



## Legal Aspects

# The Dickensian Era of George the 4th: Can We Move Forward From Civil Imprisonment?

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### Biography

Stephen Cowan is the Managing Partner at Yuill + Kyle Solicitors (part of the MacRoberts Group). He is the author of 'Scottish Debt Recovery: A Practical Guide' - 2nd Edition 2019 (Publishers W Green), and has submitted written evidence to the Scottish Parliament at the time of the debate into what is now the Debt Arrangement and Attachment (Scotland) Act 2002 as well as to the Lord Chancellor's Enforcement Sub-Committee.

Stephen lectures extensively on Scottish Debt recovery law and credit control issues on behalf of various organizations including Central Law Training and the Institute of Credit Management. He is also a tutor and a part-time lecturer for Strathclyde University, one of the UK's top ten ranked law schools.

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Stephen's latest book 'Scottish Debt Recovery: A Practical Guide' - 2nd Edition 2019' is available from <http://bit.ly/35qOVh9> or Amazon at [https://www.amazon.co.uk/gp/product/0414031067/ref=db\\_s\\_a\\_def\\_rwt\\_bibl\\_vpji\\_i0](https://www.amazon.co.uk/gp/product/0414031067/ref=db_s_a_def_rwt_bibl_vpji_i0)

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### Abstract

*To quote Charles Dickens, "Annual income twenty pounds, annual expenditure nineteen [pounds] nineteen [shillings] and six [pence], result happiness. Annual income twenty pounds, annual expenditure twenty pounds ought and six, result misery." Dickens was of course writing at a time when debtor prisons were prevalent. In both David Copperfield and Little Dorrit, Dickens wrote of the unbearable, imprisoning world of debt, and of his own experience of debtor prisons. So could you still be imprisoned for debt in today's modern world. According to the author of this article it seems you can.*

### Introduction

Charles Dickens is a British institution. His serial writings had a significant impact on the social consciences of the day, often highlighting the poverty and other hardships which existed in the early part of the 19th century. This may be hardly surprising as his books often drew from his own personal experiences.



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Born in 1812, his father, John Dickens, was a clerk in the Royal Navy. Aged only 12, the young Charles was sent out to work at a boot-blackening factory after his father had been imprisoned in Marshalsea debtors' prison as a result of a £40.00 debt which he had failed to repay. This real life experience was fictionalized in the book, *Little Dorrit*.

### Imprisonment for debt default

Whilst debtors' prison prevailed in England, the more enlightened Scottish experience was entirely different, with the imprisonment for the non-payment of fines having been abolished as far back as 1880.

However, many will be surprised to learn that, even today, many hundreds are jailed in England for the non-payment of council tax. According to a recent report in the Financial Times (18 September 2019), since 2016 nearly 700 people have been incarcerated for failing to pay their council tax. A further 7,000 have been handed a suspended "committal order".

Whilst the non-payment of council tax is not a criminal offence, English councils are able to apply for a committal order requiring the debt to be paid. Failure to comply with it can result in imprisonment for up to three months. Whilst England is the only country in the UK which uses this power, the likelihood of imprisonment will depend upon where precisely in England the defaulter lives. For example, Bradford Council has been responsible for approximately one in five prison enforcement processes for the whole of England in 2016/17. Presumably, in nearby Leeds it is used far more sparingly, if at all.

We all know that we have an obligation as honest citizens to pay our debts and that council tax should be no exception, but surely the threat of imprisonment for its non-payment cannot be right? It is likely that many of the defaulters are "can't pay" as opposed to "won't pay" and will be amongst society's most vulnerable. Indeed, Chris Shaw, QC, has charged that the law is "anachronistic, unfair, uneconomic and inhumane". Add to this that if you do live in Bradford, the chances of imprisonment for default are significantly increased than if you don't.

### What's the position in Scotland?

What's happening in some parts of England is clearly unfair, particularly when one considers that the 1992 Council Tax Regulations provide that if one instalment is missed then the entire balance of the council tax for that year becomes immediately due. So, what this could mean is that an individual's debt problem will almost automatically career out of control should one payment be missed. According to Citizens Advice in England, as many as 95,000 individuals have sought help from them for the non-payment of council tax.

### Are these English practices emulated in Scotland?

The Debtors (Scotland) Act of 1880 provides that there cannot be imprisonment for the non-payment of a debt (there are some exceptions – for example, the non-payment for the maintenance of the child of a former spouse could merit a custodial



sentence). Also, it is possible for a person to be imprisoned for contempt of court. Indeed, this is what was mooted in the “Moneybarn” case (Hamilton Sheriff Court, October 2016) but failed.

The facts were that Moneybarn advanced vehicle loans and attempted to have a defaulting customer arrested for the non-return of the vehicle in question following the court’s order to do so. However, they were unsuccessful in having the debtor imprisoned, with the sheriff holding that “the arguments which led to the abolition of imprisonment for non-payment of civil debt in the 19th century are likely to be equally valid today”.

Apart from a more pragmatic approach in dealing with vulnerable debtors being needed (not least the cost of prison itself), surely Scotland’s position is more sensible? Nobody wants to go to prison. So, if a person were to be faced with imprisonment for the non-payment of a debt, it is likely that, in desperation, they could well seek other ways to pay the debt.

This could easily result with a quick visit to a loan shark. The adverse consequences of this will be all too apparent even to the most zealous creditor. Surely it will be far more sensible to separate the “can’t pays” from the “won’t pays”.

The latter can be taken to court and be subject to the various civil judgment enforcement remedies which are available. The former should be treated more sympathetically and offered debt advice and assistance. They should be treated fairly to ensure that their adverse circumstances do not spiral out of control — and not be subject to the threat of imprisonment.