

Relief for the indebted

Sue Edwards asks why people with money in private pensions are excluded from cost-effective forms of debt relief

In April 2009, the Government introduced the statutory debt relief order (DRO), a low cost form of debt relief aimed at people with debts of less than £15,000, less than £50 monthly available income for their creditors and assets of less than £300. Free debt advice charities welcomed this new initiative. Although many of our clients cannot repay what they owe during their lifetime, they may be too poor to afford the £510 fee to go bankrupt.

Just before the DRO legislation came into effect, the Government announced that money in pension pots would count as an asset, even when the money cannot be accessed for many years. This exposes a fundamental flaw with the eligibility rules, something which the free debt advice sector had raised with Government at the time. Advice agencies are now finding that some of their most impoverished and vulnerable clients cannot access affordable debt relief:

An unemployed client of a South Wales CAB met all the conditions of a debt relief order. However, he did have a retirement fund valued at just over £600. This took him

over the £300 asset limit for a debt relief order and so his application would fail. He could not access his pension for many years yet, and, then he would only get an income of £1.72 per month from it. In the meantime, the client continued to experience pressure from creditors and would have to continue with small repayments over many years, requiring continued CAB support. He could not afford the £510 bankruptcy fees and would need to seek charitable assistance to pursue an option which holds far wider implications than a DRO and will be far more resource intensive for the Insolvency Service.

As the case above shows, many debt clients who were expected to qualify for the cheaper DRO scheme will now either be opting for bankruptcy or remain locked into long-term token payments, potentially for the rest of their life. This has implications for the number of new debt cases hard-pressed advice agencies can take on if they have to continue to negotiate with creditors over many years. It could also clog up the courts with unnecessary bankruptcy petitions at a time when personal insolvency is increasing. In the current economic climate, we believe that this rule

needs to be changed swiftly to allow more people to get help with their debts and seek effective debt relief.

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The good ship HMS... Waters not so stormy but lifeboats still needed

Peter Tutton assesses the impact of the Homeowner Mortgage Support scheme

Grey, windy, rainy and chilly! That was the verdict of weather forecasts through much of November 2009. At times like these, we must take our sunshine where we can. And the most recent mortgage possession forecast from the Council of Mortgage Lenders (CML) provides an unlikely ray of hope. With only a month or so of 2009 remaining, the CML has revised the predicted number of repossessions sharply downward to 48,000 for this year and 53,000 for 2010. In contrast, CML analysis at the start of 2009 was that 75,000 homes would be lost because of mortgage arrears.

This most welcome turn about has been attributed to a combination of historic low interest rates, improved lender forbearance and Government action. CAB money advisers have certainly been telling us that many lenders are now offering a much better range of options for borrowers in arrears. Likewise, extra help from Government such as the reduced waiting time for mortgage interest payments from the benefits system, the introduction of a pre action protocol and the Mortgage Rescue and Homeowner Mortgage Support schemes have all improved the likelihood of some people with mortgage arrears to stay in their homes.

However, before we start swinging from the chandeliers, let's not forget that nearly 50,000 families have lost their homes this year and it looks like at least the same number will in 2010. In the first half of 2009/10 mortgage arrears enquiries to the CAB service increased by 35 per cent compared to the same period in 2008/9 and this trend may continue if unemployment continues to grow. We are far from out of the woods on mortgage arrears and the stubborn concentration of serious arrears problems among a smallish group of *sub prime* lenders suggests an extended overhang of the problems facing lower income and credit impaired borrowers that we highlighted in the run up to the recession in our 2007 evidence report, *Set up to fail*.

While many borrowers are being helped, it is clear that a large number need more help to keep them in their homes. So we believe there is a clear need to review the support available from both lenders and Government schemes to see what is not working and for whom. As a result we have been looking at mortgage arrears problems in more detail, including on the Homeowner Mortgage Support scheme (HMS).

All about HMS

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HMS was launched in April 2009. It aims to fill a gap in the mortgage

safety net for households that are not eligible for help from the means tested benefits system because someone is still in work or the household has some other resources, but not enough to maintain mortgage payments. Borrowers entering into a HMS agreement with their lender would be able to pay less than the full interest payment for up to two years. The unpaid interest accumulates for the borrower to deal with at a (hopefully more prosperous) later date. The Government intervention underwrites a proportion of the deferred interest in the event that the lender subsequently repossesses the home and sells at a loss. Essentially, HMS encourages lender forbearance and breathing space for households to recover from the recession.

However only a relatively small number of borrowers have signed up to the scheme so far, prompting some criticism that HMS has not been particularly successful. On the other hand, many lenders participating in HMS are offering similar help under their own forbearance schemes and others have committed to provide comparable arrangements rather than sign up to HMS. This view suggests that HMS has been successful in encouraging lenders to work with borrowers in financial difficulties in a much better way

and so many more borrowers have benefited from the broad focus of the Government's intervention.

In the first half of 2009/10, Citizens Advice Bureaux dealt with 2,350 enquiries about HMS. To look in more detail at these, we took a sample of 562 enquiries and asked the advisers who worked on them to tell us about the clients' mortgage arrears problems and the outcomes where these were known. We received 270 responses from 204 bureaux, quite a good return considering how busy advisers are. The headline findings were as follows:

Rationale for the scheme

Around 61 per cent of the borrowers were in arrears as a result of reduced economic activity. Firstly, this suggests that advice about HMS is being targeted quite well at people who might be eligible for help. Secondly, it suggests that the policy rationale for the HMS scheme is correct. For instance, job loss was cited as a reason for arrears in 51 per cent of cases. This compares to around 20 per cent of borrowers citing job loss in a survey of CAB mortgage arrears clients in summer 2008. The recession is, not surprisingly, driving the growth in mortgage arrears enquiries seen by the CAB service this year.

Lenders

Almost three quarters of these borrowers were covered by some commitment to extended forbearance by their main mortgage lender, either because they were a member of HMS, or were offering a comparable scheme. In contrast, around 21 per cent of these cases involved lenders

that neither signed up to HMS nor committed to offer an alternative. So there is a significant group of borrowers who remain outside the umbrella of HMS type support.

Second charge lenders were mentioned in only about 18 per cent of the responses, which is rather lower than the 30-40 per cent we have typically seen in other surveys of mortgage arrears enquiries. This might suggest a perception that HMS is less likely to help borrowers with multiple secured loans.

Eligibility for HMS and alternatives

We asked whether advisers thought that the borrowers advised about HMS were likely to actually be eligible to join the scheme. Of the 237 responses, around 37 per cent were classed as potentially eligible. However, out of the 270 enquiries, advisers only knew of five cases where the borrower had actually been accepted onto HMS by their lender.

We also asked advisers whether those borrowers not entering HMS had any other viable options to deal with their mortgage arrears. Half of the borrowers in the survey had another viable option. Lenders had offered another suitable arrears option in 19 per cent of cases and help with mortgage interest payments was available from the benefits system in 17 per cent of cases. Fourteen per cent of the borrowers seemed unable to remain in homeownership but were directed towards options for an orderly withdrawal - ten per cent were directed towards the Mortgage Rescue Scheme and four per cent towards their lender's assisted voluntary sale scheme.

In eight per cent of cases, advisers believed that the borrowers wanted to stay in their home, but had no options to help them do this. In another two per cent the borrowers said that they wanted to hand in their keys and took no other option.

Outcomes

Finally, we asked the advisers to assess the likely outcome of these arrears cases in the longer term. We received 198 responses to this question. Advisers believed that just over half of these people had a good chance of staying in their home. The options available for dealing with arrears had given another 36 per cent temporary breathing space, but advisers thought these borrowers would still struggle. Advisers also believed that around 14 per cent, or one in seven, of the borrowers they advised about HMS were likely to end up being evicted because of their mortgage or secured loan arrears.

This survey seems to add some weight to the theory that low take up of HMS is at least in part due to the other forbearance options on offer. But the outcome was much less certain for nearly half of the households we were told about. Another forthcoming survey of people helped by court desk advisers will highlight how it is the poorest borrowers who are most likely to face repossession. Economic waters may be starting to calm, but more and better lifeboats are still needed to help the most vulnerable in particular. The job of helping people to stay in their homes is far from done.

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Deficient action

Nina Mackellow considers the need for a change of strategy to address the problem of energy inefficiency in the private rented sector (PRS)

Increasing energy efficiency in homes is a key strategy of the Government to reduce both carbon emissions and fuel poverty. So far the focus has been on incentives rather than regulation. Yet this strategy doesn't seem to be having the desired impact on the PRS which continues to have some of the most energy inefficient housing and is proving to be the hardest area to tackle.

Carbon emissions from homes account for a quarter of total UK emissions. Reducing this figure is a key element of the Government's strategy to achieve an ambitious 80 per cent cut in carbon emissions by 2050, based on 1990 levels. Improving energy efficiency has so far been the main way the Government has sought to tackle residential emissions, with the advantage of also cutting fuel bills and in so doing contributing to the commitment to eradicate fuel poverty by 2016.¹ Homes in the PRS are more than three times as likely as those in the social sector to have an excess cold hazard.² Some 416,000 homes in the PRS have this risk. Despite various financial incentives (Landlords Energy Saving Allowance, Warm Front Grants, energy company discounts through the Carbon Emissions Reduction Target (CERT)), the gap between energy efficiency in the PRS and that in the social sector has increased in the last ten years, indicating that a

voluntary approach to tackling the problem is not enough.

Landlord inaction and insecurity of tenure

All these measures to improve energy efficiency in the PRS rely on either the landlord or tenant being proactive in applying for financial help. Yet our evidence shows that many landlords are unwilling to undertake even the most basic repairs. Given this, it is unsurprising that an approach which relies on them taking the initiative to invest in extensive improvements, often with no obvious financial gain, is failing to achieve the desired outcomes.

A CAB in Hertfordshire saw a man who had been without heating or hot water for three months. He complained to his landlord when it first stopped working and was assured that it would be repaired, but nothing was done. An environmental health officer had visited the client and had meetings with the landlord, but this had not resulted in any action. The client had to buy electric fan heaters which caused his electricity bill to increase from £25 to nearly £100. He was extremely concerned about the health of his two year old son and his wife who was eight months pregnant. The house had developed a mould problem as a result of the

cold conditions.

The draft Heat and Energy Saving Strategy (HESS) produced by the Department for Energy and Climate Change (DECC) suggests a voluntary code of practice where private landlords pledge not to rent out properties below a specified minimum standard for energy efficiency. Given that the Law Commission estimated in 2007 that only around two per cent of private landlords were even members of a professional association, an approach which depends on signing up to a voluntary code hardly seems realistic and we have serious reservations about how widely it would be taken up.

Nor is it realistic to rely on tenants to request improvements, since their minimal security of tenure means that they may fear retaliatory eviction or a rent increase if they are seen to be demanding improvements or making complaints.³

A Lancashire CAB saw a woman who was being evicted from her home after requesting repairs. She had lived in the property for two years with her partner and three children. She requested that something be done about the holes in the doors, the broken windows and the damp and as a result had received a notice to quit. The client had no rent arrears. She was very worried about the prospect of

¹ A household is said to be in fuel poverty if it needs to spend more than 10 per cent of its income on fuel to maintain a satisfactory temperature (usually 21 degrees for the main living area, and 18 degrees for other occupied rooms).

² Department for Communities and Local Government 2009, *English House Condition Survey (EHCS) 2007 Annual Report*

³ Debbie Crew (2007) *The tenant's dilemma*

becoming homeless especially since her partner had health problems and could not work.

In the draft HESS, the Government suggests making energy performance certificates (EPC) more prominent in estate agent advertisements and window displays. But this approach presumes that prospective tenants have the luxury of choosing their home with reference to a range of desirable factors. In reality, choice is severely limited for many CAB clients due to landlords' reluctance to take people in receipt of housing benefit. Because of the poor quality of much PRS accommodation, tenants' main concerns are usually focussed on whether essential features such as bathroom and kitchen equipment are in working order. The short term nature of most private tenancies also means that energy efficiency is never going to be high on the list of tenants' priorities.

The Housing Health and Safety Rating System (HHSRS), the risk assessment procedure used by local authorities in dealing with residential properties, offers a way to tackle cold homes. It requires all rented homes to meet standards roughly equivalent to an EPC rating of E. However, research by the Chartered Institute of Environmental Health has shown that local authorities are not using the HHSRS to its full potential. Many have not adopted a strategic approach to the problem, aimed at ensuring that the worst properties are identified and tackled first. Instead they focus only on responding to complaints from tenants, despite the fact that the most vulnerable tenants and those renting from the most problematic landlords are probably least likely to risk making a complaint. The

most energy inefficient properties are usually those owned by hard to reach landlords, outside of the circle of landlords usually in contact with the local authority.

What is needed?

In a recent report, the Climate Change Committee (CCC) highlights the Government's failure to get to grips with energy efficiency in the PRS and recommends that regulatory measures should be considered. The Committee predicts that the split incentive of tenants paying the bills and landlords paying for improvements will make the PRS unresponsive to the neighbourhood approach and Pay As You Save scheme set out in the Government's Low Carbon Transition Plan. In the absence of any proposed measures to empower private tenants through giving them greater security of tenure, tenant action is unlikely to be an effective impetus for change

There is a real need for greater political priority and resources to be given to improving standards in the private rented sector, with local authorities having clear nationally driven targets for the percentage of their PRS which should reach a certain level of energy efficiency, relevant to their starting point, by a specified date. The Audit Commission has recently highlighted the need for local authorities to raise their game in this area by making greater use of their HHSRS powers to identify those homes that are in need of improvements. And CLG's Director of Housing Strategy and Support has acknowledged the need for better use of this tool by writing to all local authority chief executives urging them to make better use of the HHSRS to reduce the number

of cold homes in the PRS. Increased capacity would allow local authorities to be more proactive about property inspection, and to develop a more joined up, cross departmental approach to enforcement. For example, housing options departments could alert environmental health officers when a tenant is threatened with eviction using a section 21 notice, as this could create a good opportunity to inspect a property without the risk of further retaliatory action against the tenants. This might also help create a much needed disincentive for landlords to use a section 21 notice inappropriately.

The PRS is playing an increasingly vital role in the housing market. It is the only sector which is currently growing in size, and it is the only option for growing numbers of households unable to afford home ownership and unable to access social housing. A real focus now on improving energy efficiency in the sector could not only make a significant impact on reducing carbon emissions, but also reduce fuel poverty, deliver savings to the NHS through tackling the causes of much ill health and create much needed employment opportunities at the local level.⁴

It would also help to make the PRS a sector of choice for tenants, rather than the option of last resort.

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⁴ British Medical Association (2003), *Housing and Health: Building for the future*, CIEH (2008) *Good Housing lead to Good Health*

Working for workers

Richard Dunstan welcomes recent progress in protecting vulnerable workers from exploitation, but notes that there is still a long way to go

In a series of social policy reports from 2001 onwards, Citizens Advice highlighted the widespread exploitation of vulnerable workers by rogue employers. Whilst the vast majority of employers try hard to meet their legal obligations to their workforce, there are still far too many unscrupulous or rogue employers (and employment agencies) prepared to flout the law and so profit from exploitation. As a result, many tens of thousands of the most vulnerable workers in the UK economy – including many low paid migrant workers from the newly expanded European Union and elsewhere – are failing to benefit from the Government's very welcome policy programme since 1997 to establish a framework of decent standards in the workplace.

And they are not the only losers. The activity of their deliberately exploitative employers – including, in some cases, the non-payment of tax and national insurance – puts good employers at a competitive disadvantage, eventually forcing some to cut corners themselves or risk going out of business. And, when they do so, even more workers lose out. Yet, all too often, such exploited workers are too fearful of victimisation or dismissal to raise a grievance and bring an Employment Tribunal claim – the principal method of enforcing most statutory workplace rights. As a result, unscrupulous or rogue employers can profit from exploitation with near impunity. For example:

A migrant worker sought advice from a CAB in Gloucestershire. His employer had been making unauthorised deductions from the client's wages to pay for a new dish washer after allegedly damaging the previous one. As a result, he was receiving less than the statutory minimum wage. The CAB explained that this was illegal, but the client was too scared of losing his job to take action.

An Indian man sought advice from a Berkshire CAB about his working conditions. For the past two and a half years, he had been employed as a restaurant chef. The client told the CAB that he usually worked over 80 hours per week with no overtime pay, and had not taken his holiday entitlement. Although his employer had agreed verbally to his taking 32 days leave to return to India, the client felt he could not complain about his working conditions, or insist on taking the holiday as he could face dismissal and deportation because his work permit was tied to this job.

A man sought advice from a Merseyside CAB about redundancy. Soon after starting work, he had two industrial accidents. These were recorded in the company accident book, but no measures were taken to prevent further similar incidents. At a later date the client witnessed a serious safety risk. When he complained to the manager, he was told not to interfere. Subsequently the client reported them to the Health & Safety Executive. Just before Easter 2009, the client was amongst seven

workers who were laid off. Five of the workers had since been taken back on, but the client was made redundant. The client felt that this was due to his complaints about the health and safety issues and not due to lack of work.

We concluded, and in our reports recommended to Government, that the five statutory workplace rights enforcement bodies – HMRC for the national minimum wage, the Gangmaster Licensing Authority, the Employment Agency Standards inspectorate, the Health and Safety Executive, and Defra for the agricultural minimum wage – should work together much more effectively and become more accessible to vulnerable workers and thereby reduce the incidence of such exploitation.

In 2007, the Department for Business, Innovation & Skills (BIS) established a Vulnerable Worker Enforcement Forum, chaired by the then Employment Relations Minister, Pat McFadden MP, to “look at the nature and scale of the abuse of worker rights, examine the effectiveness of the existing enforcement framework, and identify improvements.” Citizens Advice was pleased to participate in the work of the Forum, alongside the TUC, the CBI and the enforcement bodies, and in December 2007 we published a report *Rooting out the rogues*, reiterating our case for a more joined-up, and so more effective, statutory enforcement regime.

In August 2008, the Forum's final

report proposed “a programme of action aimed at improving awareness of basic employment rights, facilitating and encouraging the reporting of abuses, and taking steps to join up the [five] workplace enforcement bodies and enhance their profile and deterrent effect.” Work began immediately on establishing a new, single telephone gateway to the five bodies, and the Pay and Work Rights Helpline went live in May 2009. The Helpline was launched publicly in September 2009, accompanied by an extensive and imaginative promotional campaign, and the number of calls to the Helpline has since increased dramatically.

At the same time, the resources and powers of the Employment Agency Standards inspectorate have been boosted, with dramatic and very welcome results. Between April and August this year, the inspectorate won back more than twice as much money for mistreated agency workers as in the entire previous year.

For this successful programme of work, the BIS vulnerable worker team has been shortlisted by the Citizens Advice service for an award in the category of ‘Best public policy’. This award will be presented in January 2010 to the government department or public body that has been most receptive to our evidence, has responded swiftly and in a way that is commensurate with the problem. There are, however, key issues that still need to be addressed to reduce the exploitation of vulnerable workers.

One of these is the UK’s confusing and complex legislation on employment status, under which three main categories of employment are recognised: ‘employee’, ‘worker’ and ‘self-

employed’. Assignment to a particular category has implications for tax, national insurance and benefits, and for employment protection. This places unfair restrictions on the rights of many low-paid workers, and the complexity of the rules also means that even when workers *do* have rights, unscrupulous employers can easily ensure that their staff do not qualify.

There is a clear link between in-work poverty and poor treatment at work, a problem that the UK’s employment status legislation is contributing to. For example, the legislation enables employers to falsely categorise workers as self-employed in order to pay them below the minimum wage, allows casual workers to have their regular employment terminated at a day’s notice and limits homeworkers’ eligibility for maternity pay. It can also mean that workers are left with no choice but to work informally. There is no moral or economic justification for the high risks of extreme hardship which these workers and their families face.

Such working conditions can also make it more difficult for people to progress – those on atypical contracts are less likely to receive training at work, and more likely to cycle between low-paid work and benefits. Employment insecurity affects many other areas of these workers’ lives, limiting access to credit, leaving workers without redundancy pay and causing extreme stress from financial worries. Preventing the injustice of such poor treatment at work would contribute to reducing poverty in the UK.

There are strong economic reasons for taking action. The OECD has convincingly shown that across the economic cycle growth is not

diminished by fairer rights at work. As the Government seeks to rebuild the economy after the current recession, it will be essential to cultivate the productivity benefits and higher skills that improved treatment rights will bring. Many other European countries with successful economies have better provisions in place to ensure fairer treatment for those in precarious employment.

Citizens Advice is therefore one of a number of organisations – including the Child Poverty Action Group, the Fawcett Society, Gingerbread, the Law Centres Federation, the Methodist Church, the Muslim Council of Great Britain and Oxfam – that have joined a TUC-led campaign to ensure fairness at work for those in low-paid and precarious jobs. As the *fair work coalition*, these organisations have come together to highlight the continuing injustice experienced by dependent workers on ‘worker’ or ‘self-employed’ contracts, and to draw attention to the in-work poverty that can result from the reduced employment rights experienced by these workers. We are calling on the Government to commit to reviewing employment status legislation, using powers introduced in 1999, to ensure that all working people have the same set of basic rights.

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The pitfalls of personalisation

Lizzie Iron explores the downside of personalising public services

Personalised services, individual budgets, direct payments – the new buzz words in delivering government services. The focus to date has been in health and social care, but back-to-work services are also increasingly aiming for more personalised services, and other departments will no doubt follow.

What is personalisation?

The principle of personalisation is that service provision should be designed around the needs of the individual. In health and social care, an individual should be assessed for services which suit his or her requirements, and should then be offered the choice of receiving those services directly, or receiving a payment to purchase the services that best meet their needs. In back-to-work services the individual should work with their employment adviser to find the right job for them and their circumstances, or to identify appropriate training and development opportunities to get into work.

The problem for the lay-man is that this seems entirely natural, and it's a bit mystifying to work out why Government is so exercised about it! It is, however, an indication of how far services have become driven by process – rules, systems, value for money, measurability, targets, consistency, resourcing.....

A Hertfordshire CAB reported a lone parent who had received a letter from Jobcentre Plus, inviting her to a Work Focused Interview.

The letter said 'your Personal Advisor can make sure that you know about the range of help available. *They can help you make the right decision for yourself and your family and assist you in overcoming some of the problems you might face in preparing for work*'. However, when the client attended the interview, her own ideas for re-training were dismissed, and she said she was given no information on courses which would be available for her, nor about potential employers. She felt that the interview delivered none of the promises made in the letter, and was angry as she wanted help finding work and did not think that she had received personal service.

Statutory services tend to be designed for an average range of need, and come from the start-point of what the government is able to provide, often based on how many people can be served at the lowest cost. This results in services which are often inadequate for more specific needs, and are limited by budgetary restrictions, political agendas, and local pressures. Personalised services aim to understand the unique circumstances of the individual and to assess their need from a starting point of what would be ideal for them. Provision of the service is then dependent on various factors – such as resources, availability and accessibility. Provision may not reach the ideal, but is more likely to get closer to solutions that suit the individual.

This is not a new idea, but it is a challenge for Government to deliver it successfully. There is an

inherent tension for Government in this aspiration: how can they deliver personalised services and still ensure that public money is spent appropriately and that a reasonable consistency of provision is achieved?

What are the problems?

While personalised services would appear to be desirable, there are problems for many CAB clients. The Department of Health states: 'Everyone eligible for statutory support should have a personal budget - a clear, up-front allocation of resources. The council or a third party may manage this on behalf of an individual. Alternatively, people may choose to take all or part of this budget as a direct payment, with access to appropriate support to enable real choice and control.' Some people are better able to manage choice and control, while others may prefer to share or delegate it. Real problems arise where people who choose direct payments do not have access to the information and support they need to manage them effectively. For example, take-up of direct payments in the Salford region is low: anecdotal evidence from the Combined Hospitals CAB suggests that clients would like more 'say' in the provision of their care, but are anxious about taking full responsibility for it. Evidence from bureaux across the country shows increasing problems for people on individual budgets having to deal with the technical aspects of becoming employers as well as problems for the people they employ:

A Hampshire CAB saw a client who was in receipt of direct payments to employ carers. He had not been offered any advice on how to deal with employing staff and got into difficulties with an ex-employee who was seeking to enforce her statutory rights to pay-slips and holiday pay. The client did not want to deny his carer any of her rights but lacked the information to fulfill his obligations as an employer, and was becoming increasingly anxious about the situation.

A CAB in the North of England saw a client who had been verbally bullied by the disabled woman who had employed her for the past three years, paid for by direct payments. The client had been working 60 hours a week, seven days a week and was told she was not allowed holidays as there was no one to cover her. She had never received written terms and conditions of employment and had tried without success to complain to her employer's social worker.

In back-to-work services, individuals are not given direct funding, but support is supposed to be designed specifically around the individual's needs and circumstances. We have seen numerous cases, however, where the client tries to take control – for example by finding a training course for themselves – but the system is not flexible enough to allow them to follow it up without losing financial stability.

A man in his fifties and claiming JSA saw details of a 14-week skills-based training course which would lead to possible employment as a plumber. He was not eligible for New Deal 50-plus. He was told that he would lose his JSA if he undertook the course and that there would be no help available for him to do it. He had no savings but planned to borrow the money for

the course fee. He was frustrated by the lack of help available to him to retrain to find employment.

Clients with learning difficulties, mental health conditions, or serious debt problems may all find the prospect of managing their own budget – and commissioning services for themselves - to be a significant challenge. This is not to deny them the right of control, but they may need support to help them achieve the best outcomes.

Opportunities

It is already clear that this system will result in a wider range of providers - some on big contracts, others in one-to-one personal relationships. As well as the problems mentioned above, this is likely to create problems of quality control and accountability if things go wrong.

A range of provision means that people will need to find the best services for their needs, so information and advice services are critical to personalisation. It is not yet clear whether budget-holders will need to use some of their payments to buy advice services, or whether government will bear the cost, and make them free to users. The advice must, however, be independent and impartial, so that outcomes are absolutely in the client's best interest. With no profit incentive, and no government agenda, third sector organisations have the credibility to offer advice on this basis, and the CAB service is still one of the most comprehensive advice providers available.

Some bureaux are already supplying these services, and have also taken the next step into advocacy. The two services together ensure that the principles of personalisation are achieved even for highly vulnerable clients.

Tameside CAB runs a service called the ChoicE Shop, which gives clients a comprehensive package of information on community care issues which enables them to make informed choices appropriate to their personal needs, well in advance of having to make critical decisions – such as leaving hospital or moving into a care home. The Tameside advocacy service operates a six-week review for clients in residential care, and the statutory review at 12 months.

Conclusion

While an aspiration for personalised services would seem to be common sense, it is vital that there are mechanisms to ensure that the most vulnerable people in society are able to make best use of them. Otherwise, we will simply replace statutory services designed for the average majority with personalised services accessible to the average majority – and the people with the most complex lives, who – arguably - stand to benefit most from personalised services, will simply remain on the margins as they always have done.

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Courting disaster

James Sandbach looks at current issues facing local courts and the spiralling costs of using the courts

A cursory look at the Ministry of Justice and Court Service (HMCS) websites suggests that local courts are currently being closed at an alarming rate; with up to 18 magistrates' courts and several county courts being axed. Not all of this is necessarily bad news; modernisation of the court service inevitably means that some courts that can't deliver basic customer standards such as a functioning reception, disabled access and a decent waiting area will lose business to those that can.

There are also some striking new court projects opening up from the Supreme Court and the new Civil Justice Centre in Manchester to the Merthyr Tydfil Combined Court Centre and several projects around the country that bring magistrates, crown and county courts together in purpose-built facilities. However, questions arise not just over whether local access is being compromised, but also how well the administration of justice fairing up as HMCS and the Ministry of Justice seek massive efficiency savings and court users have to deal automated systems which churn people through costly procedures, as well as the effect of policy changes over legal aid.

Costs again

One certainty is that the justice system isn't getting any cheaper. In particular the costs of civil litigation and court procedure have been rising: the impact of the Woolf

protocols for case management and pre litigation stages have generally been thought to have "front-loaded" costs to earlier stages of the dispute resolution process, and the "no win no fee" – conditional fee (CFA) and 'after the event' insurance (ATE) - system of funding professional legal has opened up new risks.

All this is now the subject of a major review of the civil costs regime by Lord Justice Jackson. In Citizens Advice's submission to the review, we argued that even nominal costs such as county court application fees can present a major barrier to using the civil justice system, even before the question of the question of whether the client needs professional representation or legal aid is addressed. And qualifying for fee remission is fraught with difficulty – as one CAB adviser in the West Midlands recounts:

"I assisted my client in completing three applications to the county court to vary the judgments along with three applications for a remission of the fee as she is in receipt of income based ESA. The evidence to support the application for a fee remission must be a letter from the DWP stating that the client is in receipt of a qualifying benefit dated not more than one month prior to the application. The letter from the DWP confirming the client's receipt of ESA was dated 23/06/09. The client attended the county court on 21/07/09 to submit the applications and each of the applications was date stamped.

The forms were then forwarded to the Northampton Bulk Centre and were date stamped 30/07/09. All of the applications were then returned stating that the client's evidence to support the application for fee remission was more than one month old."

Nevertheless, the review has at least raised the issue of overall costs in the civil justice system to the legal sector. Commenting on work of the Review, the Lord Chief Justice has warned of "mayhem" if people involved in disputes are priced out of the civil court system because legal aid is not available and costs and professional charges are too high.¹ In our submission we focussed in a few key issues – including the importance of litigants having support and advice in court, as acting as 'a litigant in person' can expose court users to risks. But the other key issue is the simple notion of proportionality – particularly where court costs, conditional fee indemnities and professional charges exceed the value of debts being recovered through the courts. Finally we argue that judgments should be automatically enforceable so that winning litigants in person don't have to go through another round of litigation. For example:

A CAB in Buckinghamshire in reported that their client was sued by plumbers for money owed to them for work done at her home. She had not paid them because of bad workmanship and delays and submitted a counter claim. At the pre hearing review, the judge

¹ Interview, Daily Telegraph, 27 October 2009

advised client to get a solicitor as the claimant had got one. The client did this and took out a loan to cover her solicitor's costs. She was awarded £8,000 at the full hearing but her legal costs were in the region of £12,000. There would be a further hearing to decide on allocation of costs later. The plumbers stated that they could not afford to pay the £8,000 award immediately, offering instalments of £800 per month. Overall the client, by following the judge's advice, incurred substantial legal costs and even if she was awarded them by the court, she was unlikely to recover them.

Improving the budgeting, administration and proportionality of justice

It is of course easy to identify problems in the court system, to bemoan the limits of legal aid funding, and identify unreasonable costs, professional charges and defective legal insurance products. But it is far less easy to reach and implement the right solutions. Intermediaries who channel cases to lawyers are now more heavily regulated than they were in the past, but the system of referral fees and CFA and ATE procurement is remains murky. Landmark House of Lords judgments have said that professional charges should a matter for regulators, rather than "costs hearings" for the courts.² However, currently there is little that regulators such as the Legal Services Board can do to regulate fee scales. One way forward could be practice requirements for both courts and litigants' representatives to undertake advanced case budgeting on the basis of fixed fee rates.

Our evidence also suggests there are administrative weaknesses in the court system which can generate further costs, e.g. complex or online forms. Basic support with form filling could help, as well the IT capacity to transfer cases between courts more effectively. However there are also more fundamental policy questions for judicial and government authorities to address in order to ensure that costs are proportionate, e.g. what sort of issues should be litigated and how. Bureaux regularly report cases involving very small amounts of money which raise issues about how and when the courts should get involved in debt or deferred payment matters, whether to lenders, landlords or public authorities. For example:

A South London CAB reported that their client was paying his TV licence at £5.50 per week. The client had mental health problems and his only income was benefits. He missed one payment, resulting in the magistrates' court issuing a summons for £5.50. The CAB provided a letter to the court, setting out the client's particular circumstances.

Balancing the rule of law

It is therefore difficult to address the problems of costs in the court system without also addressing also the boundaries and basis of civil and criminal liability. Access to justice challenges are also raised by the recent introduction of means testing for legal aid at a low level of income eligibility. For example:

A West Midlands CAB reported that their client was facing criminal charges under sections 1 and 6 of

the Forgery and Counterfeiting Act 1981 for allegedly forging some students' certificates. She had admitted some of the charges and had a first court appearance at Birmingham Magistrates Court. She approached a legal aid solicitors firm for assistance, but they advised her that she was not entitled to legal aid as her husband had annual earnings over the relevant threshold for their circumstances. Consequently the client would have to face proceedings which might result in a prison sentence of up to ten years if found guilty without legally aided advice.

So as the justice system faces funding uncertainty and political change, it is important not only to explore cheaper collective redress and ADR options, but also to re-examine the fundamentals of what society expects from the justice system. Citizens Advice is leading this discussion in our policy work, for example: with two new forthcoming reports, one on civil recovery, and one on mortgage arrears actions.

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² *Callery v Grey*, (Nos 1 and 2) MLC 0799 (HL:02)

Evidence reports published in the last six months

- **Supporting Justice** (*free, June 2009*)
The case for publicly funded legal representation before the Asylum Support Tribunal
- **Out of Order** (*free, June 2009*)
CAB evidence on the use of charging orders and orders for sale in debt collection
- **Hung UP** (*Leeds CAB, free, June 2009*)
The cost of calling government from a mobile phone
- **No time to retire** (*free, July 2009*)
Legal aid at 60
- **The story of influence** (*free, September 2009*)
A history of CAB policy work since 1939
- **Limited capability** (*free, November 2009*)
CAB evidence on the first year of employment and support allowance administration

Recent briefings and responses to consultation papers September – November 2009

- Submission to Tenant Services Authority on Building a new regulatory framework

(September)

- Submission to the OFT's review of high cost credit (September)
- Submission to CLG on protection for tenants affected by landlord mortgage arrears (September)
- Reforming financial markets – response to HM Treasury (September)
- EQUALITY BILL: Response to Government Equalities Office on Specific Duties: Making it Work (October)
- Legal Aid: Refocusing on Priority cases. Response to the Ministry of Justice (October)
- Response to the Office of Fair Trading's consultation on irresponsible lending (October)
- Response to DCLG consultation on allocations code of guidance (October)
- Response to DWP consultation on Energy Costs Support Scheme (October)
- Response to the Financial Services Authority on redress for payment protection insurance (October)
- Response to DH green paper Shaping the Future of Care Together (November)



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