

Poverty is not a Crime

**The case for ending the criminalisation of the
non-payment of the TV Licence**



About APPEAL

APPEAL (the working name of the Centre for Criminal Appeals) is a non-profit law practice committed to fighting miscarriages of justice and demanding reform. We provide investigation and legal advocacy for victims of unsafe convictions and unfair sentences who cannot afford to pay for a lawyer themselves. We use individual cases as leverage for system-wide criminal justice reform by educating the media, parliament, criminal justice policy makers, the legal profession and the public about how and why miscarriages of justice occur and what needs to change to stop them.

APPEAL's Women's Justice Initiative (WJI) uses strategic litigation to appeal sentences and convictions for women experiencing severe disadvantage in the criminal justice system; women who are victims of domestic abuse, whose mental health has been ill considered, and who are given damaging short or minor sentences or fines. We empower women to become advocates for reform and use casework to campaign for changes to the law.

The Women's Justice Initiative has been heavily involved in the call to end the use of imprisonment for non-payment of council tax, both through assisting with litigation and campaigning for the repeal of Regulation 47 of the Council Tax Regulations 1992. We supported Melanie Woolcock's judicial review of her imprisonment for non-payment of council tax, the pressure from which led to the end of the use of imprisonment for non-payment of council tax in Wales. In 2019, our work expanded to look at TV Licence fee non-payment, due to the stark disproportionate effect it has on women. Our views on the issue have been informed by:

- Providing legal assistance to a number of women being prosecuted for the non-payment of the fee;
- Qualitative research undertaken by our Women's Justice Caseworker who observed TV licensing hearings in Stratford and Canterbury Magistrates Court over a five-month period in 2019/2020 and spoke to 20 women being prosecuted and numerous friends/family members, magistrates, and prosecutors;
- Quantitative analysis of official Ministry of Justice data.

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SUMMARY

The Offence

Under the Communications Act 2003, it is a criminal offence to install or use a television receiver without a licence. This means you cannot watch any BBC content without a licence, whether live or online, or any live TV on any network or television service. Currently, the licence fee costs £159 per year.

“Criminalisation is a draconian response to debt”

In 2020 55,000 people were prosecuted for this offence, 52,400 of whom were convicted. In the years prior to the pandemic, the number of people being charged for the offence regularly exceeded 100,000. The prosecuting authority is TV Licensing, a trademark of the BBC, conducted via the Single Justice Procedure, a process used for prosecuting certain low-level criminal offences. If convicted, a person may be liable for a fine of up to £1000. Non-payment of the fine may result in a term of imprisonment up to 28 days.

Our view

As part of our Women’s Justice Initiative and our campaign to decriminalise debt (an issue that disproportionately affects women) APPEAL has been investigating the criminal offence of the non-payment of the TV Licence fee and providing legal assistance to people facing prosecution for over three years. The results of our analysis and investigations, which are outlined in this briefing, have led us to believe unequivocally that the offence should be decriminalised. We will be advocating on this issue while the Government and the BBC negotiate the BBC Charter.

As 2022 defines itself as a year in which poverty is expected to rise due to high inflation and exorbitant bills and energy prices, this has never been more vital. The criminalisation of debt has no place in our society, particularly when the way in which it is enforced discriminates against women and disproportionately affects those experiencing financial and health problems. De-criminalising this offence would also help to relieve the backlog in the courts. Poverty is not a crime. Let’s stop treating it like one.

WHAT'S THE PROBLEM?

A stark gender disparity

In 2020, 75% of prosecutions by TV Licencing were against women, despite only accounting for around 50% of licence fee holders.¹ Astonishingly, it is also the most common offence for which women are convicted, accounting for 30% of all convictions against women in 2019.²



TV license prosecutions against women in 2020 (75%)



Number of women that are licence holders (50%)

Despite investigating this issue, the BBC has failed to provide a satisfactory explanation or solution for this disparity, concluding in its 2017 Gender Disparity Report that it is likely due to societal factors beyond their control.³⁴ However, the disproportionality has increased by 4% since 2017, and has risen dramatically from 62% in 2003, when the Communications Act came into force. Measures that had been implemented to address these factors – like ensuring Enforcement Officers visit properties on evenings and during weekends when men may be more likely to be in the home – have not been successful.

Prosecution for this offence is not only discriminatory but contrary to the Government's own commitments to divert women away from the criminal justice system wherever possible, as outlined in the Female Offender Strategy published in 2018.⁵

¹ Ministry of Justice, *Crime outcomes in England and Wales 2020 to 2021*, <https://www.gov.uk/government/statistics/crime-outcomes-in-england-and-wales-2020-to-2021>. For the proportion of licence fee holders, see the BBC's 2017 Gender Disparity Report, <https://www.tvlicensing.co.uk/about/gender-disparity-AB23>

² Ministry of Justice, *Statistics on Women and the Criminal Justice System 2019*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938360/statistics-on-women-and-the-criminal-justice-system-2019.pdf

³ <https://www.tvlicensing.co.uk/about/gender-disparity-AB23>

⁴ TV Licensing, Gender Disparity Report, 2017, <https://www.tvlicensing.co.uk/about/gender-disparity-AB23>

⁵ Ministry of Justice, *Female Offender Strategy for women in the criminal justice system* <https://www.gov.uk/government/publications/female-offender-strategy>

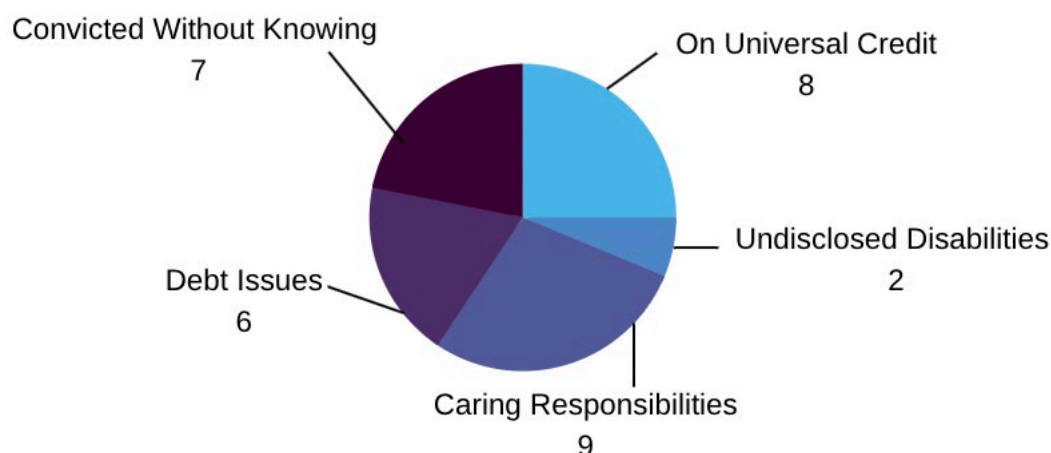
Penalising vulnerable people

Prosecuting someone for the non-payment of a TV Licensing debt is one of the clearest examples of the direct criminalisation of poor and vulnerable people that persists in England and Wales.

The evidence is stark: people in debt are more likely to be women,⁶ have a lower-than-average income and suffer from vulnerabilities such as mental health issues.⁷

While attending TV Licensing prosecution hearings in Stratford Magistrates Court over a five-month period in 2019/2020, APPEAL spoke to 20 women and found a significant proportion in receipt of benefits, with caring responsibilities or with debt issues. Some had been convicted under the Single Justice Procedure without their knowledge. Some had disabilities but had not been asked about them during their interview with an TV Licensing Enquiry Officer:

Vulnerabilities faced by women spoken to by APPEAL



At APPEAL we have represented *pro bono* a number of women being prosecuted for this offence. In **all** the cases we have worked on, we have successfully demonstrated to TV Licensing that it is not in the public interest to proceed with the prosecution. Two of these women were lone parents, four were on benefits and two had severe mental and physical health issues which affected their ability to engage with the prosecution process. Yet, contrary to the public interest test that TV Licensing are obliged to consider, and in spite of its own policy on vulnerable customers, the body continues to initiate cases against those experiencing financial and health difficulties.

⁶ Women's Budget Group, *The Female Face of Poverty*, <https://wbg.org.uk/analysis/the-female-face-of-poverty/>

⁷ Royal college of Psychiatrists, *Debt and Mental Health*, <https://www.rcpsych.ac.uk/mental-health/problems-disorders/debt-and-mental-health?searchTerms=debt%20and%20mental%20health>

Case Study: Grace

Grace was on Universal Credit and had an autistic son who needed extra care. He only watched YouTube, for which a licence is not required when no live TV is being watched, and no one else in the house watched any other form of television. Grace was very worried about what would happen in court as she could not afford another bill. She was worried about her son who was off school due to half-term that day – she had had to arrange and pay for extra care for him. The TV she had in her house had been smashed by her son and she said it was unusable when the Enquiry Officer visited, as she could not afford to get it repaired or replaced. She pleaded guilty because she feared the size of her bill had she opted for a trial, and left the court room in tears with a large fine to pay.

Clogging up the courts

The latest statistics show the current backlog in the magistrates' courts at 350,000, creating unacceptable delays to justice. Approximately one in 12 of those cases are prosecutions for the non-payment of the TV licence fee⁸.

The ripple effect of a conviction

A conviction for a low-level criminal offence can have an impact that far outweighs the crime itself and can exacerbate some of the vulnerabilities that resulted in the debt in the first place.

Firstly, as the conviction will appear on an enhanced DBS check it can represent a barrier to employment, exacerbating financial difficulties. As women work in many of the sectors that require an enhanced DBS checks (such as health and social work, retail and education) this may also deepen gender inequities.

Research carried out in December 2021 by campaign organisation Women Against Rape also shows that convictions for low-level offences are resulting in women being denied financial compensation for rape and sexual assault.⁹ Again, this is an unacceptable consequence of a low-level conviction such as this.

It can land you in jail

Those who are convicted of the non-payment of the TV licence fee are given a fine. If someone does not pay the fine the court may send them to prison for up to 28 days. Although the court must be satisfied that they did not pay due to "wilful refusal or culpable neglect", this same test has been found to have been misapplied in up to 18% of council tax committal order determinations.¹³ By pursuing cases through the Magistrates Court as a criminal offence, TV Licensing is therefore putting vulnerable individuals at risk of imprisonment.

Since 2010, nearly 350 have been sent to prison for not paying the fine associated with a

⁸ Oral answers to questions in the House of Commons, 14 January 2020

TV Licensing conviction.⁹ Although the numbers of people being imprisoned have declined dramatically since the mid-1990s (in 2020 it was zero), the threat of imprisonment can cause significant stress, particularly when the individual is already facing difficulties in financial, physical and/or mental health.

“90% of those being prosecuted for TV Licencing non-payment did not respond to the SJP letter sent to them in the post”

A lack of transparency

The prosecution of TV Licensing cases is carried out under the Single Justice Procedure (‘SJP’), a criminal process used to prosecute certain low-level offences.

Over the course of our work on TV licensing prosecutions, APPEAL has grown increasingly concerned that the practice is contrary some of the hallmarks of a healthy justice system including fairness, transparency and appropriate safeguards to protect defendants who, for various reasons, are unable to fully engage in the process.

Case Study: Katie

Katie is a lone parent who was fined £675 under the Single Justice Procedure without knowing about it. She only found out after bailiffs called to her house at 7:30am, scaring both her and the kids. She had just started a new job and was unable to get a full paid day off work to attend court. She had to take the morning off without pay and was very anxious that her case was not being promptly called. She became very upset when told her case would not be heard until after the lunch break, despite her being told to show up at 9:30am, as she was unsure whether her boss would accept her continued absence.

In January to September 2020, 90% of those being prosecuted for TV Licencing non-payment did not respond to the SJP letter sent to them in the post.¹⁰ While it is not possible to know for what reason an individual has not responded, we have seen numerous defendants in Stratford Magistrates’ Court having to attend to make a statutory declaration that they did not receive the notice, citing a change of address, being moved around in temporary or shared accommodation or post routinely going missing in their housing estate.

Some individuals do not find out that they have a conviction until there has been an

⁹ Parliamentary Question Television: Licensing: Written question – 26808 (9 March 2020) <https://questions-statements.parliament.uk/written-questions/detail/2020-03-09/26808>

¹⁰ Parliamentary Question Television: Licensing: Written question – 143756 (26 January 2021) <https://questions-statements.parliament.uk/written-questions/detail/2020-03-09/26808>

attachment order made on their benefits or wages, when it comes up on an enhanced DBS check for new employment, or when bailiffs come knocking on their door.

The process has also been shown by a number of leading criminal justice advocates to cause miscarriages of justice.¹¹ More information can be found in APPEAL's briefing *Conveyor Belt Justice*¹².

CONCLUSION

Whilst we recognise the value of the BBC, the method by which it enforces the payment of the licence fee is both discriminatory and disproportionate¹³. It has criminalised some of the poorest members of society, is a draconian response to a debt issue and has resulted in a system where the vast majority of those being prosecuted and convicted of TV licence fee non-payment are women – all while substantially contributing to the enormous backlog in the courts.

The use of the Single Justice Procedure in carrying out the prosecutions exacerbates the problem as the majority of people do not respond to the allegations and some may not even know they are being prosecuted.

“I am deeply concerned that so many women are being disproportionately saddled with the stress and anxiety of facing criminal charges for non-payment of the licence fee”

Nadine Dorries, Culture Secretary, comment to the Times, February 2022

As we continue to experience the economic consequences caused by the COVID-19 pandemic and face huge inflation and energy bills that are predicted for this year, it is vital now more than ever that individuals experiencing financial hardship are given support rather than criminal sanction. That is why APPEAL believes the non-payment of the TV licence fee must be decriminalised as a matter of urgency. In the short term, it should be suspended pending the outcome of the BBC's Gender Disparity Review due in 2022.

¹¹ For example, see the written submissions to the Justice Committee, April 2021, from Transform Justice, Fair Trials and Big Brother Watch all of which can be downloaded from the Justice Committee website

<https://committees.parliament.uk/work/1106/covid19-and-the-criminal-law/publications/written-evidence/>

¹² APPEAL, *Conveyor Belt Justice*, September 2021, <https://appeal.org.uk/reports-and-policy-briefings>

¹³ See APPEAL's proposal for an alternative enforcement model: APPEAL, Decriminalising TV Licence Non-Payment, Consultation Response, March 2020

https://static1.squarespace.com/static/5537d8c5e4b095f8b43098ff/t/615ec879da1f4a7a53b2a191/1633601658830/2020_03_31%2BTVL%2BConsultation%2BResponse%2B%28final%29%2B.pdf