liability orders increased by 56%, though consideration need only be given to the number of summonses issued before and after the reforms because N&BBC front loads its costs and applies them all in respect of issuing the summons.
202. The number of summons issued before the reforms according to CIPFA was 4,606 and for the same period after that a figure of 8,994 was recorded. The standard summons costs were £80 therefore the costs raised in the year preceding the reforms were £368,480. The year following, based on the same standard costs, the amount raised was £719,520.
203. Assuming no surplus existed before – which is unlikely considering the sums involved – much of the additional £0.35 million raised would have had the potential to be inappropriate profit. It would have required lowering the standard costs substantially to leave the council in a position that didn't leave it open to legal challenge over the reasonableness of its charges.

North East Lincolnshire Council (NELC)

204. Comparing the data before and after the reforms indicates that NELC increased the issue of summons by 72% and liability orders by 45%. Again, only an account of the summons is necessary because NELC is another authority which front loads its costs and applies them all in respect of issuing the summons.

205. The number of summons issued before the reforms was 9,984 and 17,197 after. The standard summons costs were £70 for both years therefore the costs raised before and after the reforms were £698,880 and £1,203,790 respectively.

206. Assuming again that costs income simply covered incurred expenditure before the reforms, much of the additional £0.5m raised would have had the potential to be inappropriate profit with the risk to the council of being legally challenged.

Note: A subsequent review likely to have been prompted by proceedings being instituted in the High Court (the present case) resulted in the standard level of costs for 2014/15 being reduced from £70 to £60 (See also §171-177, this Annex).

Peterborough City Council (PCC)

207. The Reforms impact on the summons increased the number issued by 54%. Costs are front loaded by PCC, so applied all in respect of issuing the summons.

208. The number of summons issued before the reforms was 12,279 and 18,971 after. The standard summons costs were £68 for both years therefore the costs raised before and after the reforms were £834,972 and £1,290,028 respectively.

209. Assuming again that costs income simply covered incurred expenditure before the reforms, much of the additional £0.455m raised would have had the potential to be inappropriate profit with the risk to the council of being legally challenged.

Kirklees Borough Council (KBC)

210. Instead of lowering the costs asked for as a measure against escalating volumes of applications, KBC did the opposite by increasing them, creating a greater risk of inappropriately profiting.

211. The authority raised its summons and liability order charges from £92 and £20 respectively to £95 and £25, whilst its summons and liability orders increased from 20,929 and 15,333 respectively to 31,462 and 24,638. The costs raised after the Reforms were therefore £3,604,840, which was £1.4 million (61%) higher than the £2,232,128 raised before the reforms.

Leeds City Council

212. Charges for summons and liability orders were £70 and £20 respectively before and after the reforms; its summons and liability orders increased from 41,876 and 31,509 respectively to 57,916 and 44,951. The costs raised after the reforms were therefore £4,953,140, which was £1.4 million (39%) higher than the £3,561,500 raised before the reforms.

Manchester City Council

213. Pre Welfare reform summonses were charged at £82 and recorded at 50,429 which had increased by 40% after the reforms. The charge (all front loaded to the summons) remained the same level raising around £5.77 million with additional costs raised around £1.64m.

Nottingham City Council

214. Charges for summons and liability orders were £50 and £20 respectively before and after the reforms; its summons and liability orders increased from 18,782 and 14,845 respectively to 31,189 and 25,722. The costs raised after the reforms were therefore £2,073,890, which was £0.84 million (68%) higher than the £1,236,000 raised before the reforms.

Insufficient staff / time to complete volume of work claimed

215. With liability order applications typically running into thousands each month, councils have to be sensible about the amount of staff hours they attribute to dealing with each case for them to be credible.

216. Breakdowns supporting expenditure have been found in a couple of examples to expose their claims as entirely unachievable when considering staff numbers, time attributable to each case, and the number of hours available.

217. Responses to Freedom of Information requests made to Sandwell Metropolitan and Luton Borough Councils have disclosed data which entirely discredits the claims with respect to being able to process the volume of cases that are put through the Magistrates' court. It would either be impractical to employ the number of people to complete the work, or, there would simply be insufficient hours in the day for staff to process the volume of cases, considering the time stated it requires to carry out the work.

Sandwell Metropolitan Borough Council (SMBC)

218. Figures supporting the £72 costs claimed per summons were provided in SMBC’s response to the Freedom of Information request (ref 1-693869037) dated 3.2.15. The first two in a list of several itemised account for the majority of the cost (£60) which is provided as follows:

“		£	Notes
1	Senior Officer - Sets Parameters 1 Hour	£20	Relates to Senior Officer ensuring the correct parameters are set for the Liability Court to take place - Hourly Rate
2	Making Complaint - Team Leader 1 Hour	£40	Relates to Senior Officer ensuring the complaint is correct in right format for the Courts - Hourly Rate
3”		

219. It was confirmed that only 1 ‘Senior Officer’ and 1 ‘Team Leader’ is involved in the described activity, so any ambiguity is removed that there may be multiple employees undertaking the work. In light of the breakdown accounting for individual costs, and with data held relating to the annual number of summons issued, the certainty is that there is insufficient working hours in the year for it to be credible.

220. From records held, the authority issued 23,285 summonses in 2013/14. Assuming both employees have 4 weeks holiday a year with no sick days, based on a 5 day working week, and if they were solely dealing with summonses they would have to work a 97 hour day.

Luton Borough Council (LBC)

221. Court costs charged by LBC are in total £120 per case for Council Tax and applied all in respect of issuing a summons. Figures supporting the costs, which included NNDR calculated separately were provided in LBC’s response to a Freedom of Information request (ref 823941) dated 23.3.15. The first four items listed, all in connection with issuing notices/summons and identical in both breakdowns account for around £45 of the costs as follows:

Admin staff costs (L5 grade)	Staff time	Luton costs	Summons	Comments
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	Hrs			
Reminder Notice	1	£17.99	£17.99	Run report in review mode. Check for any errors and run in update mode.
2nd Reminder/Final Notice	0.75	£13.50	£13.50	
Pre Summons	0.5	£9.00	£9.00	
Summons	0.25	£4.50	£4.50	

222. There is only any need to consider the first two items relating to reminder notices etc., to know that it would be impractical to employ the number of staff necessary to account for the expenditure. There is however sufficient data to be able to determine, reasonably accurately how many full time posts would be needed, exclusively dealing with court applications, to process the amount of work claimed.
223. One and three quarter hours (1.75) have been attributable to these notices which accounts for only £31.50 of the overall cost per summons. Data obtained from CIPFA records that the number of reminder notices issued in 2013/14 for Council Tax and NNDR was 37,977. It is not possible to precisely determine the number of staff hours attributable to the work from the data obtained because the figure is given as a whole and not separated in respect of the reminder and the 2nd reminder notices etc. However, because it can be reasonably assumed that there are fewer 2nd reminder notices, then allowing for this by adjusting the 1.75 hours (accounting for both notices) to 1.375 would address this matter.
224. The total number of reminder notices (37,977) comprises 34,943 Council Tax and 3,034 NNDR. Multiplying this by the hours attributed to both reminders (adjusted figure) returns an annual figure of 52,218 hours (37,977 x 1.375).
225. Assuming a full time employee works 40 hours a week with 4 weeks holiday (no sick days), then the number of hours attributed annually for each employee would equal 1,920 hours. It would therefore require 27 staff working constantly with no dinner or tea breaks exclusively on reminders to ensure the notices were appropriately checked (52,218 / 1,920 = 27).
226. There are additional staff hours attributed to the pre summons and summons which for each application account for three quarters of an hour (0.75). Then in the case of Council Tax another 3 hours attributed to preparation, before and after the court hearing, which in the case of NNDR is 1.5 hours as detailed below:

Admin staff costs (L5 grade)	Staff time Hrs	Luton costs	Summons	Comments
Preparation before and after Court - specific to account	(CTax) 3	£53.98	£53.98	Before: Ensure all court documents are taken to court and are available. Prepare briefs as required.
	(NNDR) 1.5	£26.99	£26.99	After: Update all records where an interaction has occurred.

227. The number of Council Tax and NNDR summonses issued was stated as 15,975 and 1,561 respectively and would assume the pre summons issued would be a greater number. However, disregarding this factor and assuming the same number for both notices, the equivalent number of full time staff based on the same criterion would mean another 15 full time staff would be required $(17,536 + 1,561) (0.75 \times 2) / 1,920$.

Staff time attributed to preparation (before and after the court hearing) has been estimated differently by LBC in respect of Council Tax and NNDR, therefore require calculating individually. In respect of Council Tax the 3 hours attributable to each application equates to 47,925 $(15,975 \times 3)$ and in the case of NNDR (1.5 hours), 2,341 $(1,561 \times 1.5)$. The equivalent full time employees required for both procedures is therefore 26 $(47,925 + 2,341) / 1,920$.

Note: Claiming expenditure incurred after the court hearing in respect of court costs in liability order applications is not lawfully permitted.

228. Up to this point it has been estimated that 68 full time posts would be the minimum required to process the amount of work claimed but there is more work attributable to staff time under the description 'Staff costs for issue of a summons'. In terms of money, this work represents £1.71 of the standard costs in both Council Tax and NNDR applications and is estimated to be the equivalent of less than one full time employee.

Note: It is indicated in a recovery policy (Kingston upon Thames Borough Council) that billing authorities might consider it impractical to check reminders individually and rely

on the council tax processing system to do the job. Para 5.1 of the recovery policy provides the reference as follows:

“5. Reminders

5.1 Due to the number of accounts administered by the Revenue Service it has been decided that reminders will not be checked individually before they are issued. Parameters are agreed in advance by the Senior Managers and reminders are issued on this basis. The parameters consist of number of days behind and the monetary minimum value.”

It should be noted that the number of reminders issued by Kingston was 25,771 in 2014/15 for Council Tax which compared with LBC’s 34,943 for the same year.

Neighbouring authorities preferring standard levels of costs

229. Presumably to lessen the administrative burden (See also §190, this Annex) it is apparent authorities are choosing to set their costs at the same level as a neighbouring council, rather than determining them from their own incurred expenditure. This approach has apparently been adopted by Northumberland County Council as the following details.

Northumberland County Council / North Tyneside Council

230. A number of reports (Cabinet etc.) relating to Northumberland County Council (NCC) included proposals for generating additional revenue by increasing the amount of court costs charged its Taxpayers for Summonses and Liability Orders.

231. Prior to 1.4.11, NCC charged overall costs of £60 but were from then increased to £100. The proposals were initially detailed in one of those reports exploring various options available to the council under the relevant Council Tax regulations (Tax Billing Options, Appendix E). The report, (para 35) set out how much additional income the increases would likely generate:

“35. Based on actual costs of £402,326 that were paid to the Council in 2009/10 an increase of £20 to £50 for the summons costs and an increase of £20 to £50 for the liability order costs (£100.00 in total) to bring the Council more in line with neighbouring Authorities will result in a potential increase in income of £268,217 to £670,543.”

232. Matters were raised from members of a Scrutiny Committee about the proposed increase to £100 and suggested that a more modest increase to £80. It was noted however that the costs were insufficient to cover recovery and were anyway ultimately at the discretion of the court. Papers relating to a meeting of the Scrutiny Committee on 24.1.11, provides so far as is relevant, as follows:

“Members felt that increasing the level of court costs to £50 and fees to £50 was excessive and that £40 for each would be more appropriate. It was pointed out that these costs were at the discretion of the Magistrates Court and that they in no way covered the cost of recovery action. It was also noted that it was only those who had not paid their Council Tax/Non Domestic Rates, despite having been given all the available options, who would be penalised.”

233. Apart from the reference to a penalty, there was also a misunderstanding about what, in regards costs, the regulations enables the authority to apply for. This might account for why they were considered insufficient. It is evident that NBC understood wrongly that the law enabled it to apply for an amount equal to the costs that are reasonably incurred as a result of taking recovery action against its taxpayers. Another report (the Corporate Director of Finance), dated 24.1.11 reinforces this at para 2.1 as follows:

“2.1 The Council Tax (Administration and Enforcement) Regulations 1992 (SI 613) stipulate a prescribed process to follow when recovering unpaid Council Tax. Regulation 34(7) of SI 613 enables the Council to apply for an amount equal to the costs that are reasonably incurred as a result of taking recovery action against taxpayers who default on their Council Tax payments.”

234. The regulation referred to, in fact, enables the Council to apply for an amount equal to the costs it reasonably incurs in **obtaining the order**, NOT, **taking recovery action**.

235. Regarding NBC’s apparent view that court costs should penalise the Taxpayer, this view is reinforced in another reference to the proposals (para 54) of NBC’s Medium Term Financial Plan 2011/2015 and Budget 2011/12 as follows (emphasis added):

“54. These revised policies are designed to encourage prompt payment, provide additional assistance to residents by enabling payment over twelve months and encourage the use of direct debit as the most cost effective method of payment.”

Increasing the court costs – as well as generating additional income – was obviously intended to function as a penalty.

Note: It was held on judicial review, *R v Highgate Justices ex parte Petrou* [1954] 1 ALL ER 406 that costs should not exceed the proper costs incurred and should not be a penalty. (See §183, this Annex).

236. Turning to the matter of neighbouring councils setting standard costs. The proposals coincided around the same time that NCC were in discussions with North Tyneside Council regarding shared services, and was suggested no decision made on increasing costs until discussions had taken place to ensure that both Authorities were charging the same level. Under ‘Reports of the Corporate Director of Finance’ of the document (See §232, this Annex) the following was resolved:

“(c) no decision on the proposed increase in Court Costs and granting of Liability Order be made until discussions have taken place with North Tyneside Metropolitan Borough Council to enable both Authorities to set the same level of costs.”

237. No further reports have been obtained in relation to the discussions with North Tyneside, though it is confirmed that costs, at the proposed level, have been charged by NBC since 1.4.11, as detailed in its November 2011 Council Tax and NNDR Court Costs and Fees Policy. It would therefore be safe to assume that the increase was agreed and applied in respect of both authorities.

ANNEX B

A focus on North East Lincolnshire Council (NELC)

Determining costs imposed before case is heard

1. It is contended that a standard sum should not be agreed in advance because doing so would not account for variations in court applications, which is the principal factor determining the level. Individually, costs raised under regulation 34(5) of the Council Tax (Administration and Enforcement) Regulations 1992 (the “**Regulations**”) derive from the aggregate, split between the number of defendants on the complaint list. These costs must vary, along with fluctuating volumes of applications to comply with Regulations. The standard costs sought, that is, each defendant’s share of the total, would require monitoring to ensure against profiting from enforcement.
2. Conventionally, a claim for costs would be dismissed if not directly relating to preparing the case as would any asked for which weren’t itemised. It follows that due process would require the billing authority itemise the time and effort expended on each element of the case after which the court, being ultimately mindful of defendant numbers, use its discretion in awarding the appropriate costs.
3. It is evident however, that NELC, on behalf of the Magistrates’ court is permitted to determine its own costs. This was revealed in a letter (4.3.11) sent by NELC to the court outlining its decision to increase and front load court costs which on that occasion saw the summons increase by around 120 per cent from £32.00 to £70.00.
4. The majority of costs claimed by NELC would, if due process was followed, be identified as inappropriate profit, more so now bulk orders are being granted for applications in record numbers because of major changes to welfare benefits which took effect in April 2013.
5. Billing authorities must be mindful of ‘economies of scale’ and adjust individual costs accordingly as a measure against significantly exceeding expenditure. Merely opting for a standard sum in each bulk application puts councils in danger of profiting from generated income. Seeking to fix a standard sum which applies in each case regardless

of application numbers would be feasible only if all attributable costs (e.g. court fees) were not influenced by scale. As this is not true, account needs taking of other expenditure (notably IT systems) that does effectively reduce pro rata costs as case numbers increase.

6. Expenditure is therefore not simply the product of the number of summonses issued, multiplied by a predetermined sum, which is why to some extent standard costs cannot be sought in advance (not if at the same time adhering to Regulations). An imbalance in the ratio of income to expenditure (weighted to income) arises with increased volumes. With account for this and disregarding both costs that would be incurred regardless of applications and which are not specific to the claim, then it would be these considerations that the court should apply its discretion in awarding the appropriate sum.

Increasing and applying hearing Costs in respect of instituting the summons

7. NELC took the decision (2011/12 budget-setting), to increase summons costs to raise a forecasted three quarters of a million pounds additional revenue over four years. Although published papers gave no details, the aforementioned letter (4.3.11) stated that there would no longer be costs for a Liability Order.
8. The NELC had previously imposed a standard sum in respect of instituting the Summons. In cases where the debtor failed to settle before the court date, a second sum was added. The net result of the changes amounted to the overall court costs increasing by 23% and the summons by 120%.
9. Since the review, and because of the composition change, it is evident that expenditure incurred in bringing the case before the court is raised in respect of instituting the complaint. Additional revenue generated can therefore be attributed, in part, to front loading costs now that all summonsed account holders post the 2011/12 review routinely incur full costs. In contrast, prior to the review, full costs of proceedings were only incurred by those defendants failing to settle before the hearing.
10. Additional income generated from front loading costs is significant as around 25% of account holders summonsed, settle their liability before the application is heard (cases

not proceeding to court). Before the 2011/12 budget only an element equal to 56% of the total costs ordered on the complaint being heard was raised in respect of instituting the complaint. It suggests then that front loading costs, so that 100% is incurred in respect of issuing the summons, accounts significantly for the forecasted additional £188,000 each year the changes were intended to generate.

11. The law distinguishes between summons costs incurred in respect of instituting the complaint and those including additional costs of bringing proceedings before the court. Because every taxpayer summonsed incurs Liability Order costs regardless of their cases being brought before the court, the doubt arises as to whether the Regulations are being complied with.

Income Generation – Public Consultation on 2011 Budget

12. The 2011/12 budget-setting was open to consultation where the views of residents, businesses and scrutiny panel were sought to establish their preferences for where savings could be made to meet the shortfall as a result of government cuts. It was found that increasing summons costs as a means of generating income was favoured by the majority of respondents over alternative proposals to introduce a charge for replacement bins or garden waste collections.

Note: It was not previously known that in addition to the consultation and various meetings, the budget process included an interactive simulator tool on the council's website intended for the public to participate in the budget setting (see §§120–131 Annex A). It is now evident that details were provided of the costs increase and that there would no longer be a liability order charge. This part (§§13–22) was produced having knowledge obtained from published papers indicating that the option presented was simply to 'increase summons costs', for which allowances should be made.

13. The question whether the consultation was conducted properly (in a fair way for example) is not the focus; but rather that it should never have been open for public consultation. The costs incurred by a debtor in respect of issuing a Summons had either increased by 120% or they hadn't and therefore not appropriate that the public were asked for its opinion. Whether it was preferred by the public to raise additional money this way over introducing charges for waste services was not a relevant factor. To

determine the level of expenditure on the strength of a ballot is a concept alien to normal accounting practices and incompatible with legislative provisions which restrict costs in respect of instituting the summons to the authority's "*reasonably incurred*" costs.

14. It is unknown whether respondents were consulted solely on their preference to increase costs or made aware of the details and the legal implications of no longer charging for a liability order as a consequence of those costs being front loaded to the summons. In an email on 26.5.11 however, NELC did make the following statement:

“The decision to increase the summons charge and make no subsequent charge for a liability order was agreed by members following public consultation in relation to the budget proposals.”

The above does not indicate the degree to which members of the public were informed of the proposed increase in costs, only that following the consultation the decision was agreed by the council. It does suggest though that members of the council may have been aware that the proposal involved more than increasing costs; a point further backed-up in an email sent by the council on 21.4.11 responding to a request for documents dealing with proposals of the summons increase from £32 to £70. The email provides so far as is relevant, as follows:

“The increase was agreed at our Council meeting on 17th February as part of the budget-setting. I attach a link to the papers but this particular element forms a relatively small part of the overall proposals and is only mentioned briefly in Appendix 6 to the budget report which sets out a summary of savings proposals put forward.

Elected Members did have the opportunity to scrutinise the detail behind each of these proposals at budget consultation Scrutiny Panel meetings that took place in January. However these discussions took part in private session as the details were deemed to be exempt from publication under the Access to Information rules of the Local Government Act 1972 (as amended)....”

15. Even if costings were provided and respondents told that charges would be front loaded they still lacked knowledge to make properly informed decisions on whether the proposals were lawful unless they had the necessary legal background in order to

interpret the regulations. That also goes for council members who agreed the proposal on account of what seemed to be the public's preference to increase the costs.

16. Other papers obtained provide very limited information to ascertain the level of scrutiny that went into the decision process. Minutes dated 11.1.11 of the Tourism, Leisure and Culture Scrutiny Panel that were to be submitted to the Council at its meeting on 17.2.11, stated so far as is relevant, the following:

“The Chair advised Members that the Scrutiny Chairs’ Liaison Group would be the appropriate place to raise any issues relating to the cross-cutting savings proposals and that all Members would be invited to attend this meeting. The Scrutiny Chairs’ Liaison Group would meet in private session as usual, but the minutes of the meeting would be made available to the press and public.

.....

The Panel had a number of queries in relation to the savings proposals at Appendix 5 to the report, and it was agreed to discuss these further in private session.

EXCLUSION OF PRESS AND PUBLIC

RESOLVED - That the press and public be excluded from the remainder of the meeting on the grounds that discussion of the following business was likely to disclose exempt information within paragraphs 1 and 3 of Schedule 12A of the Local Government Act 1972 (as amended).”

17. The minutes of the council's Scrutiny Chairs’ Liaison Group (*re, minutes 28 Jan 2011*) briefly recorded an objection to the increase and subsequent response by Mr. Walsh, the Executive Director of Business Service. Mr. Walsh’s understanding was that the issues concerned the council pursuing, or not pursuing recovery through the Magistrates' court, rather than the authority wanting to front load and increase summons costs with the intention of raising £0.75m additional revenue over 4 years. The only reference in the minutes relevant to the proposal is the paragraph which follows:

“At BS10 (Increase summons cost), Councillor Howarth was invited to comment and he raised his concern at the impact this proposal would have on the most vulnerable people in this Borough. Mr. Walsh acknowledged the concerns but noted that the Council had a duty to collect monies owed. He stressed that assistance would be offered for genuine cases of hardship and the courts should only be used as a last resort.”

18. Mr. Walsh's response had no relevance to the concerns raised by Cllr Howarth which should have been evident to members of the Scrutiny panel, but apparently it wasn't as the proposal withstood its scrutiny. The Councillor raised his concern about the impact the increase in costs would have on the most vulnerable people, however, with no relevance whatsoever the Director of Business Services answered by saying that "the Council had a duty to collect monies owed".
19. The only feasible reason for the remark (if not crossed wires), would be to imply that the coercive effect of a higher penalty would achieve improved collection of "monies owed". However, it was held that costs should not exceed the proper costs incurred and should not be a penalty: see *R v Highgate Justices ex parte Petrou* [1954] 1 ALL ER 406. It seems a fair assessment that the Council's Executive Director of Business Services showed neither any understanding of the concerns raised nor regard for the legal implications so consequently dismissed the matter.
20. The democratic process failed by allowing the proposal without apparently any consideration of the legal implications. The report provides no evidence of any member in attendance challenging the Executive's response, indicative of the meeting being merely a formality with the implementation of the proposal a foregone conclusion.
21. Although elected members had the opportunity to scrutinise the detail behind the proposal at consultation scrutiny meetings, they took place in private as the details were deemed exempt from publication under the Access to Information rules of the Local Government Act 1972. There is however a publicly available summary of the response to the budget consultation dated 31 January 2011 (*re, page 2 Appendix 4*) where under the recommendations relating to proposing an increased summons costs (BS10) it states the following:

"The SCLG [Scrutiny Chairs' Liaison Group] supports this proposal in principle. However members sought reassurance that increase in charges would not create a perverse incentive to summons."

Interestingly the Council Tax summons count for 2013-14 was 62% higher at 17,197 compared with the 2010-11 figure of 10,675.

22. This was serious official error and contempt for the law. Senior officers were clearly acting ultra vires to propose a scheme to generate income that involved manipulating court costs and made more serious with its implementation being solely dependent on the outcome of a ballot, as opposed a true evaluation of expenditure.

Resolve issues caused by IT system failures

23. A Cabinet report in 2002/03 identified ways of funding additional resources to ensure a backlog of work that had arisen due to changes in the IT system were addressed. The summons costs were increased by 50% in order to raise additional revenue to meet funding to pay for additional staff.
24. The decision to increase summons costs did not arise because of an increase in the cost of instituting the complaint, rather for the clear intention of funding additional resources to overcome the backlog of work that had arisen in the administration of Council Tax, Business Rates and Housing Benefit due to delays in implementing a new IT system. The Council had therefore acted for an improper purpose namely to raise revenue as it clearly intended to use the surplus to defray other administration expenditure and reduce the need to meet the cost, by for example increasing council tax, using reserves or cutting down on waste. This purpose was not authorised under the Regulations and therefore the decision was unlawful.

Encouraging behaviour (deterrent / penalty)

25. A review in 2001/02 disclosed that if the billing authority were to follow the trend of other councils by charging more in respect of Non-Domestic Rates than for Council Tax (NDR), the extra cost would encourage prompt payment. It was forecast that charging three times more for what had been identical costs would also improve cash flow with the overall effects of the review potentially generating additional income of £38k per annum. A report of the Director of Finance to the Cabinet Committee (Review of Recovery Costs 6 April 2001), details at paragraphs 4, 5 and 6, the relevant matter, as follows:

“4. The proposal would be to increase by £2.50 to £35, the amount charged for a Liability Order for Council Tax debts. However, with regard to Non-

Domestic Rates, the Summons cost would rise from £10 to £30 in addition to the £2.50 extra for a Liability Order.

5. The decision to charge more in respect of Non-Domestic Rates is one which other local authorities are taking in increasing numbers. (There are two in this region currently, Bradford and Sheffield.) The reasoning behind this is that it is believed that some businesses deliberately delay payment of Rates as the penalty for late payment is so small in comparison to the amount that might be owed. The extra cost is seen as a way of encouraging prompt payment.
 6. If the proposal is accepted, then based on the number of Summonses issued and Liability Orders obtained in the current year, an extra £38,000 of additional cost income would be generated bringing the total to approximately £390,000.”
26. The rise in the business rates penalty wasn't to mirror a 200% increase in incurred recovery costs. This hike was purely a way of encouraging prompt payment. Processes for Council Tax and NDR Liability Order applications are identical, so proving a difference in administration costs could be difficult if the court required it to do so. However, as the council are left to their own devices, it is unlikely the Magistrates' court would have asked the authority for any justification.
27. The cost of issuing a summons should only take into account the administration involved and not a “deterrent” element, as there is nothing in the legislation to support an increase in costs on this basis. It might have been considered an effective measure for improving cash flow, but until it is legislated that a penalty may be imposed, the law only provides for the billing authority to recharge costs to the resident which have been reasonably incurred.
28. To leave absolutely no doubt, the liability order does not function to punish late or non-payment neither can the costs which may be reclaimed from the respective debtor function as a fine or penalty nor used to encourage prompt payment.

Breakdown of costs (£1.13m)

29. NELC claims the annual figure, relating to all activity associated with recovery, is around £1.13 million (2011/12), however, the supporting data does not go beyond

breaking down this figure other than stating how much is attributable to the Council tax department, Control & Monitoring and Debt Collection.

30. It is not obvious how the costs are linked with applications for liability orders. What could be an arbitrary amount for recovery work is taken from the total expenditure of each category, giving a total cost attributable to Council Tax recovery. If the data is intended to function as a breakdown and justification of reasonable costs incurred, the absence of detail renders it entirely of no value.
31. The data below was provided by the council and is claimed to be its annual budget for all activity associated with recovery of Council Tax and Business rates. It amounts to around £1.13 million.

2011/12 REVENUES BUDGET (debt recovery)

CONTROL & MONITORING

Total revenue expenditure budget	– £507,000
£ recharged income	– £0
Percentage recovery work	– 20%
Cost attributable CT recovery	– £101,400

DEBT COLLECTION

Total revenue expenditure budget	– £738,500
£ recharged income	– (£121,800)*
Percentage recovery work	– 100%
Cost attributable CT recovery	– £616,700

COUNCIL TAX

Total revenue expenditure budget	– £826,900
£ recharged income	– £0
Percentage recovery work	– 50%
Cost attributable CT recovery	– £413,450

TOTAL – £1,131,550

*cost of sundry debt collection recharged to other directorates

32. NELC implies that because court costs income is within its annual budget (£1.1 million) for all activity associated with recovery of Council Tax etc., it considers that its claim is lawful as it has stated that *‘the monies raised from costs are not greater than the cost of the service’*. It is assuming in the context of the Regulations that this expenditure is permissible which is fundamentally misconceived and an inappropriate measure of an amount, if kept within, might be lawful. Permissible expenditure, for which NELC may claim costs, is in respect of the court application which simply involves a process to obtain the court’s permission to enforce payment and nothing more.

33. NELC has confirmed that the ‘*cost of the service*’ relates to ‘*the costs reasonably incurred for Council Tax collection and recovery*’. Therefore the court application costs, for which the Regulations provide, make up only an element of the aggregate amount of *recovery* expenditure which in turn is a subdivision of the ‘*cost of the service*’. Clearly, by viewing entitlement to recover the ‘*cost of the service*’, NELC is recharging significantly more expenditure to the defendants than is attributable to the court application.
34. When considered thus it is clear that must include expenditure attributable to the court application but only as an element of the aggregate amount and so the idea of ensuring income is kept within this budget is misconceived as a measure of what might be lawful.
35. A statement made by NELC reinforces doubts that the figures supplied do not specifically relate to the costs reasonably incurred by the authority in connection with the application:

“The figure £738,500, listed under "DEBT COLLECTION", represents the cost of running the recovery service and is the total revenue expenditure budget associated with the debt recovery team for 2011/12.”

36. This declaration means an attempt is being made to inappropriately reclaim the overheads of an entire department with proceeds from summons costs. Job descriptions which were obtained reveal that recovery team staff do not solely dedicated their services to activities which are attributable to the application for liability orders. A more brief account was given by NELC’s Chief Executive regarding what made up the costs, as follows:

“The summons penalty costs were increased to £70 in April 2011 an increase of 23%, and are now inclusive of obtaining a liability order. This increase is in line with national averages for unitary authorities, which according to the chartered institute of public finance and accountancy (CIPFA) is £78. This fee is used in order to cover the following costs:

- the cost for the use of the court
- the wages of the staff employed to collect Council Tax and Business Rates

- ICT costs
- postage

Bearing in mind the additional costs of chasing late payment of council tax the amount of summons penalty costs remain reasonable when compared with the national average and our neighbouring council's of Hull and East Riding who charge £80.”

37. This further confirms that the setting of fees is not based on actual costs. In this instance the Chief Executive is admitting they are based on what other authorities charge and that they also include costs for obtaining the liability order in with the summons charge which is impermissible. His reference to staff wages in the collection of Council Tax and Business rates adds weight to the assertion that the council aims to unlawfully cover the entire cost of these operations with proceeds from what he refers to as penalties.

Recovery Staff salaries accounted for

38. NELC identified which of its staff may at some point be involved in the preparation and issuing of the summons, accompanied with the salary range of those positions and stressed that although the list includes all positions which ‘CAN’ be involved, not all named posts are involved every month. Documents detailing the job descriptions for all the posts were also supplied.
39. None of the positions have been created specifically for producing and issuing summonses and all of the posts identified would exist within the authority regardless. It would seem rational to interpret from the Regulations that “*costs reasonably incurred*” should only relate to costs specific to the claim being made and not extend to include those employment costs that would be incurred in any event. The departments and staff employed to run them would likely exist within the council, regardless of the level of recovery work undertaken. Initiating the production of reminders, threatening letters and summonses, all exploit computer technology. They are automated processes, and so the costs incurred do not increase proportionally with corresponding additional income generated as a result of a higher production of summonses.
40. NELC were unable to proportion how much of the employment costs are attributable to the preparation and issuing of the summons as it does not record the allocation of

employee hours to that level of detail. However, the job descriptions that go into comprehensive detail, indicate that the allocation of employee hours would be a tiny proportion of those the council claim to be attributable. A broad range of duties are listed in the job descriptions, including (in particular enforcement and recovery posts) activities associated with different aspects of debt recovery. Many of the activities fall outside the description of what the Regulations allow as recoverable costs from taxpayers incurring the summons costs.

41. Examples are detailed in the job descriptions of the posts for Debt Recovery Assistant, Debt Recovery Officer, Senior Debt Recovery Officer and Court Enforcement Manager. The costs incurred as a consequence of the following duties, fall outside what the law allows as recoverable by way of the summons charge. The list is not exhaustive, but all activities are described in one or more of these job descriptions.

Organise and present cases at the Magistrate's Court and County Court | Dealing with the effective recovery of Sundry debts and Benefit overpayments | Represent the Council in County Court recovery of sundry debt and benefit overpayments | Process attachments of earnings and benefits | Attendance at Court Committal Hearings | Making payment arrangements by telephone with arrears cases | Preparation of evidence for Court Hearings | Providing information to bailiffs and agents | Assist with mailings of local taxation bills, reminders | Contact with customers for payment arrangements | Contact with bailiffs by telephone and letter for updating of records | Attending Magistrate Court for liability order hearings to interview members of the public in order to assess repayment of the debt and give appropriate advice | Monitor numerous debt recovery reports including Attachment of Earnings, Attachment of Benefits and Special Arrangements | Process sundry debt recovery run ensuring all letters are issued correctly | Dealing with customers' bankruptcy and liquidation of companies | Update and maintain manual and computer record systems to include bailiff website | Operate customer tracing procedures using in house and external systems | Advising bailiffs on appropriate course of action | Manage the process for externalisation of debt recovery work (for example to Bailiffs and collection agencies) in accordance with Council policy | Manage and maintain a high level of local and national key performance indicators for

example letter response times, telephone response and clearance of debt | Process complex and difficult cases and respond to complaints, MP and Member enquiries and Local Government Ombudsman complaints | Manage the process for bankruptcy, liquidation and related matters | Manage implementation of revised working practices e.g. Code of Practice for enforcement of debt | Maintain external Bailiff System to ensure the information they hold is up to date | Advise other Bailiff/collection agencies of any changes to debt | Managing the Recovery of extremely sensitive debt, which impacts on vulnerable people | Respond to complex and difficult complaints.

42. Clearly none of the activities set out above can be remotely connected with instituting the summons and therefore expenditure in respect of the work can not, as the Regulations make no provision, be re-charged to the debtor in respect of summons costs. Whilst some of the work is dependant on the authority proceeding with recovery once the summons has been served, for example obtaining Liability Orders from court, this is not attributable to the summons, neither is also work carried out post liability order doing attachments, arrangements and referrals to bailiffs.

Inseparable costs

43. A request for a breakdown of other miscellaneous costs was put to NELC and included IT, printing, consumables, letter preparation etc. None of these costs could be itemised because it either didn't hold information in so much detail, or costs could not be specifically attributed to summons preparation alone because they were consolidated with shared activities. It is not feasible that NELC would be able to attach a figure of £1.13 million incurred costs with such an imprecise accounting regime.
44. Regarding the annual costs of software licensing, acquisition and/or leasing, NELC was unable to breakdown the costs in relation to those attributable specifically to the preparation and printing of the summonses. Though unable to breakdown these costs, it stated the software used is designed for the recovery of Council Tax as a whole,

and cannot be specifically allocated to the individual element of summons preparation. Similarly it was unable to breakdown the cost of computer time attributable specifically to sorting data, generating lists, and printing forms, as it did not hold the information to that level of detail.

45. It was unable to account for the costs associated with running the print, folding, and insertion equipment but stated that the printing of summons is done using a communal printer, and this, along with the activities for folding and insertion are included, but not specifically identified as part of the overall cost of activities supporting the department. In the same way, costs for consumables including paper ink envelopes etc. are not held specifically in relation to the preparation of summons.

Composition of Council Tax Summons / liability Order costs

46. Historical levels of the summons and liability order suggests that costs for obtaining liability orders have been front loaded and are now being charged to residents at the summons stage of recovery. The evidence arises from the weight given to the summons in relation to the liability order charge has shifted from being the lesser amount to the higher until ultimately the entire cost is front loaded to the summons. It is clear why the composition has been manipulated this way, but doing so in order to increase income from the court process takes away any credibility that it is based on actual incurred expenditure, nor properly referable to the enforcement stage.
47. Though there would seem nothing preventing an authority from electing not to apply additional costs on obtaining a liability order, it would be unlawful if it were to specifically charge costs for a liability order at the summons stage. The following table charts the changes of costs raised per summons and liability order over the period from 2000/01 to 2011/12:

2000/01	Summons £10.00 Liability Order £32.50	2004/05	Summons £30.00 Liability Order £25.00
2001/02	Summons £10.00 Liability Order £35.00	2006/07	Summons £32.00 Liability Order £25.00
2002/03	Summons £15.00	2011/12	Summons £70.00

48. The costs appear arbitrarily split between the ‘summons’ and ‘liability order’. The tendency to proportion costs in favour of the ‘summons’ is evident with weight shifting over time to the more frequently incurred charge. In 2001/02 it was deemed only 22 per cent was incurred in respect of instituting the complaint (summons) whilst the following year this had risen to 30 per cent, and in 2006/07 considered to account for over a half of the total costs of securing the liability order. The assertion presently is that NELC incurs the entire costs in respect of the summons which consequently enables it to obtain maximum revenue.
49. The radical change to the charging structure makes it a very real possibility that the Regulations are not being complied with because householders charged for a summons are automatically incurring liability order costs whether an order is made against them or not. NELC has taken steps to increase revenue, not only by inflating costs, but by giving increased weight to the summons in relation to the overall amount which brings into question how the Magistrates' court, which is required to agree the level of costs, has been able to authorise these, with any credibility.
50. There have been five increases, and/or composition changes to the summons and liability order costs over the period from 2000/01 to 2011/12. For all these, where there is documentation referencing the changes, it is clear that the hike in costs were not implemented as a consequence of increased costs incurred by NELC for issuing the summons. Two noticeable observations can be made, one being that there was no justification, regardless of whether authorisation was given by the Magistrates' court, and the other being that additional revenue would be generated.
51. A comparison demonstrates how the split between the two charges is chosen randomly, and to best profit the council.

Establishing Costs – A ratio Perspective

52. In 2001/02, twenty two per cent of the total costs made up the element imposed for the summons charge. If the ‘then’ costs ratio was substituted for apportioning the 2011/12

total costs of £70, this would highlight that the summons should be around £15 which is an overcharge of £55. This, however, must rely on an assumption that the total costs are in fact as much as £70 which for an almost entirely automated process, and because of economies of scale, cannot be the case.

Council/court relationship and dereliction of duty

53. Bulk council tax liability hearings are scheduled to take place every month. The arrangement suggests they are administrative rather than judicial affairs, because of there being no requirement for the defendant to attend court. Those who do are typically low in number and are met by employees of NELC who are deployed at the court to intervene with proceedings.
54. The staff have no connection with the court, but attend to circumvent the judicial process. A room is reserved at the premises where staff interview the defendants who think they have attended to appear before the bench, as stated on their summons. For those unfamiliar with these hearings, they may appear regular so would go along with the procedure. Staff will be either seeking payment plans or attempting to resolve mistakes made in their applications. However, those obstructed from presenting their cases before Magistrates, get no dispensation; costs would still stand and the Liability Orders obtained.
55. It is reasonable to assume that NELC's involvement also doubles to limit time taken by Magistrates. Several weeks would be needed to process a single batch, should all defendants turn up knowing that they were entitled to a hearing. If everyone appeared, the court would still be in session when the subsequent batch was conveyed in. When considering that by notching 3,000 names on the complaints list, revenue of over £0.2m can be achieved for attending briefly the Magistrates' court, the likelihood that profiteering occurs is a reality.
56. Figures presented this way, suggests that NELC benefit to a far greater extent from income generated than it incurs obtaining the orders. £1.13m cannot therefore represent a realistic amount of annually incurred expenditure for sending out summonses. The only amount that NELC has been able to justify is the £3 court fee paid in respect of

each complaint instituted. This is attributed to the ‘*Debt Collection*’ category of its debt recovery budget and so there remains £1.09m for sending out reminders and summonses i.e., letter printing, envelope enclosing, mailing costs and because the process is automated, little else.

57. The Regulations restrict costs to incurred expenditure attributed to the process of obtaining the court order, and nothing more. Therefore expenditure that might be incurred afterwards can not lawfully be charged to the debtor, for example expenditure incurred in relation to enforcing the debt once having obtained the order would be impermissible to recharge to the debtor. It would be unlawful too for NELC to cover its costs for sending out reminder and threat letters as doing so would mean defendants subsidising late payers who in the majority would not incur costs.
58. Only expenditure specifically connected with obtaining the order may be recharged to the taxpayer, but where a case does not proceed to court once a summons is served, that expenditure is limited to instituting the complaint. A further proviso is that the amount claimed is no more than that reasonably incurred by the billing authority in any individual case. A document published in September 1993 by the Department of the Environment (the “**DoE**”) entitled “*the Council tax practice note number 9: Recovery and Enforcement*” reinforces this in paragraph 3.18 as follows:
- “**3.18**...The order will include the costs reasonably incurred by the authority in securing the order. Whilst it is likely that authorities will have discussed a scale of fees with the Clerk to Justices it should be recognised that the Court may wish to be satisfied that the amount claimed by way of costs in any individual case is no more than that reasonably incurred by the authority.”
59. Clearly expenditure which is not specifically attributable to the court process, like council tax administration in general, cannot be included in the calculation and reclaimed by way of costs. The council’s debt recovery budget states under ‘*Control & Monitoring*’ that 20% (£101,400) of the total £507,000 budget listed in that category is attributable to council tax recovery. It is likely, and of concern that an element of expenditure will relate to monitoring of liability order applications and if so would be claimed under false pretences.

60. Staff are legally required to check the accuracy of all accounts before processing them to the enforcement stage. There is overwhelming evidence that the council does not meet this obligation. Data supplied by the council which relates to liability orders covering a five year period provides evidence that neither the local authority nor Magistrates' court are monitoring liability order applications. The following is recorded over that period:

- 6,580 Liability Orders were issued for an initial debt of less than £100
- for a debt less than £25 the number issued was 1,387
- for outstanding balances under £15 the figure was 544
- 45 accounted for debts less than £5
- 3 Liability Orders were even issued for an initial debt of only 1 penny

61. Also over this period, a total 3,528 Liability Orders were issued for initial debt of £50 or less. NELC has stated that its collection team checks the accuracy of all accounts before passing them to the enforcement stage and accounts are only progressed to enforcement for amounts over £50. Against its own guidelines, over three and a half thousand householders incurred court costs that shouldn't have. Whether or not orders are sought purposely to generate income is a matter in itself for investigation, though what is relevant here is the negligence of both the council and court staff who reviewing the cases.

62. The annual £101,400 attributable to '*Control & Monitoring*' will be costs claimed under false pretences as there clearly is no effective monitoring of liability order applications. A decision whether to issue a summons pursuant to information laid involves the exercise of a judicial function, and is not merely administrative: see *R v Brentford Justices ex parte Catlin* [1975] QB 455. Lord Chief Justice, Lord Widgery, in giving judgment, held that:

“...before a summons or warrant is issued the information must be laid before a magistrate and he must go through the judicial exercise of deciding whether a summons or warrant ought to be issued or not. If a magistrate authorises the issue of a summons without having applied his mind to the information then he is guilty of dereliction of duty...”

63. This indicates that there is at least a dereliction of duty, when so many liability orders are granted for insignificant amounts. Many of which would likely have originated from administration errors or payment oversight rather than non-payment.

Defective Summons Documents

64. There is compelling evidence that no *Control & Monitoring* is carried out in NELC's liability order applications due to the circumstances surrounding a bulk council tax liability hearing held in June 2011. In respect of those proceedings, 3,361 summonses were served containing incorrect and out of date information relating to costs for obtaining a liability order, after authorisation had been given by the Magistrates' court.
65. NELC had informed the court in writing, that from 1 April 2011 it would be changing the composition of the costs by increasing the summons from £32 to £70 and no longer imposing £25 costs for obtaining the liability order.
66. The Magistrates courts' Legal Adviser is required to review applications which should have already been checked by the council's recovery staff beforehand, but in spite of this, more than 3,000 defective summonses were sent out unnoticed to residents stating that the council would apply for further costs of £25 if a liability order was granted. The obvious error going unnoticed suggests neither of these procedures had even taken place.

Disproportionate number of households receiving summonses

67. Data obtained from CIPFA revenue statistics helps put the number of householders affected by summons costs in perspective. After exempt accounts are removed, for example, those in receipt of full council tax benefit, the number incurring summons costs is in excess of a quarter of all bills. With these costs being imposed on such a high proportion of council taxpayers it is a clear indication that it is for the purposes of profiteering. This is a pre welfare reform estimate, and because exempt accounts are now insignificant, it is not possible to make the same comparison post reforms; however, their effects, have caused the numbers receiving summonses on the whole to be far greater.

