

Citizens Advice proposals for the **Ministry of Justice (MOJ)**

Using the Spending Review to make
life simpler and fairer for people

Introduction

Whether in our one-to-one advice work, or in the analysis of our client evidence at a national level, Citizens Advice consistently generates sound solutions to the problems that people encounter day in, day out.

Our policy proposals often come down to making life simpler and fairer for people who rely on public services, achieving more for less, and ensuring that help goes to those most in need of it. The Government's Spending Review presents a rare opportunity to achieve these outcomes on a broad scale.

In its draft Structural Reform Plan, MOJ includes among its priorities a 'rehabilitation revolution', 'courts and legal aid' and 'civil liberties'. Citizens Advice particularly welcomes the following specific objectives:

- To work with voluntary sector organisations to determine a strategy for a reduction in re-offending and more effective rehabilitation.
- To reform the legal aid system to make it work more efficiently, whilst protecting the most vulnerable members of society.
- To undertake reform of the courts to determine how disputes could be resolved more effectively in future.
- To develop a mechanism to prevent unnecessary criminal offences.

Informed by our unique understanding of the difficulties that people are facing, which coincide with MOJ priorities, this submission sets out:

- the issues we think the Spending Review should focus on addressing
- our proposed policy solutions
- the ways in which the Citizens Advice service – with its extensive network of bureaux, high levels of public trust, and professional volunteer workforce – could support the Department to deliver those solutions.

In summary, our submission focuses on why and how MOJ should and can:

- make the civil legal aid system more customer-driven
- support and advise prisoners to reduce re-offending rates
- provide alternatives to court buildings which offer local access to justice
- stop the criminalisation of people with public service debts
- offer more suitable debt management solutions
- regulate bailiffs.

Support for service delivery

We welcome the Spending Review's consideration of whether more government activities could be delivered by the voluntary sector – in order to simultaneously improve service levels and achieve savings. This submission sets out a series of practical and innovative ways in which we could potentially support government in the delivery of the solutions we propose. In short, Citizens Advice could:

- provide a pre-legal aid advice service
- offer a legal aid assessment and appointment making service
- develop the public's 'legal capability'
- establish a pre-release advice service for those leaving custody.

Why Citizens Advice

Citizens Advice Bureaux are local charities working with, and trusted by, some of the most vulnerable people in society. They:

- provide free, confidential and impartial advice from over 3,500 community locations
- give clients, and others like them, a voice by spotting failures in the system and responding with policy proposals.

Citizens Advice Bureaux are organised to deliver value for money. They:

- mobilise 21,500 volunteers, saving a market rate of £106 million and creating vibrant communities
- develop skills and encourage progression – 40 per cent of volunteers who leave go into paid employment or higher education
- boost local economies by helping people to avoid debt, manage it, and maximise their incomes
- reduce the strain on local authority, health and legal services.

Citizens Advice Bureaux deliver impressive results. During 2009/10 they:

- advised 2.1 million people on 7.1 million problems
- enabled 12.7 million queries to be researched independently on Adviceguide.org.uk
- improved the situation of 6.4 million people by influencing policy.

The problems

1 **The civil legal aid system does not meet demand**

The level of need for legal assistance is immense. Around a third of adults experience legal problems but, while the majority of them seek advice, only half successfully obtain it – just 20 per cent of the population is eligible for (an often limited range of) civil legal aid services. Those services are currently focused around costly litigation. If the system were re-organised to reward early intervention and prevention, more people could benefit from a budget that is under intense pressure.

2 **A lack of support for prisoners contributes to high re-offending rates**

Nearly half of all offenders sent to prison are re-convicted within a year of release, and the rate of re-offending is even higher – 60 per cent – for the 60,000 prisoners who serve short-term sentences each year, creating a revolving door of crime.

Housing and money issues are among the key risk factors in whether an offender will re-offend. Once in prison, offenders can find it difficult to deal with their problems because phone calls and letter writing are subject to restrictions. Without support and advice, prisoners often lose their outside accommodation and their debt problems spiral out of control. Government reports have shown that around half of prisoners have debt problems and 33 per cent have nowhere to stay on leaving prison.

A third of adults experience legal problems but only half successfully obtain advice

3 Closing courts saves estate management costs but risks local access to justice

The Court Service is dependent on a 'bricks and mortar' delivery structure, in which resources are disproportionately absorbed by estate management. To counter this, the trend in recent years has been towards 'multi-hearing centres' or combined courts, bringing together various criminal and civil jurisdictions. MOJ has recently announced over 160 specific court closures, including many small courthouses. Rationalising the number of premises is inevitable, but downsizing the system could impact adversely on local access to justice. The Court Service needs to operate more peripatetic systems if it is to continue to serve the needs of local communities.

4 Enforcing public service debts through the courts is inappropriate and expensive

Enforcement of debts via the magistrates court is an inappropriate and expensive way of dealing with council tax arrears and non-payment of the TV licence fee. Court action against debtors who cannot afford to pay is largely pointless, only serving to criminalise ordinary people who have ordinary (and small) debts. Neither is it appropriate for those who could pay given time, because it imposes extra costs on debtors, thereby decreasing recovery rates. Such court action impacts on the taxpayer as well as the individuals concerned – in 2009 it was estimated that magistrates' civil court fees covered just 55 per cent of the cost of doing the work.

In 2009 magistrates' civil court fees covered just 55 per cent of their costs

5 Debt remedies fail consumers and debt management firms take advantage

The current system of voluntary and statutory debt management and debt relief measures is incoherent, inefficient and fails to deliver good outcomes or sufficient protection to many of the poorest and most vulnerable people in financial difficulties.

Although there are currently three main insolvency options open to individual debtors – bankruptcy, debt relief orders and individual voluntary agreements (IVAs) – the apparent ‘choice’ of options is really no choice at all for many consumers in financial difficulty. People in need of debt relief may find themselves excluded from the most appropriate option due to factors such as the size of their debt or a limited income. Formal insolvency options are not suitable for everyone with debt problems either. Many are able to recover control of their finances after a temporary income shock like unemployment or illness, reflected in the fact that, annually, more people set up debt management plans than pursue insolvency remedies.

But there is currently no debt management scheme that provides the same protection that bankruptcy or an IVA can against enforcement and spiralling debts. This fuels supply of commercial debt management solutions where regulation has failed to protect financially vulnerable consumers from high charges and bad practice. Conversely, the fundamental need for certain protection has driven consumers into inappropriate and expensive IVAs. Even where consumer needs are being met by the current system, this is often at a significant cost to consumers, their creditors, the taxpayer or all three.

Debt management schemes can be costly and poor quality, providing limited protection for consumers

6 Private bailiffs gain competitive advantage from bad practice

For twenty years Citizens Advice has been highlighting the problems that people face with enforcement action by private bailiffs collecting debts such as council tax, magistrates' court fines, parking penalties and child support maintenance. Every day we see evidence of aggressive and harassing conduct, mis-statement of powers, overcharging of fees and widespread refusal by bailiffs to accept reasonable repayments. We believe the problems arise from the competitive market for creditor business, which incentivises private bailiffs to maximise fee income from debtors. This is money that could be better used to pay debts.

The result is often fear and stress and significant extra costs for people who are already in financial difficulty. In some of the cases we have seen, vulnerable households were forced to borrow more money to meet the bailiffs' demands, making their debt problems even harder to deal with. Not all private bailiffs adopt bad practice, indeed the industry itself has repeatedly called for the government to set up an independent regulator to set standards for the market to prevent any firm or individual bailiff from getting a competitive advantage from bad practice.

We see evidence of aggressive conduct, mis-statement of powers and overcharging of fees

Our proposed policy solutions

1 Making the civil legal aid system more customer-driven

We will be making a substantial contribution to the Government's fundamental review of civil legal aid. This will include ideas to improve access to the system, cut red tape, reward quality and early action, and deliver a more responsive customer-driven system with:

- A single point of access to locate a suitable legal aid provider and book appointments in real time, either over the phone and online.
- A more effective approach to remuneration, which incentivises quality advice and earlier intervention, as well as quantity of cases.
- A procurement policy which ensures that local priorities and needs are properly taken into account.
- A funding policy for social welfare law advice that rewards cost-savings to the state and community premiums e.g. the use volunteers, partnership working, problem prevention or outreach services.
- A 'personalisation' or choice-based option, whereby the legal aid authority authorises legal aid entitlement and issues credits to be used with a provider of choice.

2 Supporting and advising prisoners to reduce re-offending rates

Before release, a range of support and advice services should be available to help prisoners organise accommodation and immediate financial support. Welfare rights and debt advice, in particular, have a key role in reducing the risk of re-offending and helping ex-offenders to re-integrate into the community.

We believe there should be access to advice services in every custodial setting. The public would benefit if re-offending rates could be successfully reduced, as would the criminal justice system itself. Our 2007 report, *Locked out*, found that the cost of a CAB advice service for the entire UK prison population would amount to an average of just £319 per prisoner per year. This compares to the £35,000 annual cost of keeping a re-offender in prison.

3 Providing alternatives to court buildings which offer local access to justice

If the number of courts continues to decline, access to judicial decision making could be delivered through alternatives such as:

- Court gateway partnerships: A person wishing to access the court could visit an advice agency or similar community-based service, which could link them up with the court electronically over the internet.
- Mobile courts: Very simply, the idea of a 'mobile court' draws on the best of the UK's legal tradition, when justices of the peace toured the country on horseback. Today, this would mean judicial office holders making use of community venues on an outreach basis, as with the highly successful Community Court which operates out of a school building in Liverpool. This system might only be suitable for particular types of low-level disputes.
- Community mediation: Mediation is proven to be an effective alternative as a means for resolving civil legal issues, for example small claims, neighbour and family disputes. Mediation services have always produced good outcomes when they have been introduced into court, though mediation could easily take place outside of a court building.

4 Stopping the criminalisation of ordinary people with public service debts

Offences relating to minor debts such as non-payment of TV licence fees should be de-criminalised. This would reduce bureaucracy and remove the need for (and cost of) magistrates' involvement. Unpaid debts would then become issues of civil liability only, and debtors in payment arrears should be referred for money advice.

Local authorities and other public bodies should be forced to negotiate affordable repayments before seeking a liability order, which should only be available to them, as creditors, as a last resort.

5 Offering more suitable debt management solutions

Citizens Advice believes that most of the problems with the 'market' for debt remedies could be solved quite simply by implementing existing legislation – the debt management scheme provisions in Chapter 4, Part 5 of the Tribunal, Courts and Enforcement Act 2007. These existing regulations are sufficient to create what is needed:

- A 'breathing space' scheme with effective protection.
- A better-regulated, longer-term debt management scheme which protects debtors from aggressive creditors, and protects creditors from bad practice by debt management and IVA providers.
- A cheaper form of debt relief than IVAs, particularly where the debtor is not a home owner, as in around 60 per cent of 'straightforward consumer' IVAs.
- A form of accessible debt relief for those debtors with too little money for an IVA.
- An alternative to bankruptcy – which would reduce costs to the Insolvency Service – where there is some income but no assets.

6 Regulating bailiffs

Self regulation has not worked, so the solution is to bring the private bailiff industry under the control of an independent regulator paid for by the bailiff industry. Plans to introduce bailiff regulation were laid under the previous government, with the Security Industry Authority being earmarked for the role. This Government should take forward these plans quickly, ensuring that:

- The regulator has sufficient powers and sanctions to provide effective protection to people in financial difficulty.
- The regulator is active in setting standards for the sector (through, for instance, rules, codes and guidance).
- The regulator regulates bailiff firms as well as individual bailiffs.
- Bailiffs are required to accept repayment offers and suspend enforcement action where these have been worked out on an agreed objective basis.

How the Citizens Advice service can support the delivery of these solutions

The Citizens Advice service is ideally placed to work with MOJ to reduce bureaucracy and achieve more for less.

As an organisation, we are geared up to develop the most appropriate services, target them effectively and deliver them efficiently. In fact working to our 2014 strategic plan will see us:

- greatly improving access to advice by establishing and developing our national Adviceline telephone service
- equipping individuals with the knowledge and skills necessary to prevent problems occurring
- encouraging clients to adopt digital technology by offering use of the internet and accessing web-based public services on their behalf
- recruiting and training even more volunteers, promoting community involvement and helping people back into paid work.

Specifically, the Citizens Advice service could assist MOJ to achieve substantial savings in the ways outlined below. All initiatives would include discrimination and other issues covered by the Equality Act 2010 to ensure the Act is embedded and implemented.

1 Providing a pre-legal aid advice service

A pre-legal aid advice service would help people attempt to resolve their problems without recourse to full legal aid services, ensuring those who were later referred on for full legal aid, were both eligible and most in need of it. The service would be bypassed if it was clear from the outset that the individual had a legal problem and was eligible for full legal aid.

The pre-legal aid service would be available online, by telephone and face-to-face. The online service would use a series of decision trees to help users determine their position and work out their most appropriate approach. These decision trees would be supported by a range of tools and materials including online calculators and template letters.

The telephone and face-to-face services would be delivered by trained volunteers operating through Adviceline and the bureaux network, meeting the needs of those who are either unable to use the online service, or who need further assistance.

2 Offering a multi-channel assessment and appointment making service

Individuals would either work through online decision trees or have a telephone or face-to-face assessment interview to determine their eligibility for both pre-legal aid advice services and full legal aid advice services.

Since Citizens Advice introduced a 'gateway assessment' approach to service delivery as standard, 50 per cent of enquiries are being resolved at the first point of contact, illustrating the potential efficiency of this proposed approach.

Those who qualified for the pre-legal aid advice service would be referred to a CAB. Those who qualified for full legal aid services would be referred by appointment to the most appropriate provider.

3 Developing the public's 'legal capability'

Building on its successful approach to helping people improve their financial capability, Citizens Advice would put in place a programme of work that would equip individuals and communities to address difficulties before they become problems.

In the past three years Citizens Advice has provided financial capability training to in excess of 130,000 frontline workers, each of whom pass on information, support, and learning to an average of 15 vulnerable clients. We believe that the same approach could be used to improve people's understanding of their legal rights and responsibilities.

4 Offering a pre-release advice service for those leaving custody

Prior to release, every individual in custody would be given the opportunity of calling Adviceline or contacting a volunteer information assistant (who may be a prisoner themselves) and agreeing an 'advice package'. This could range from a series of leaflets, self-help materials and key contacts to a pre-arranged appointment with a CAB of the individual's choosing.

Opportunities to volunteer as information assistants would be made available to offenders and ex-offenders, as studies show lower rates of recidivism in offenders who have entered into volunteer programmes.

Contact us

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