

# evidence



## Deal or no deal?

Cathy Finnegan argues that energy companies should not be able to disconnect customers for non-payment of repayments to fund energy efficiency measures.

The Energy Bill, currently going through Parliament, seeks to improve the energy efficiency of the UK's housing stock and sets out the Government's flagship 'Green Deal' policy. This will allow private companies to finance the installation of domestic energy efficiency measures with the cost paid back by consumers from the savings on their energy bills. Whilst we welcome the intention of the Green Deal, and the consumer protections already contained in the Bill, we are concerned about the proposal to allow suppliers to disconnect the energy supply of consumers who fall behind on Green Deal payments.

At present, suppliers can only disconnect a household for failure to pay for the charges associated with the supply of energy and associated metering costs. It is a crucial debt advice principle that debts for which one can lose one's home, liberty, or supply of essential goods and services, should be prioritised over other debts. Allowing disconnection for the non-payment of Green Deal repayments would subvert this principle simply because of the way in which the loan is repaid. Some energy companies already provide goods and services as well as fuel, such as boiler repair services or insurance cover. Although there are some circumstances in which

a customer may receive a joint bill for their energy supply and these services, the energy supplier cannot disconnect customers for failing to keep up payments for these services. This important consumer protection must not be reversed.

Although cases of actual disconnection are rare, CAB evidence indicates that vulnerable people may be threatened with disconnection for fuel supply arrears. This can cause serious distress and anxiety.

A CAB in Merseyside saw a lone parent on income support who had accrued arrears on her fuel bills after recent hospital treatment for cancer. During this period her meters had not been read and she had built up arrears. She told the bureau that when she had phoned her supplier to tell them about her situation, the supplier simply added a £14 late payment charge to her arrears and threatened her with disconnection, for which she would be charged over £220. She was told that if this happened, the reconnection fee would be over £115. This woman was in tears when she came to the bureau. She was struggling to feed and clothe her child and the action of her supplier was causing her extreme distress and hardship.

Where customers are in financial

difficulty, threats of disconnection can lead them to try to make repayments at an unaffordable and unsustainable rate. We would therefore be extremely worried to see any extension to the circumstances in which suppliers may disconnect their customers.

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# It's the system, stupid

Alex MacDermott considers whether vulnerable debtors can be empowered and enabled by better debt collection practices

In April the UK Government published a strategy for consumer empowerment which aimed to ensure that all consumers feel confident and empowered.<sup>1</sup> These are aims that Citizens Advice wholeheartedly supports. We regularly see consumers who have little or no power in their relationships with businesses and service providers. Many of them simply cannot get a good deal, put things right or influence the policies and practices of others.

Some of these consumers fall into well defined groups with easily identifiable characteristics and traits – such as people with sensory impairments and those who have physical or mental health problems. Consumers in these groups are often referred to as being vulnerable, because their personal circumstances make them more susceptible to negative or detrimental outcomes than other people. For example:

A CAB in the West Midlands saw a 28-year-old man who was blind. He lived in local authority accommodation and paid £15 per fortnight rent to top up his housing benefit payment at his local neighbourhood office. He had asked the council to provide all written communications with him in large print, but this never happened. As a result he didn't notice when his housing benefit stopped. No one at the local neighbourhood office told him. One day he happened to have

a friend with him when he made his payment and they noticed he was over £1,000 in rent arrears. When he asked about this, they said he should have known his housing benefit had stopped and that the council had started eviction proceedings.

As this case shows, sometimes it's not the person's circumstances that cause the problem, it's the system they're dealing with that's at fault. Practices have developed to deal quickly and efficiently with the majority of people, whilst measures to help vulnerable consumers are only targeted at those whose characteristics or traits are considered to make them vulnerable.

Such an approach implies vulnerability is a static state that always affects certain people, and never affects anyone else. As a result if your circumstances aren't on the list, you're expected to cope regardless of how complex or stressful the situation is.

More recently insights from behavioural economics have been used to suggest all consumers can be 'nudged' into making better decisions. But if you are nudged into taking action to deal with your over-indebtedness, you need your creditors to work with you. Otherwise you remain disempowered and excluded by their poor practices. For example:

A CAB in the South East saw a man

who had recently suffered a drop in income. He only had one creditor to which he owed three debts. He had no physical or mental health problems and was perfectly happy to negotiate with the firm by himself, he just needed a little bit of advice and support from the bureau. The bureau happily advised the client and even provided him with the letters and financial statement he would need. But the creditor just refused to deal with him. They ignored his offer, piled on interest and charges and kept calling and writing to him about his debt. They simply would not consider his offer unless and until the bureau made it on his behalf. This disempowered the client and diverted bureau resources away from other people who desperately needed help.

A CAB in the North West saw a man who was off work sick. He needed some respite from his creditors while he focused on keeping his home and getting back to work. To do this their adviser helped them make token offers of £1 per month to each of their unsecured creditors. All but one accepted and agreed to freeze interest and charges and stop calling and writing for a short time. But one didn't. Instead they said their system could only accept an offer of £10 per month, and if the client could not pay this he'd still get calls and letters and interest and charges would still apply. This just added to the client's health problems, undermined the good practice of their other creditors

1. *Better Choices: Better Deals. Consumers Powering Growth*. (2011) Department for Business, Innovation and Skills and Cabinet Office  
2. BS 18477:2010 Fair, flexible services for all, British Standards Institute, 2010 and see [odi.dwp.gov.uk](http://odi.dwp.gov.uk). The Government Office of Disability Issues encourages all government departments to use the social model when considering disability.

and added to the work load of the bureau.

We believe this evidence strongly supports a dynamic concept of vulnerability, which can be identified through both 'risk factors' and 'behavioural triggers'. These approaches are recommended by Government Office of Disability Issues, and the new BSI standard for inclusive services, which recognises vulnerability as a dynamic and transient condition, rather than a fixed state, and we would urge businesses and service providers to adopt it.<sup>2</sup>

Describing these approaches is all well and good. But how can businesses and services providers put them into practice?

We recognise that this is a challenge. And we welcome the challenge we've been set in *Better Choices: Better Deals* where Government has asked the Citizens Advice service and Consumer Focus to consider how we can help to empower vulnerable people as consumers: something we've been working on for sometime.

In 2008 we published *With a little help from my friends*, a report that examined the problems with assisted self-help debt advice – whereby people in debt are empowered to take control of their finances by providing them with the advice and support they need to deal with their creditors by themselves.

Following this report we worked with creditors, debt collectors and other advice agencies to develop a new standardised approach to assisted self-help debt advice that is now known as CASHflow. The CASHflow process has now helped thousands of consumers and recently become enshrined in the

Lending Code, which sets out how subscribers, including all major banks and credit card companies, must treat their customers.

More recently we used conspicuous examples of good debt collection practices to produce *Do the right thing: advisers' and creditors' experience of best practice in debt collection*. In this report we set out the five steps we believe all creditors should take to achieve best practice in debt collection. We also called on creditors of all kinds to join us in a conversation about how debt collection practice can be improved across the board.

This conversation became the Addressing Financial Difficulties best practice working party (the AFD). This is a truly cross industry working party with creditors of all kinds represented. It is a forum to champion and share best business practices that help consumers avoid, manage or recover from periods of financial difficulty.

The AFD will be publishing a definitive guide to best practice at addressing financial difficulties later this year. This guide will use practical examples to set out an inclusive framework that:

- identifies and responds to consumer vulnerability
- identifies and responds to people facing financial difficulties
- overcomes the 'ostrich' effect and gets consumers engaged
- keeps consumers engaged whilst avoiding any further debts
- allows advisers and creditors to work together as efficiently as possible.

This guide strongly advocates the dynamic interpretation of vulnerability and highlights a number of examples where creditors get it right – such as the use of clear and

concise language to make processes easier to understand, and the use of key words to identify people with mental health problems so they can be taken out of the mainstream debt collection process.

These and the other examples used in the AFD's guide go some way to presenting social remedies to the social aspects of disability and vulnerability. We're not fully there yet and there are a lot of systems and processes that still leave consumers disempowered. But if we can keep working together and keep sharing practices that are proven to work, we're confident we can empower many more consumers.

We believe this work is in everyone's interests:

- Consumers get better deals and are at less risk of suffering negative outcomes.
- Businesses suffer fewer losses, receive fewer complaints and pay less to resolve them.
- Advice providers make better use of scarce resources.
- Government reduces spending on regulation.

And these benefits should be the 'nudge' that businesses, service providers and policy makers need to overcome any complacency and ensure that no matter how broad and inclusive the mainstream is, consumers who do fall through the gaps get the extra help and extra protection they so desperately need.

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# Tax credits - a time to renew

Christie Silk examines why hundreds of thousands of families face overpayments each year for failing to renew their tax credit

It's that time of year again – the radio advertisements prompting people to renew their tax credit claims early will soon be followed by television reminders to 'do it now'. Working and child tax credits provide substantial sums of money to lift low income families out of poverty and to make work pay. Entitlement is based on annual income and most awards require renewal every year between April and the end of July.

Claimants can renew by completing and returning the forms or by calling the Helpline. This year more claimants will have their awards renewed automatically and will only need to make contact if their forms show incorrect information. Yet, judging by the experience of the previous seven years, thousands will still face gaps in their income as, for one reason or other, they fail to renew by the deadline.

Furthermore, failure to respond to papers sent by HM Revenue and Customs during this period results not only in payments stopping but all payments received between April and August having to be repaid. When the consequences are so severe, why do almost half a million families still fail to renew their awards each year?

To understand why these problems arise, and what can be done to reduce them, Citizens Advice analysed 222 cases about tax credit renewals seen by bureaux in England and Wales in Autumn 2010.

We found that in many cases, there

was no single, clear cause for why the renewal failed, but there were three key contributing factors:

- poor understanding of the system
- client vulnerability
- inadequacies in service delivery.

## Understanding

Many clients appeared to have incorrect perceptions of their award and their responsibilities. Twenty-three clients failed to renew because they didn't understand that they needed to take action. Around half of these identified specific circumstances:

- it was the first year they had to renew
- their entitlement had ended or was about to end because their child had recently left school or they had stopped work
- they no longer wanted to receive tax credits
- their situation had not changed so they did not realise that they still needed to complete the form.

Our survey suggests that clients found it difficult to understand that the renewal concerned both future entitlement and confirmation of entitlement to money already received. Those who had ongoing entitlement were also shocked to find not only that their payments stopped but also that they would have to repay any money paid since April – the start of the tax year.

HMRC-commissioned research similarly found that many claimants did not understand the provisional

nature of tax credits.<sup>1</sup> Claimants struggled to understand the language and format of the renewals packs, and what they needed to check on their award notices. Such fundamental misunderstanding indicates that some people did not read or understand the information and guidance given in the renewal pack. Indeed, the perceived complexity of the system caused some people to disengage completely. Fifteen clients did not return their forms because they found them too difficult to complete.

## Vulnerability

We found that it was particularly difficult for people with additional needs or complex personal circumstances to understand and/or engage with the system. Ten clients could not renew because they had a mental or physical health problem. Two clients were coping with domestic violence, one of whom didn't have access to her post.

It is perhaps inevitable that claimants in these circumstances would struggle to comply. HMRC can reinstate payments and an award back to the beginning of the tax year for those who re-engage quickly after missing the deadline, and a longer period for those with 'good cause'. In 70 per cent of cases where the CAB intervened, they succeeded in helping get the payments reinstated and in a further 10 per cent of cases the consequent overpayments got written off. However, resolving these problems is not always straightforward. Without the

1. *Customer experiences of tax credit overpayments: exploring customers' understanding and experiences of overpayment and debt relating to tax credit systems*. HMRC research report 113, December 2010, IPSOS Mori Social Research Institute.

bureau's help, it was apparent that many of these clients would still be without the income they were entitled to and would have ongoing overpayments.

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## Delivery

The successful renewal of an award requires administrative efficiency by both HMRC and claimant. Our survey showed that some clients faced unnecessary barriers which made engagement difficult. Some reported that they could not get through to the Helpline, others reported that they did not receive the renewals packs or their returned forms were not processed.

A London CAB advised a widow in financial difficulties who had returned her renewal papers in May 2010 but had not heard anything by August. She phoned to chase this up numerous times but could not get through. When the adviser called the intermediaries' line, the office claimed her annual declaration had not been received and her payments had stopped.

Tracking postal correspondence is a perennial, frustrating challenge in service delivery. Given the large volumes of post dealt with, a small number going astray is not surprising.

For claimants with literacy difficulties or who simply find forms difficult, the Helpline may be the only means of renewing. As the Helpline provides a translation service, access is also important for people whose first language is not English. However, in July and August last year, HMRC faced severe problems handling the volume of calls. While average waiting times reached ten minutes, a worrying number of calls were

simply cut off. Weekly performance ranged from 38 per cent of calls cut off at the beginning of July to a massive 83 per cent of calls cut off in mid August.<sup>2</sup>

A number of clients had missed the deadline because they could not get through to the Helpline. The problems forced HMRC to extend the deadline from 30 days to 60 beyond the renewals deadline for claimants to get in touch to get their awards put back into payment.

In Yorkshire, a lone parent was unable to return the forms because she was fleeing domestic violence. Her child tax credit stopped, so she tried to ring HMRC from her mobile at least 40 times over two days but couldn't get through. She was losing £100 a week and incurred costs from the calls.

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## Conclusion

Reducing the number of failed renewal cases every year is a serious and complex policy challenge for HMRC.<sup>3</sup> People are not failing to renew out of dishonesty – in fact they can face severe financial difficulties not doing so. For a significant minority of claimants, neither the financial consequences of non-engagement nor the media campaigns are proving sufficient. The confusion is compounded by the difficulties that they encounter in accessing support.

There is, however, light at the end of the tunnel. The Welfare Reform Bill currently passing through Parliament will replace tax credits with a universal credit, which will be simpler to understand and comply with. The rules for universal credit will only require changes in circumstances to be reported when they occur,

employers will confirm a claimant's earnings, and there will be no annual reconciliation.

Nevertheless, as five more years of tax credits renewals remain, HMRC and the Department for Work and Pensions (DWP) are beginning to work in a more joined up way. This year, HMRC are making better use of benefit data and are automatically renewing a proportion of claims where details are already known by DWP. This will reduce the requirements on claimants to repeat details to different departments. It should also enable the Helpline to meet a reduced demand.

Finally, there is no doubt that any system whose customers include the most vulnerable, must recognise that there will always be some people who will need help to do the right thing. Others make errors in their efforts to engage. The experience of tax credit renewals tells us that, despite the huge financial penalties that arise for those who don't renew on time, hundreds of thousands people still fail to do so every year. We are concerned that the legislation for universal credit will mean that claimants who make mistakes (whether by chance or deliberately) in relation to their claim can be subject to civil penalties. Although the system will be simpler, there will always be people who struggle to understand and meet their responsibilities due to language, literacy or sickness and disabilities. Improved compliance must come from improved understanding and data sharing by departments rather than punishment.

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2. HC Deb, 23 November 2010, c278W

3. <http://www.hmrc.gov.uk/stats/personal-tax-credits/cwctc-final-awards-supp-may11.pdf>

# Back to the poor law?

Alan Barton examines the Government's proposals to abolish the Social Fund

Since the late 1980s the discretionary social fund, administered by the Department for Work and Pensions, has provided a safety net for people on means tested benefits who need to borrow money in an emergency or need to buy essential household goods.

It has three components: community care grants, crisis loans and budgeting loans. The grants are intended to assist people leaving institutional care, to help people stay in the community, and to help families under exceptional pressure. In the main, these grants are given to enable people to buy essential household items, often when moving to a new property – 263,000 grants were given in 2009/10, costing £139 million. Crisis loans are only given to people who are without sufficient resources to meet their immediate short term needs – 2.7 million were made in 2009/10. Budgeting loans are to help people who have been on benefits for more than six months with intermittent expenses that are difficult to budget for from benefits – there were 1.2 million awards in 2009/10.

The Government has been considering the future of these payments once universal credit replaces most working age benefits from 2013, as proposed in the Welfare Reform Bill currently before Parliament. Their proposals are that budgeting loans and some aspects of crisis loans should become advances of universal credit, whilst community care grants and crisis loans for living expenses should be abolished and the responsibility

for meeting these needs should be passed to local authorities. Currently interest free budgeting loans of between £100 and £1,500 can be claimed by recipients of income support, pension credit, or income-based jobseekers allowance or employment and support allowance to buy high cost household items they require such as cookers or beds. They must have been receiving the qualifying benefit for at least 26 weeks and not to have too much existing social fund debt, but otherwise the rules are simple and the claiming process is quick and straightforward. Repayments are made by deduction from benefits. This is a system which generally works well and the proposed new system should be similarly effective, although we think the scheme would be more valuable if the 26 week qualifying period was abolished or shortened.

At present about half of all the crisis loans that are granted are for what are known as alignment payments. These are made to claimants who are awaiting payment of a benefit they have claimed. About 1.3 million of these payments were made in 2009/10, reflecting the slow processing of many benefit claims. Again the proposal to replace these loans by advances of universal credit looks sensible provided administration is simple, with speedy decisions.

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## The Government's proposals

By contrast the proposals to abolish community care grants and crisis loans for living expenses with 'local

support' are causing great concern to all the bodies which deal with recipients of these payments, including the CAB service. We understand why the Department for Work and Pensions wants to reform the system. The arrangements for community care grants have been criticised as poorly targeted and inefficient by Parliament's Public Accounts Committee. The Committee also said: "responsibility should only be handed to local authorities if there is a clear business case to do so, and if local authorities are properly resourced to do the job."

Applications for crisis loans used to be made locally by completing a form. Citizens Advice Bureaux reported that prospective applicants were often discouraged from making an application by Jobcentre Plus staff, and there were also access problems for people who could not easily get to a Jobcentre to apply. In an effort to improve the accessibility of crisis loans, Jobcentre Plus switched to a telephone application service using an 0800 number and regional call centres. Following this change, the number of crisis loan applications has increased by two and a half times in the last three years and DWP believe they are being claimed inappropriately, although they have not produced evidence to support this. Bureau advisers continue to see people who are refused a crisis loan when they appear to qualify, and this evidence of unmet need is confirmed by the review statistics. The 2009/10 Secretary of State's Annual Report on the social fund shows that, when unsuccessful applicants sought a

review of the decision, 38 per cent of refusals were reversed on a first review. Of those cases that went to a review by the Independent Review Service, 51 per cent had the original decision substituted.

Citizens Advice and other groups working in this field would welcome analysis, research and debate on what can be done to improve the system. However, this is not what has happened. Instead the DWP has put forward its proposals in fewer than four pages, giving no analysis of the issues and only a sketchy picture of what it envisages. It appears that the £139 million currently spent each year on community care grants plus possibly some more in respect of crisis loans (which should be self funding) will be transferred to local authorities and devolved administrations. They will not be given any new duties or powers, but DWP will write to local authorities to set out the Government's policy expectations for the new funding. The money will not be ring fenced so local authorities will be able to spend it for other purposes if they wish. Given the strong financial pressures that local authorities face, there is a substantial danger that they will do this.

The DWP envisages that adult and child care services departments of local authorities will use the money to give grants to disabled people and lone parents who need to furnish and equip new homes, as a replacement for community care grants. However, these local authority services currently only deal with frail and disabled people with substantial care needs, and with families where children are at risk. Many of the people who would qualify for a community care grant at the moment will have no

contact with these services, and would risk getting no help under the government's proposals.

DWP does not expect local authorities to set up emergency loan schemes, but suggests they could support food banks, second-hand furniture and white goods schemes, local credit unions and homelessness prevention schemes. Whilst Citizens Advice recognises that such schemes have a role to play in helping people to manage on very low benefit incomes, we do not see how they can possibly replace the 1.3 million crisis loans for living expenses that are made each year. The experience of the CAB service is that many of the people who apply for crisis loans are in desperate need of immediate cash to buy food, or top up a gas or electricity card for light and heat.

We cannot tell how local authorities will provide 'local support' to replace community care grants and crisis loans. But we are very concerned that the Government is proposing to remove the right of poor people to apply for community care grants and crisis loans if they meet the demanding eligibility criteria. Currently, applicants can seek an internal reconsideration and then an independent review if they are refused. These rights will disappear and the Independent Review Service will be abolished. Instead people in often desperate need will have to manage on whatever their local authority chooses to provide – which in some cases is likely to be very little – with no redress if legitimate needs are not met.

We expect that the inadequacy of these new arrangements will result in unsustainable demands being placed on charities, and many poor people being forced to seek credit

from high cost lenders, including illegal lenders, thus making them even poorer.

We are surprised that DWP thinks that local authorities and devolved administrations will be able to provide a better service than DWP could. DWP benefits - including the future universal credit - exist to help people in financial need to meet the costs of their and their families' lives. By contrast, local authorities are responsible for securing the provision of services to their populations. They are not responsible for ensuring individual families have the resources to purchase items they need to live their lives. It seems to us that community care grants and crisis loans fall very clearly into the area of activity for which DWP is responsible. It follows that we would expect DWP to be exploring how it could provide better financial support to those currently applying for community care grants and crisis loans. Of course, this would not rule out commissioning other local agencies to be involved in delivery.

As they stand, the Government's proposals shift responsibility for helping poor people who need urgent financial support away from DWP and onto local authorities and devolved administrations. Their argument is that local authorities know local needs best and are best equipped to meet them. This remains to be seen. These proposals carry uncomfortable echoes of a return to the Poor Laws.

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# Hollow demands

Richard Dunstan reports on redevelopments since the publication of our December 2010 report *Uncivil recovery*.

In February 2010, Catherine was surprised to receive a legally-worded letter from a company called Retail Loss Prevention (RLP), demanding £137.50 as compensation for her “wrongful act” causing loss to Debenhams. A few days previously, Catherine had been accused by Debenhams security staff of the attempted theft of cosmetics. Strongly contending her innocence – the alleged ‘theft’ was simply a mix-up between two sales assistants – Catherine had asked that the police be called. The police had then attended but, after taking statements from Catherine and Debenhams staff, had decided to take no action; the cosmetics were recovered intact.

Catherine wrote to RLP, challenging the demand. RLP replied: “Where a business is subjected to wrongful acts, they are entitled to claim the value of the loss caused, plus the costs involved in investigating or mitigating the attempted wrongful act. Decided case-law provides authority for claiming [such] costs. The [pre-set, fixed] costs applied in your case have been tested through the civil courts, which have established the figures to be fair and reasonable.”

Catherine did not respond to this letter. Five months later, she received a letter from a debt collection agency, JB Debt Recovery, stating:

“[RLP] have instructed us to collect the above outstanding debt. Should we not hear from you within 7 days, then [RLP] will have no alternative than to consider legal

action. A successful legal action could result in all legal costs being added, plus interest.”

Armed with advice from her local CAB, Catherine did not respond to this letter; as of June 2011, she has not heard further from RLP or JB Debt Recovery, and no county court claim has been made.

In December 2010, our report *Uncivil recovery* described how such threatened ‘civil recovery’ against those accused of theft has become widespread in recent years, with RLP and three other agents issuing more than 100,000 demands per year on behalf of retailers such as Iceland, Superdrug, and Tesco. Among CAB-reported cases, one in four of the recipients are teenagers, and many others have serious mental health problems. And, in many cases, the alleged offence is strongly denied. But, among the 450 cases we have examined in detail to date, there is one common feature: if the sum demanded is not paid, the threatened county court action does not follow. Our analysis of these cases further shows that:

- Just three retailers – TK Maxx, Boots and Asda – account for 50 per cent of all demands, and six retailers for 70 per cent of all demands.
- Among shoplifting-related cases (80 per cent of all cases), the value of the goods allegedly stolen was less than £10 in 46 per cent of cases, and less than £25 in 75 per cent of cases; yet the average sum demanded was £143.92.

- In two out of three cases the police were either not called, or as in Catherine’s case were called but decided to take no action.
- In every single one of the more than 360 shoplifting-related cases, the sum demanded was a pre-set, ‘fixed sum’, plus the value of any goods not recovered intact and fit for re-sale; in 80 per cent of cases, as in Catherine’s case, the latter was given as ‘nil’.

However, we can find no evidence of a retailer having ever successfully litigated a contested county court claim in respect of such an (unpaid) pre-set, ‘fixed sum’ demand. This is hardly surprising, as in fact there is no legal basis for claiming such ‘fixed sums’ as compensation for the consequential damages of a tort. If a (proven) tort such as theft caused significant disruption to a retailer’s business, then the law allows the retailer to claim for the staff time diverted to dealing with the effects of the disruption. However, the retailer would need to prove that the disruption to its business was significant, and would need to evidence how much staff time was actually diverted.

On 22 March 2011, during a parliamentary debate initiated by Simon Hughes MP, the justice minister, Jonathan Djanogly, stated: “The Government accept that a retailer arguably has a legal right to recover any additional costs or losses directly caused as a result of dealing with a case. However... there is no statutory or other clear basis for setting the amounts of such costs

or losses that can be recovered in an individual case. Therefore, the amount of money, if any, that a retailer can recover from an individual accused of low-level theft in respect of its wider costs is entirely a matter for the courts based on the circumstances and facts of the case.

I say 'if any' because my officials have not yet been able to identify any cases in which the issue has been tested before the courts ... a test case might be a good idea."

On 12 April, the Law Commission published a consultation paper setting out proposals for reform of the right of redress against unfair commercial practices: *Reforming Consumer Redress for Misleading and Aggressive Practices*. Noting that "if someone has stolen goods, there can be no objection to a demand that they should pay for the goods which have been stolen", the Commission states:

"However, 'civil recovery' is problematic. One problem is that the recipients often deny that they have committed any theft. Another is that agents demand that the recipient pays a fixed sum for 'investigation', 'security' or 'administration' costs. These 'fixed sums' have no legal basis. If the theft caused significant disruption to the retailer's business, then the law allows the store to claim for the staff time diverted to dealing with the effects of the disruption. However, the store would need to prove that the disruption was significant, and that staff time was actually diverted. The law does not generally allow fixed sum penalties. Nor does it allow stores to apportion the overheads incurred for security and surveillance to individual shoplifters."

Subsequently, in its written response to a film on threatened civil recovery broadcast by BBC TV's Watchdog on 14 April<sup>1</sup>, RLP stated:

"It should be noted that claims are routinely issued in Court and that RLP rely on established case law to support its clients' claims. This legal concept was tested in lower value first instance cases and the heads of damages were accepted in County Court by separate judges. Whilst first instance cases do not create a legally binding authority, they have some persuasive authority. The Law Commission, Home Office and Ministry of Justice have the information on these cases."

The Ministry of Justice has now shared this information with us. It includes brief details of the 96 county court claims issued by retailer clients of RLP over the ten-year period 2001-10. Our analysis of these 96 claims shows that:

- Seventy-three of the claims resulted in a default judgment, 13 were admitted/settled, and five could not be served on the defendant. So, in relation to these 91 claims, it cannot be said that the 'legal concept' was tested in court, let alone approved, by a judge. Just three claims were fully defended and went to trial before a judge, but in each case the outcome is given as 'unknown'. (In the other two cases, the outcome is unclear, and we await clarification from RLP).
- Forty-eight (50 per cent) of the claims were issued by just four retailers: Boots; Arcadia Group; Argos; and Sainsbury's.
- All but 25 of the claims were issued before 2007. No claims were issued in 2002, 2003,

2004, 2007 or 2009, and only three in 2008.

- Of the 15 claims issued in 2001, eleven (73 per cent) were for less than £155. However, of the 81 claims issued since 2001, none was for less than £200, and only five were for less than £500. Of the 22 claims issued since 2008 (of which 12 were issued by Boots), only three were for less than £1,500, and the median sum claimed was some £3,700.

In short, it would appear that less than 0.02 per cent of the more than 600,000 demands issued by RLP since 2000 have resulted in a court claim. Moreover, it would appear that very few, if any, of the 81 court claims since 2001 related to alleged low-value shoplifting, and that none related to a pre-set, fixed sum demand of the sort issued to Catherine.

Why do high-street retailers allow their agents to extract money from often vulnerable individuals with seemingly hollow threats of court action and escalating costs? The available information suggests that the practice recovers a tiny proportion - less than 0.2 per cent - of the £4.4 billion annual cost of crime to the retail sector, yet it causes untold misery to hundreds if not thousands of entirely innocent shoppers such as Catherine. It is time to bring such unfair practice to an end.

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1. See: [www.bbc.co.uk/blogs/watchdog/2011/04/civil\\_recovery.html](http://www.bbc.co.uk/blogs/watchdog/2011/04/civil_recovery.html)

# The rehabilitation revolution – will it work?

James Sandbach examines proposals to tackle reoffending

Within weeks of taking office, the coalition Government's Justice Secretary, Ken Clarke, bravely promised a rehabilitation revolution in criminal justice policy which would reduce both the prison population and the appalling re-offending statistics in England and Wales. The Ministry of Justice have now outlined their ideas in a Green Paper, *Breaking the cycle: effective punishment, rehabilitation and sentencing of offenders*. But do the Government's proposals stack up?

We agree with much of the Green Paper's objectives for more proportionate approaches to sentencing, and targeted interventions to prevent re-offending. In our 2007 report, *Locked out*, we highlighted some of the issues that need to be addressed to support offenders to manage their problems and re-integrate into the community. However, the Green Paper also exhibits a rigid cost-cutting approach, so it may not achieve all it sets out to do.

## Pathways to rehabilitation

There is a notable shift of emphasis away from the previous Government's approach to deliver strategic commissioning plans for offender services on a regional basis. Instead, a new integrated model is proposed which puts emphasis on requiring offenders to tackle their criminal behaviours and causes such as drug and alcohol dependency. The new model should also be integrated with other support services. Commissioning will take

place locally through Probation Trusts and controversially the Green Paper proposes to open up the market to a wide range of providers on the basis of payment by results.

Whilst the Green Paper recognises that homelessness and unemployment are major issues for the offender population, it plays down some of the key elements of exclusion that trap offenders in lives of crime and incarceration. Key amongst these is personal finance – having a legitimate sustainable income with access to a bank account, and the financial capability skills to manage in ways that will sustain housing and employability, access to training, and support family relationships. There is no mention in the Green Paper of the finance gap that offenders typically experience on release from prison before formal support systems start kicking in. Bureaux continue to report cases where ex-offenders are in crisis situations due to lack of immediate support post-release particularly for short-term or remand prisoners. For example:

A Hampshire CAB's client was in prison for month after pleading guilty to stealing. He was given one month on remand and 200 hours' community service (unpaid work). As he had served his month already on remand, he was released straight from the court. Consequently, he did not receive a travel voucher or any financial assistance which he should have received from the prison, or help from the probation service. He was immediately

homeless, having to sleep on friends sofas, and unemployed – his first benefit payment having taken about a month to sort out. He felt his situation would lead to him fall in with the wrong crowds.

A South London CAB saw a single 43 year old man who had been released from prison in February 2011. He was in a hostel for two weeks, then he was told by his probation officer he would find him accommodation which never materialised. He was living rough without money or food; he had applied for jobseekers allowance but needed an address. He found a suitable property to rent, but could not afford the deposit or rent in advance. When he applied for a social fund loan he was told that, as he had not claimed benefit for 26 weeks continuously, he would not qualify. His probation officer referred him to the local authority's homeless persons unit, but they told he was not in priority need for rehousing. He then registered with the neighbouring local authority, but found it would take up to eight weeks for his name to be entered onto the system to start bidding for accommodation.

We therefore argued in our response for a greater emphasis on offender support work covering housing, welfare benefits, debt, money advice and financial capability. Over the past two years, we have worked in partnership with the Revolving Doors Agency, the Prison Reform Trust, Unlock and the Money Advice Service to push these issues as central to

successful interventions.<sup>1</sup> We have also argued that advice services can be integral to resettlement, and that the provision of advice to prisoners should be mandatory so all prisons should have to offer confidential, independent quality assured advice which covers the whole range of legal, financial, housing and personal issues.

If, as envisaged under the Government's proposals, alcohol and drug rehabilitation agencies become the key or lead agencies in delivering offender support services, we believe that there should be partnership and subcontracting arrangements put in place for advice agencies to be able to work alongside rehabilitation services in prison and probation settings.

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## Prisons and sentencing

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The Green Paper does not flinch from controversial issues of prison, punishment and sentencing reform. Prisons should be places of hard work and punishment, but should be reserved for more serious offences. Offences which currently incur short-term sentences increasingly should be dealt with through a rigorous and demanding strict community sentence regime. Finally, the Paper proposes more prison diversion schemes to ensure that offenders with mental health problems get treatment.

Whilst the shift of emphasis to community penalties and diversion is welcome, is the focus on hard prison labour right? It suggests that prisoners are a profitable source of physical labour which could limit the contribution of organisations that work with prisoners, and reduce

the opportunities for prisoners to engage in meaningful work, training, skills based activity, or volunteering, such as the successful schemes run by some bureaux. In our 2007 report we found that the availability and diversity of personal development and educational courses varies considerably between prisons. Overcrowding, frequent prisoner transfers, safety, control and under-activity, especially within large male prison establishments, are still significant problems which need to be tackled.

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## Restorative justice

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There is also a strong emphasis in the Green Paper on restorative justice and reparation for victims. A key proposal is for more legal provisions for offenders to financially compensate victims for the impact of their crimes, alongside greater use of fines. But, does it really help if offenders are pushed into debt, due to excessive use of fines, bailiffs' warrants and compensation orders, which could subsequently lead to reoffending? Restorative justice initiatives in the community such as community courts (for example North Liverpool Community Justice Centre) and neighbourhood justice panels have worked well and should be encouraged, but they do need resources to make them work. Finally the Green Paper proposes that more cases should be dealt with summarily by magistrates with incentives for defendants to make early guilty pleas.

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## A system on trial

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It is too early to judge whether the proposed rehabilitation revolution is going to deliver. The Green

Paper is high level and often lacks a detailed understanding of the socio-economic issues, and the practical problems faced both by offenders and the agencies and organisations that work with offenders. Much of the detail and implementation around new sentencing frameworks and payment by result schemes for rehabilitation services is yet to come. However, there are big risks to the Government's approach – payment by results could prove to be an impractical and financially unsustainable model for offender services, with an emphasis on delivering to meet targets short-term outcomes rather than improving longer term outcomes. Community based organisations like Citizens Advice Bureaux could find themselves excluded when they have much to offer in supporting ex-offenders, because they cannot afford to provide services on a payment by results basis. Ex-offenders could continue to find themselves unsupported in meeting their core needs such as living costs. A big step-change like this will also require a major input of resources, which, given the current economic situation, are unlikely to be forthcoming.

Finally, as the Justice Secretary has recently found to his cost, the political debate over crime, prison and public protection is highly emotive. Clarity matters - good intentions alone are not enough. These must be balanced with what the public legitimately expect for their justice. Consequently the rehabilitation revolution may yet unravel.

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1. *Hand to Mouth: Research report on the impact of poverty and financial exclusion on adults with multiple needs*, Revolving Doors Agency 2009, Bath and Edgar; *Time is Money: Financial responsibility after prison*, Prison Reform Trust and Unlock (sponsored by Friends Provident) 2010; *Improving the financial capability of offenders A guide for Citizens Advice Bureaux and others*, Consumer Finance Education Body (now the Money Advice Service), 2010

## Evidence reports published in the last six months

- **Give us a break!** (April 2011)  
The CAB service's case for a Fair Employment Agency
- **Access for all** (March 2011)  
The importance of inclusive services, which are accessible to all users and potential users
- **Cashing in** (March 2011)  
CAB evidence on the problems of cold calling and charging up-front fees by credit brokers

## Recent parliamentary briefings and responses to consultation papers

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Reform of regulation of insolvency practitioners – response to the Insolvency Service (May)

HM Treasury consultation on simple financial products (March)

Equality Act 2010: The public sector Equality Duty - Reducing Bureaucracy (April)

HM Treasury and BIS consultation on reforming the consumer credit regulatory regime (March)

DWP Call for evidence: Local support to replace Community Care Grants and Crisis Loans for living expenses (April)

EU consultation on Alternative Dispute Resolution (March)

FSA consultation on product intervention (April)

Response to Ministry of Justice on Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders (March)

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