

A real opportunity for equal opportunities?

Matt Jones sets out Citizens Advice's views on the Equality Bill

According to the Legal Services Research Centre, discrimination is the eighth most common problem on which people seek advice, but is in the top three problems for which people say they can't get help. Citizens Advice aims to develop discrimination services from the first point of contact to resolution. In 2008/9, the service dealt with over 25,000 problems about discrimination, including a 17% increase in employment discrimination problems.

The purpose of the Equality Bill currently passing through Parliament is to harmonise, simplify and strengthen equality law and to increase equality of opportunity. Part of this process of harmonisation is to bring together existing race, gender and disability duties of public authorities into a single equality duty, and extend it to the protected characteristics – of age, sexual orientation, gender reassignment, and religion or belief. Citizens Advice welcomes the Bill, and will try to influence its content.

The Bill will impose a duty on strategic public authorities to consider socio-economic factors in their planning, but it does not cover regulators – such as the Office

of Fair Trading or Ofgem. Citizens Advice believes that extending this duty to regulators would help to achieve fairer markets for all consumers, including those who are disadvantaged by their circumstances.

The Bill will also ban providers of goods, facilities and services from harassment or victimisation of customers on grounds of race, age, gender and disability but not on sexual orientation or religion and belief. It also does not protect under 18s. Citizens Advice sees no good reason to exclude these groups from the Bill's protections and is calling for changes.

Currently, cases of discrimination can only be brought to court or tribunal based on single protected characteristics. CAB advisers see significant numbers of cases where discrimination is because of more than one characteristic – for example, an older woman, or a gay black youth. We are therefore calling for the Bill to address the problem of multiple discrimination.

As well as highlighting the importance of improved access to advice and representation generally, we are specifically arguing for

collective redress provisions, so that a body such as the Equality and Human Rights Commission can take a claim to court on behalf of a number of vulnerable individuals.

While we are keen to improve on some of the proposals, we believe that this Bill is a landmark piece of legislation and we want to see it progress swiftly to Royal Assent.

Matt Jones is a Public Affairs Officer at Citizens Advice.

Matt.jones@citizensadvice.org.uk

Contents

Housing	2
Liz Phelps considers the need for reform to help private tenants whose landlords are repossessed	
Debt	4
Sue Edwards examines how new initiatives to tackle mortgage arrears and repossessions are working	
Pensioner poverty	6
Alan Barton asks whether targets to tackle pensioner poverty can be met	
Essential services	8
Tony Herbert argues that suppliers of LPG and central heating oil should be regulated	
Human rights	10
James Sandbach looks at key human rights issues for CAB clients in 2009	

Recession victims – the plight of private tenants

Liz Phelps considers the need for reform to prevent private tenants facing immediate eviction when their landlords are repossessed

With the Council of Mortgage Lenders predicting 75,000 repossessions this year, it is perhaps not surprising that Government and media attention has been primarily focussed on putting in place measures to help struggling home owners to stay in their homes. Far less attention has been paid to the plight of private tenants caught up in this process, who stand to lose not only their home but even their statutory rights to a notice to quit and court order, if their landlord is repossessed.

The recent Government announcement that it will introduce legislation to address this problem is therefore very welcome. This follows a concerted campaign by Citizens Advice, Crisis, Shelter and the Chartered Institute of Housing over recent months to draw attention to the issue. The campaign called on the Government to take urgent action to amend legislation so that, where a tenanted property is being repossessed, the judge has the discretion when making an outright possession, to defer possession for a limited period to give the tenant time to find somewhere else to live. Such a reform has widespread support in Parliament, with over 100 MPs having signed an Early Day Motion on the issue.

Assured shorthold tenants have few enough rights as it is. Landlords

can evict tenants without reason and are only required to give two months notice (outside a fixed term) and obtain a possession order through the courts. That two month notice period is crucial in providing a breathing space for tenants to start looking for an alternative home. Yet where a lender takes possession action against a defaulting borrower/landlord, then unless the lender has given consent for the letting, the tenant loses even these basic rights.

Inadequate warning

The only warning the tenant gets of the fact that the property is being repossessed is a notice which the lender must send addressed to 'The Occupier' before the hearing and a Notice of Eviction shortly before the court bailiff comes to carry out the eviction. However it is clear from CAB evidence that this notice to 'The Occupier' is often not an effective warning: it is not clearly addressed to the tenant and there is nothing on the envelope to distinguish it from junk mail which may be similarly labelled. As a result, the first the tenant may know about what is happening is when the bailiffs arrive to evict them:

A Surrey CAB reported the case of a lone parent with two children who had been renting a property for 10 months. She came back from a holiday to find that the locks

had been changed and there was a notice announcing that a possession order had been made. After a two hour wait, a representative from the lenders turned up and let her in under supervision for ten minutes to collect a few necessary possessions, including her son's GCSE work. The client and her children were left very upset and she had great difficulty arranging for access in order to collect the rest of her possessions.

Where the borrower has a buy to let mortgage, then the lender will usually have given consent for the property to be let. This is important as it means that the terms of the tenancy are binding on the lender, so that the tenant's statutory rights to two months notice and a court order are not affected. But this does not apply where borrowers with a residential mortgage have let out their property without obtaining the permission of their lender – perhaps as a strategy to help them afford the mortgage or because they had to move for work reasons and were unable to sell. In these situations, the property rights of the lender effectively trump the housing rights of the tenant, despite the fact that the tenant is the innocent party in the matter and is living in the property as their home.

It is impossible to quantify the extent of this problem because such tenants are inevitably hidden in the statistics. However over the last year, the CAB service has dealt

with around 1,000 cases of tenants threatened with homelessness as a result of their landlord being repossessed, and this is likely to be only the tip of the iceberg. An analysis of these cases shows that they reflect the broad cross section of the population who now make their home in the private rented sector, with around half being families with dependent children. Many will have gone on to make homelessness applications to their local authorities, with all the difficulties and uncertainties that this involves.

A CAB in the West Midlands reported a disabled woman who was due to be evicted because of her landlord's mortgage arrears. She had three dependent children and the council had accepted that they had a duty to rehouse her under homelessness legislation. However this would not happen until she was actually evicted. She was therefore in a state of limbo, unable to have her belongings moved out of the property or plan for the future. She had cancelled her utilities but had not been able to give a forwarding address. The strain of the situation was affecting her medical condition.

Citizens Advice is therefore delighted with the Government commitment to act to address this unfairness. The challenge now is to make sure that the necessary changes happen quickly. Amending legislation is typically a slow process, but recent measures in relation to the banking sector and mortgage rescue have shown that it can be done quickly when there is the political will. With 75,000 repossessions expected this year, this is a change which is needed now, not in two years' time when we can hope the worst of the recession will be over.

Fragile rights

This issue also highlights the broader problem of the fragility of private tenants' rights, which this specific reform will not resolve. In some cases, tenants have gone through all the expense and upheaval of moving into their new home only weeks before finding themselves caught up in their landlord's repossession crisis. Many are left significantly out of pocket as a result and are understandably questioning why they are put through rigorous reference procedures before being granted the tenancy, yet have no way of checking out their landlord's financial situation.

A CAB in Somerset reported the case of a man who was only seven months into a one year fixed term tenancy when, without prior warning, bailiffs arrived to repossess the property because the landlord had not paid the mortgage since he moved in. The flat was let through an agency which will not refund the original £350 fee he paid, nor waive the requirement for a further fee for finding him alternative accommodation.

The government's current consultation on private rented sector reform - *The private rented sector: professionalism and quality* - includes welcome proposals for the statutory regulation of letting agents, who now handle some 60% of all private lettings. If regulation were to include a requirement for letting agents to check that the landlord had the lender's permission to rent before taking a property on to their books, this would at least provide greater certainty for tenants renting through an agent.

The Green Paper also provides the opportunity to address the wider issue of the lack of private tenant empowerment. Around three million households now live in private rented housing, and all the indications are that this sector will continue to grow. If the sector is to be a genuine tenure of choice, rather than a last resort for those unable to access either owner occupation or social housing, then there is a need for reforms which give tenants clear rights which they can exercise without the fear that their landlord will retaliate by refusing to renew their tenancy, or even giving them notice to quit.

This is surely an essential element of being able to call somewhere your home.

Liz Phelps is a social policy officer working on housing and health issues.
Liz.phelps@citizensadvice.org.uk

So far, so good?

Sue Edwards considers how well new initiatives to tackle mortgage arrears and repossessions are working so far

The economic downturn has meant that more people than ever are seeking advice from advice agencies about mortgage and secured loan arrears. In 2008/9, Citizens Advice Bureaux dealt with 95,000 problems about mortgage or secured loan arrears, a 49 percent increase on the previous year. Over the past year, advice agencies have been delighted and bewildered by the blizzard of Government and mortgage lender initiatives designed to tackle rising mortgage arrears and repossessions. These included:

- Additional funding for court advice desks so that people facing a court hearing for mortgage arrears could get free advice and representation
- Improvements to the stage safety net, support for mortgage interest (SMI)
- A pre-action protocol for mortgage possession claims to ensure that lenders took court action as a last resort
- A mortgage rescue scheme to provide an alternative means for people who cannot afford to pay their mortgage to stay in their home as a tenant
- Guidance by the trade associations, the Council of Mortgage Lenders and the Finance and Leasing Association, to their members
- Homeowner Mortgage Support, designed to help homeowners

who have experienced a change in circumstances but who are not eligible for SMI.

These are all very welcome, but how are they actually working? Four advice networks, AdviceUK, Citizens Advice, Money Advice Trust and Shelter, are undertaking a programme of research to find out. The first part of the research – a survey of advisers' experience of helping clients in mortgage or secured loan arrears and a survey of clients contacting National Debtline – has just been published. The results show a mixed picture.

Pre-action protocol

On seeing the detail of the protocol, advisers have been concerned that the protocol might do little to stop lenders from taking possession action quickly. However, the results of the two surveys suggest there is some room for optimism – at least where mainstream first charge lenders are concerned. The key message from the findings of the adviser survey is that although mainstream mortgage lenders seem to have improved their arrears collection practices since the protocol came into force, sub-prime lenders and second charge lenders had not. Over half of the advisers surveyed reported an improvement in mainstream lenders' practices since the protocol came into force, compared to only 20 percent of advisers reporting an improvement in the practices of sub-prime and

second charge lenders. Advisers commented:

"The sub prime market lenders have become even more reluctant to help clients than before. They apply for possession at the very first sight of a default on a mortgage where... mortgage companies are, in the main, taking a more reasoned approach to arrears."

"Secured loans, with sub prime lenders, are the most problematic... They are the prime reason for my attendance at court, with clients and where high street lenders have either consolidated the arrears into a longer term [loan], or agreed a [reduced] payment, sub prime lenders have just not done this."

As research for the Financial Services Authority has found that sub-prime lenders' arrears practices are significantly worse than those of mainstream lenders, this is of concern.¹ Likewise, the survey of callers to National and Business Debtline found that borrowers in arrears with their first charge mortgage had a more positive experience than borrowers in arrears with their secured loan.

- 27 per cent of those in arrears with their first charge mortgage said their lender offered them no help when told about their repayment problems compared to 51 per cent of those in arrears

¹ Financial Services Authority press release 5 August 2008

with their secured loan.

- 57 per cent of those in arrears with their mortgage were satisfied with the way they were treated by their lender compared to only 34 per cent of those in arrears with their secured loan.

The protocol also appears to be having some impact on the practices of the judiciary. Nearly three-quarters of the advisers who had represented clients in court since the protocol came into force felt that judges were asking more questions about the lenders' attempts to reach agreement with the borrower before taking court action and 63 per cent agree that judges are willing to adjourn cases where the lender does not appear to follow the protocol. However, only a quarter of advisers agreed that judges would now award costs against the lender for not following the protocol. For example,

"The [District Judge] will adjourn if there is evidence that the protocol has not been complied with but does not penalise on costs as he says the claimant can claim their costs from the defendant anyway. One judge is more proactive re the protocol even though both are prompted."

These findings suggest that the protocol itself may need revision to provide better protection for people facing court action for mortgage arrears. Improved training for district judges might also help.

SMI

Changes to SMI which came into force in January 2009 were

designed to help stop up to 10,000 households from losing their homes due to mortgage arrears.² The findings of the survey suggest that it is too early to assess whether this is the case. Nearly half felt the SMI changes no real difference in lenders' practice following the changes to support for mortgage interest:

"If both [first and second charge] lenders are in the sub-prime bracket and they are waiting 13 weeks before help with SMI, [borrowers] are often being told by the lenders that they will go for repossession anyway."

On a more positive note, just under a third of advisers reported that lenders are less likely to proceed with possession action through the courts following the changes.

Mortgage rescue scheme (MRS)

Only a few months have elapsed since the MRS in England was introduced. Advisers' early experiences suggest a range of difficulties in getting clients onto the scheme:

- Nearly 60 percent reported that their clients could not access the scheme because their property was in negative equity;
- 46 per cent reported that clients' homes were worth more than the limit for the scheme.
- 44 per cent report that clients do not meet the priority need criteria and
- 33 per cent report that clients are not eligible for homelessness assistance

- 20 per cent report that clients' lenders are unwilling to participate in the scheme.

It is therefore very welcome that the Government is planning changes to the scheme to allow people whose properties are in negative equity to access the MRS.

What next?

These surveys are not definitive, but they do provide initial indications that further changes may be needed to these initiatives, in particular the pre-action protocol. We are undertaking further joint research during the year to enable us to evaluate the full impact of the policy changes. This will include a survey of clients seen at court. In the meantime, we call on all lenders to adhere to the letter and spirit of the pre-action protocol.

Sue Edwards is the Head of Consumer Policy at Citizens Advice. Sue.edwards@citizensadvice.org.uk

² The changes included a decrease in the SMI waiting period from 39 to 13 weeks, and an increase in the capital limit on eligible loans from £100,000 to £200,000.

Can pensioner poverty be eliminated?

Alan Barton questions whether the Government can meet its ambitious targets to tackle pensioner poverty

The Government has a well publicised target to halve child poverty by 2010 and to eliminate it by 2020. Despite making some progress, it is going to miss the 2010 target. It is seeking to build the 2020 target into law. Tackling pensioner poverty is also a government priority, although it has not committed itself to such clear targets. Instead, Public Service Agreement 17, "Tackle poverty and promote greater independence and wellbeing in later life," states that progress will be measured by five indicators, including:

"The percentage of pensioners in low income

- The Government will continue to tackle pensioner poverty, particularly through paying pensions and benefits to those eligible, so that pensioners continue to share in the rising prosperity of the nation. To monitor this we will keep track of the percentage of pensioners below key thresholds of income: 60 per cent of contemporary median income, 50 per cent of contemporary median income and 60 per cent of 1998/99 median income uprated in line with prices. The measures will report income after housing costs (AHC) are deducted."

How is this going? In 1997 2.9 million pensioners were in poverty (households with incomes below 60 percent of median AHC income). By 2005/6 this had fallen to 1.8 million. The introduction of pension credit (PC) in 2003 played a large part in this reduction. Unfortunately, the number of pensioners in poverty rose in 2006/7 and then stayed about level in 2007/8, with two million pensioners in poverty. This is lower than the population as a whole – with 22.2% in poverty, and much lower than the 30.5% of children who are in poverty.

The House of Commons Work and Pensions Select Committee's current inquiry into pensioner poverty is examining whether more could be done to address the issue and whether particular groups are more vulnerable to poverty in old age. They are also looking at benefits take-up by older people and at the likely longer term impact of planned changes in state and occupational pensions.

The CAB perspective

In our evidence to the Committee, we have drawn attention to pensioners' dislike of means testing. We are concerned that the current arrangements rely heavily on means testing for pensioners to top up their income by claiming PC, and to claim housing and council tax

benefits to pay their rent and council tax. Although the Pension Service has tried hard to identify people who might be eligible for pension credit and to persuade them to claim, take-up is stubbornly stuck between 60% and 70%. Take-up of council tax benefit (CTB) by eligible older owner occupiers is believed to be even lower, at around 40%.

The key to improving take up is for statutory agencies, particularly councils and the Pensions Service, to share information about people who are likely to qualify for one of these benefits and to encourage them to claim. They also need to develop links with local agencies that are trusted by older people, to raise awareness - many older people wrongly think that they will not qualify. These groups can also help people to make their applications.

We consider that the system for getting help with council tax needs to be changed. Many older people feel they pay too much council tax, but do not try to get their bill waived or reduced because they would have to claim CTB and they do not see themselves as people who need to claim a "benefit". The help should be renamed as a "rebate" – a more acceptable term - and local authorities should be required to identify who would qualify.

Age discrimination

Older carers and disabled people have extra costs, but are poorly served by the benefits that are available. People with mobility needs before they are 65 can get the mobility component of disability living allowance, which can lead to a Motability car and exemption from car tax. No such help is available if your mobility problems arise after your 65th birthday. This is age discrimination, and the rules should be changed to allow people help based on their needs, not their age.

Many older people care for a disabled partner. But, if they get state retirement pension, they will not qualify for carers allowance (a very modest £53.10 a week) even if they provide over 35 hours care per week. This rule should be changed so that an older carer can get carers allowance in addition to their state pension, and the rate of carers allowance should be substantially increased.

New pension rules

Major changes aimed at improving pensioners' incomes and reducing the need for means testing are planned over the next few years. From 2010, only 33 years of national insurance contributions will be needed to qualify for a full basic state pension. This will help women who have been out of the labour market due to caring responsibilities. From 2010 to 2020, the state pension age for women will rise to 65. Further rises in state pension age for men and women will follow – 66 by 2026, 67 by 2036 and 68 by 2046. The Government also hopes to start

uprating state pensions by the earnings index rather than the price index from 2012, though this may be knocked off track by the recession. This would mean that the state pension keeps up with earnings. Overall, these changes mean that more people should be getting a full state pension in future – but they will have to be older before they can claim it.

In 2012 all employers will be required to enrol their employees in a pension scheme. Employers will have to contribute at least 3% of salary to the scheme and employees 4%. Employees will be able to opt out, but the expectation is that few will do so. The hope is that 6-9 million more people will have workplace pensions, leading to smaller numbers reliant on means tested benefits in retirement.

Importance of advice

Whilst welcoming the proposed changes, Citizens Advice believes that people will need advice on whether they should opt out of the workplace pension. A few people – particularly those on low earnings and near retirement age or living alone in rented accommodation – would benefit from opting out because they might lose as much in means tested benefits as they would gain in extra workplace pension. People will need individual advice, but will not be able to afford to go to an independent financial adviser. There needs to be good quality free advice for such people, possibly along the lines of the Financial Services Authority's Money Guidance pilot schemes currently running in the North of England. By 2012, such services will need to be available nationally

to enable people to get informed individual advice on the opt out decision.

Levels of pensioner poverty have fallen greatly in the last decade, but this improvement now appears to have stalled. In the longer term, changes in state and workplace pensions should reduce the number of older people claiming means tested benefits to keep them out of poverty. For the next 20 years at least, many older people are likely to qualify for means tested benefits and it is imperative that statutory and voluntary organisations share information and work together to maximise take-up.

Alan Barton is a social policy officer working on pension and social care issues.
Alan.barton@citizensadvice.org.uk

Out in the cold

Customers not connected to the gas network currently get a raw deal, with those on low incomes hardest hit. **Tony Herbert** argues that Government should extend regulation to ensure they receive protections afforded to other customers

There are approximately 4.3 million customers living in rural areas who are not on the gas network. These people are entirely dependent on electricity, domestic heating oil or liquefied petroleum gas (LPG) for heating their homes and providing hot water.

This means they lose out in a number of ways. Most obviously, they have to pay significantly higher costs for their fuel. Estimates from 2008 suggest that households off the gas network had typical energy bills of about £1,700 per annum, compared to £1,000 for those with gas mains connections.¹

These higher fuel costs are made harder to bear since people off the gas grid do not benefit from more competitively priced dual fuel deals (where a customer receives both electricity and gas from the same supplier). To rub further salt in their wounds, customers taking only electricity under a single fuel arrangement (around a third of electricity customers, including the 4.3 million people off the gas grid) are charged higher prices for their electricity which the regulator Ofgem recently found had no cost basis.

Affordability

The problem of affordability for people living off the gas network is particularly acute for those on low

incomes, as the following cases show:

A CAB in South West Wales reported a case in which a woman suffering from arthritis experienced real difficulties in paying for her fuel from her benefit income. Her heating and hot water were provided by oil which was now costing £740 per tank when it had cost only £150 a few years ago. The client was very concerned that she would no longer be able to afford heating oil this winter, yet she needed to keep warm to avoid aggravating her arthritis. She was thinking of turning off the upstairs radiators and sleeping downstairs, and was also considering selling her home.

A lone parent in receipt of benefits sought advice from a CAB in Cornwall about how she could afford to buy oil to heat her rented home. She had almost run out of oil. When she rang up to order more, she found that the price had risen enormously and no supplier was prepared to deliver less than 450 litres at a cost of about £300, which she could not afford from her income support. The bureau applied for a grant for the client and she was awarded up to £200 but she was unable to afford the additional £100. As a result, the client and her children were living in a property with no heating and no hot water.

Minimum delivery

Affordability difficulties are exacerbated because domestic heating oil and LPG suppliers often have minimum delivery amounts which necessitate large lump-sum payments from customers up front. Yet this can be impossible for people on low incomes who are unable to afford such substantial expenditure from low weekly incomes. As a result, they might have to go without heating or hot water:

A CAB in Wiltshire reported that their client had had no central heating or hot water for three years because he could not afford the minimum quantity of oil required by the oil delivery company. He had been forced to use electric fires in winter.

No help with budgetting

Whilst fuel companies providing mains gas have to offer their customers a range of payment methods and budgeting schemes to spread the cost of their fuel, there is no such requirement for oil or LPG suppliers, who are unregulated. Nor do they offer social tariffs which can help their most vulnerable customers who may struggle to pay for their fuel.

¹ Energy prices, fuel poverty and Ofgem, Business and Enterprise Select Committee, July 2008

A CAB in Northumberland reported that their client, a 23 year old mother with three dependant children, had been without any central heating for three weeks as she could not afford a delivery of oil. Although oil deliveries can be paid for by direct debit, the client had to cancel this method of payment as she had insufficient funds in her bank account. The only alternative was to pay cash on delivery for a minimum delivery of a half tank, costing approximately £250. The client reported that her house was freezing in the cold weather at the time and her youngest child had developed chilblains. Apparently, a group of neighbours had tried to negotiate with various oil companies to buy a tank between them and have a proportion put in each of their tanks, but none would accept this.

Another Northumberland CAB reported that their client could not afford the £600 cost of having his oil tank filled since the payment terms were strictly cash on delivery. He had approached his landlord to see if he would pay for the oil upfront and allow him to pay the amount back in instalments but the landlord was not willing to do so. The client had had no heating for the last four months. He felt permanently cold even though he wrapped up in clothes and blankets.

As a consequence of the lack of affordable payment arrangements, rural customers on low incomes can be forced to make a desperate choice: to do without heating and hot water or to make applications for grants to charities or for crisis loans. Yet depending on charity for such essential items of expenditure is both demeaning and unsustainable.

A CAB in Hampshire reported that their client had to pay £300 for an oil delivery but had no money to do so. As she was disabled and the weather had been particularly cold, the delivery was essential. The client was therefore forced to apply for a crisis loan from the social fund, though it was not clear whether a loan would be granted to pay a utility bill.

make sure that the protections and assistance currently provided to customers on the gas network are also offered to those who rely on heating oil or LPG.

Tony Herbert is a social policy officer dealing with essential services issues.
Tony.herbert@citizensadvice.org.uk

What should be done?

Recently the price of heating oil has fallen, providing some much-needed respite to those struggling to pay for their heating oil or LPG. But falling prices and warmer weather should not distract from the need to address the fundamental problems with the way the domestic heating oil and LPG market currently works for those on lower incomes.

Clearly, it is right that Ofgem's work on extending the gas network should continue, though larger incentives should be introduced to speed this work up. This is particularly important since around half the communities which are off the gas network in Britain are only 2 km from a gas main, and new gas connections to these communities could reach around 220,000 fuel-poor households, potentially reducing their fuel bills by half.

More fundamental reform is also required. There is a compelling case for the Department for Energy and Climate Change (DECC) to extend Ofgem regulation to domestic heating oil and LPG suppliers. As part of this extended remit Ofgem should, as a matter of priority,

Know your rights

James Sandbach looks at key human rights issues for CAB clients in 2009

With all political parties now considering the future of human rights law, it is a good time to look at where the CAB service stands on issues of fundamental rights.¹ With so much focus on the economy, overarching personal rights can get sidelined or misunderstood in policy making and public debate, but these issues are fundamental to citizenship, security, shared cultures and values. Historically, bureaux have identified themselves as “rights based organisations” and there is no doubt that the legal framework of rights underpinning our society and political constitution can be vital casework and campaigning tools in how we help our clients to get fair treatment from public services, and to empower them to help themselves in their communities.

What follows is a look at some key human rights challenges raised by bureau evidence.

Liberty and criminal justice

The prison population has grown over the past decade, and with it re-offending rates, although overall crime has decreased. Prison overcrowding has reached such levels that the Government is now spending a chunk of the criminal justice budget on “Titan Prisons” to ease the capacity crisis. And there has been a noticeable increase in the penal system of short term custodial sentences

and remand, which can often be disproportionately disruptive, for example:

A CAB in Dorset reported that a man with mental health problems was held on remand for two months following a fight. He had been told that his incapacity and disability living allowance had been frozen, but would be reinstated on his release. This did not happen when the client was released with an electronic tag at the beginning of November 2008. Three weeks later, when his benefits were still not forthcoming, he sought advice from the CAB outreach. The adviser rang the DWP who were aware of his release and had asked the Prison Service to confirm it so that they could recommence benefit payments. The adviser tried many times to contact the appropriate person in the Prison Service, without success. The adviser then rang Jobcentre Plus who said that, as the client had been in prison for more than 6 weeks, he would have to reapply for incapacity benefit and would need to get a medical certificate from his GP. After the client left, the adviser eventually got through to the prison governor’s office who said they had not received the appropriate form from the DWP. The DWP then told the adviser that the form had been sent to the prison. The Governor’s secretary then found it on her desk and agreed to fax it to the DWP immediately. The client returned to the bureau a month later, having

still failed to receive any benefit money. The adviser had to make further phone calls to the prison and the DWP. All this was extremely stressful for the client, who had no money and was trying to resist the temptation to steal it. He was unable to see his GP because of the conditions of his release and had to attend another medical centre.

In a context of “rights and responsibilities”, it may be opportune to argue that communities, and not just the prison system, have responsibilities towards managing crime and offending behaviour, and therefore that many more offenders may be better managed in the community. The Government’s consultation on *Engaging Communities in Criminal Justice*, is a welcome signal that there may now be a policy shift towards restorative justice and community penalty schemes.

Social and economic rights

With so many public services and public goods now delivered through the private sector, we believe it is time to go beyond legislating simply for public authorities’ duties within the context of European Convention Rights. Rights and responsibilities must include corporate social responsibility.

So should the CAB service become advocates for the enforceability of social and economic rights?

¹ For the Government’s Green Paper on “Rights and Responsibilities” see <http://governance.justice.gov.uk>. A similar debate about legislating domestically for “rights and responsibilities” is also taking place within the Conservative Party which has set up its own Human Rights Commission.

In the Universal Declaration on Human Rights, civil and political rights (to vote, freedom from torture and slavery, free speech and religious freedom) and social and economic rights (work, health, education, food, shelter, and social security) were set out together, as interlocking and interdependent. Moreover, the International Covenant on Economic, Social, and Cultural Rights commits governments to taking steps to ensure that everyone has adequate standards of living, including food, clothing and shelter, favourable conditions of work, high standards of health, free basic education, as well as social security rights.

Much of our evidence on issues such as retaliatory eviction, fuel poverty, and exploitation of vulnerable workers illustrate the social and economic dimensions of human rights and the importance that of rights being enforceable across the public and private sectors. So for example, in the context of the Equality Bill we have lobbied for a clause covering socio-economic disadvantage to be built into public sector duties, and for the duties to apply not just to public bodies but to economic regulators and public service procurement more generally.

Access to legal services

.....
The question of the “enforceability” of rights is inextricably linked to the availability of appropriate advocacy and advice services. Despite Article 6 of the European Convention which guarantees equality of arms in the justice system, many people find it too difficult to use the civil law to enforce their rights. CAB evidence continues to reveal major access barriers to obtaining legal aid

from strict eligibility rules to limited specialist supplier and casework availability:

A Somerset CAB reported that a woman with three children on a low income needed legal help to contest an application for access to two of the children from her violent ex-partner. She earned £403 per month from her part-time job, topped up with working tax credit of £110.42 per week, child tax credit of £126.95 per week and child benefit of £43.90 per week. The partner looks after the youngest child and does not work. The client’s violent ex-partner has applied for access to the two children that he fathered. The client had just been notified that she did not qualify for legal aid because her income was too high. The solicitor who was dealing with the case would not do any more work on it, and was pursuing outstanding legal fees of £125 per hour plus VAT.

As it is 60 years since legal aid was introduced, it is important we argue the case for more Government support for legal aid to tackle social welfare law problems like domestic violence, unfair evictions and re-redundancies and the treatment of asylum seekers. Whilst public spending may come under pressure, it is no time for Government to think about retiring legal aid.

Human rights in the internet age

.....
Finally, the electronic age is raising all sorts of new human rights issues. A CAB in the North East managed to persuade a social networking website to take down a page that was encouraging other people to harass one of their clients. Another CAB has expressed concerns

that “Pubwatch” websites are effectively being used to exclude identified persons from leisure facilities.

James Sandbach is a social policy officer working on legal, equality and human rights issues
James.sandbach@citizensadvice.org.uk

Evidence reports published in the last six months

- **A life in debt** (*free, February 2009*)
A profile of CAB debt clients in 2008
- **A private matter?** (*free, March 2009 – a joint report with Crisis, Shelter and the Chartered Institute of Housing*)
Private tenants: the forgotten victims of the repossessions crisis
- **Let down** (*free, May 2009*)
CAB evidence on letting agents and their charges

Recent briefings and responses to consultation papers March – May 2009

- Response to Ofgem's proposals on the regulation of marketing to domestic customers (March)
- Citizens Advice's views for BERR on the content of the Consumer White Paper (March)
- E-Money Directive response to Treasury (April)
- Response to the EU consultation document: Financial Inclusion: ensuring access to a basic bank account (April)

- Response to DECC consultation on amendments to the Carbon Emissions Reduction Target (CERT)
- Citizens Advice response to the consultation by Child Poverty Unit: Ending child poverty: making it happen (April)
- Second Reading briefing (House of Lords) Welfare Reform Bill, House of Lords (April)
- Response to Ofgem's report on direct debit payments (May)
- Response to Department for Energy and Climate Change's consultation on the Community Energy Saving Programme (CESP) (May)
- Response to OFT consultation on Second Charge Lending guidance for brokers and lenders (May)
- Second Reading (House of Commons) briefing on the Equality Bill (May)

Join our mailing lists

If you would like your name added to our mailing lists to receive evidence and/or information about our publications on any or all of the following topics please contact the Social Policy Department on 020 7833 7054 or email social.policy@citizensadvice.org.uk

evidence journal | Debt and consumer affairs | Employment | Health | Housing | Immigration | Legal affairs | Social security/tax credits | Rural issues | Tax |

To order publications

You can order all of these publications through our website at www.citizensadvice.org.uk or by emailing Daniela Perdoni at daniela.perdoni@citizensadvice.org.uk

When ordering evidence reports for which there is a charge, please send us a cheque made payable to 'Citizens Advice' and send order with payment to Social Policy, Citizens Advice, 115 Pentonville Road, London N1 9LZ.