

Is the civil sanctions pilot ready for takeoff?

Susan Marks urges the Government to pilot new powers for the OFT and trading standards to tackle unfair trading.

Our June 2011 evidence report, *Desperate times, desperate consumers*, showed how the current economic situation had provided rogue traders with opportunities to fleece desperate consumers seeking to manage their restricted finances. In these times, it is all the more important that enforcers such as trading standards and the Office of Fair Trading (OFT) have the right tools to tackle unfair trading practices.

The announcement in the 2009 Consumer White Paper that a civil sanctions pilot would test out the new enforcement tools contained in the Regulation, Enforcement and Sanctions Act 2008, seemed like the obvious solution. It was designed to allow trading standards and OFT to test out an important new enforcement toolbox for consumer protection. The new tools allow enforcers to stop bad practice and to fine businesses who break the law without having to take a time consuming and costly court case. It would also allow consumers to obtain redress as part of the enforcement process.

Importantly, there were also advantages for business. There would be an opportunity for business to take corrective action if they unwittingly breach consumer protection laws. The pilot would provide fair and easy

to use mechanisms for businesses to challenge enforcement actions they felt were disproportionate. It would also ensure that businesses who comply with consumer law will gain from prompt enforcement to end potentially lucrative bad practices by rogue traders in the same market. Voluntary compliance and compensation would be encouraged.

In March 2010 the Government consulted on the proposed pilot. The decision was made to carry out a two year pilot involving the OFT and a group of willing local authority Trading Standards Services and to limit the legislation to which the sanctions could be applied. In December 2010 a joint consultation by the Local Better Regulation Office and the OFT looked at exactly how the pilot would be operated. Early in 2011 a monitoring group was established. All was ready for the Statutory Instrument that would facilitate the pilot to be laid for the proposed start date in April 2011.

Since then there has been a deafening silence, and it is unclear why. The only losers would be the illegal traders who make an unfair profit and cause consumer detriment. They could be tackled more quickly and more cost effectively. We believe that it is high time that the pilot was cleared for

take-off. The Government should announce a start date for the pilot without further delay. This would be an important step towards ensuring a fair trading environment for both consumers and business.

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Legal aid – the battle continues

James Sandbach examines the success of campaigning to influence Government plans to reduce the scope of civil legal aid

Just over a year ago the Ministry of Justice published its controversial Green Paper on legal aid reform which proposed radically narrowing the scope of civil legal aid to fundamental issues such as life, home and liberty. Indeed, since the coalition Government announced their ambition to reform legal aid to achieve a £350 million cut, in the context of ever-dwindling public funding for advice services, an epic saga has been unleashed over the future of “access to justice” and free advice. What should the priorities be for publicly funded advice, and what is the future for “social welfare law” advice services? A battle has ensued, but the signs are that campaigners’ concerns, such as those of *Justice for all* and *Sound off for Justice*, are slowly being recognised.

A winter to summer of disappointment

From one perspective, the campaigning activity has failed to shift the debate, let alone public policy. The national media profile of the issue has been low in comparison to other public services and public spending issues. A Ministry of Justice Bill closely modelled on the Green Paper’s proposals was published and passed through the House of Commons despite 5,000 responses to the Green Paper, 4,000 Valentine cards, a lobby, a march, day of action, a critical Select Committee report, several backbench debates, public bill scrutiny and evidence sessions, countless articles and interventions by voluntary sector leaders, church leaders and judicial figures.

However, that is an unfair assessment

of what has been achieved over the past year of campaigning and advocacy for free advice which has seen the following:

- A reprieve for the Financial Inclusion Fund.
- The return of special educational needs cases into the scope of legal aid.
- A recognition that domestic violence cases should include domestic abuse.
- Amendments to the Bill to cover immigration cases involving domestic violence.
- Clarification that “exceptional” funding categories may be wider than first anticipated.
- A £20 million “Advice Fund” for social welfare providers administered by the Big Lottery, in addition to money available through the Big Society transition fund.
- The announcement of a cross-departmental review of advice services funding.

And despite the exhaustion of campaigners, it is clear that the battle is far from over. Support has been won from a range of supporters such as Chief Justices, Women’s Institutes, and the Liberal Democrat Conference, whilst disability organisations are becoming increasingly effective advocates on welfare and clinical negligence issues.

The autumn rebellion

A key breakthrough came when 10 Government MPs rebelled in the House of Commons during report stage by voting for opposition

amendments to keep more complex social welfare cases within scope. Shattering the Government’s show of unity in Parliament may prove to be a turning point. The debate has moved to the House of Lords where a more rebellious mood resulted in peers from all parties criticising many of the proposed restrictions, with only the Minister defending them. The Government have indicated that implementation will be delayed to 2013 and concessions are in the pipeline including:

- Clinical negligence cases will be the scope of legal aid.
- Provisions concerning means-testing of advice in police stations will be dropped.
- The definition of domestic violence will be revisited.

There is still a long way to go in reaching any settlement to deal with social welfare and family law issues. Making further progress will depend on winning key arguments.

Is it legal?

The issue over social welfare advice has been whether debt, housing, employment, immigration and welfare benefits advice is “legal advice” and therefore fits properly under legal aid. This is a strange debate to have over statutory and contractual law – it doesn’t need much jurisprudence training to reach the obvious answer – law is law. But the real issue is over process. Do the processes involved require legal expertise and qualifications? Very little social welfare law advice falls into “reserved activity” categories under the Legal Services Act and only

small proportions of social welfare casework ever reach a tribunal or court of law. Moreover, the advice sector has been complaining for years that clients' problems do not fall within strict legal textbook tramlines – they involve multiple issues, socio-economic factors and adverse personal circumstances. So when it comes to social welfare law casework, what is the service, what is legal advice and what are the outcomes that advisers are trying to achieve for their clients?

It is up to the sector itself to “demystify” its work and answer this critique with a “render unto Caesar” response. Where an adviser and their client are pursuing a legal remedy such as an appeal or a debt relief order, this work is unambiguously legal. However, this may not by itself engage article 6 “access to justice” rights under the European Convention, so the sector also needs to supply unambiguous evidence about why their clients cannot resolve their problems on their own. This may be obvious in the case of upper tribunals, but it needs to be argued more robustly in the case of lower tribunals.

When is “violence” violence?

The second big issue is the inadequacy of the proposed test of domestic violence for accessing family legal aid. Domestic violence can take many forms: intimidation, threats, emotional abuse, abusive language, control and physical violence. There are 15.4 million incidences of domestic violence in any one year - only a fraction of these are reported to the police. Even fewer are reported to victims' charities and still fewer result in applications for injunctive relief.

The eligibility requirements make

it likely that thousands of genuine victims of abuse within relationships will not qualify for help, because they have been unable to report the abuse they have suffered or prove what has happened. It may be understandable that Government wish to switch to funding mediation for uncontentious divorces, but harm within relationships and the need for legal boundaries and remedies for those who have suffered is an acutely sensitive issue. We discuss this issue further in our recent report.¹

When to act?

It should be pushing at an open door with Government to argue that prevention is better than cure. For example, if avoiding homelessness is the priority for housing legal aid, then the legal aid system should not have to wait for possession proceedings to have been issued in order to act appropriately. Earlier advice can prevent loss of home by exploring all the legal options available to those in arrears to avoid court action. This might include prioritising payments in multiple debt cases, using debt relief remedies, mortgage protection, renegotiation of tenancy or mortgage terms, or sorting out housing benefit.

Costs, savings and consequences

The most challenging aspect of the debate over legal aid reform is the disputed evidence over the cost of reducing services. Do greater costs really accrue to other public bodies, for example costs to the courts of managing litigants in person? Our own research into methods of cost-benefit analysis has been criticised about lacking suitable “counter-factual” evidence about the outcomes of no advice. But there is undoubtedly scope for more research

about the value of advice and the consequences of its absence.

Advice or legal aid?

A key lesson from the past year is our understanding of the Government's priorities – whilst pro-advice, they are sceptical about the value of legal aid. So an overarching message must be that this is not an either/or situation. Law, rights, advice services and legal aid are all integral to each other. Clients need access to legal action as a backstop option where other methods of problem solving (eg mediation and ADR) fail. Legal, money and consumer advice are complementary parts of a whole service. Within the advice sector, generalists need specialists and vice-versa, and different channels – email, telephone and face to face advice are complementary. Advice covers a spectrum of activity and should never stop at the council office or the court door.

So an ongoing challenge for the advice and legal sectors is whether fragmented advice brands and silos serve their customers in the most effective way. The brand reputation of legal aid has suffered, despite its constitutional centrality to the rule of law. But this is a battle that can be won with the right public relations about the value of advice. Similar questions of value have been asked in the past about overseas aid – but now there is consensus between all political parties that aid assists development, so 0.7 percent of GDP is earmarked for overseas aid. It's time for a similar shift in consciousness and thinking about legal aid.

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1. *Breaking up is never easy*, Citizens Advice 2011

A charter for rogues?

Richard Dunstan questions the basis of proposed reforms to employment law

Just as this edition of *Evidence* was going to print, the Business Secretary, Vince Cable, announced a raft of reforms of both employment law and the employment tribunal system. Over the preceding weeks and months, within the Coalition a fierce struggle had been waged over the reforms. We know this because barely a day passed without someone popping up in the news media to push their own ideas on how to reform workplace rights.

A battle of ideas

At the end of October, it was multi-millionaire venture capitalist, Adrian Beecroft, calling for the abolition of all legal protection against unfair dismissal. Whilst Mr Beecroft conceded that this would result in some workers being dismissed “simply because their employer did not like them”, he thought this “a price worth paying”.

A couple of weeks later, it was the turn of the Deputy Prime Minister, Nick Clegg, suggesting that employers should be able to have ‘frank conversations’ with underperforming workers that could not be cited subsequently in a tribunal. Neither Mr Clegg nor anyone else was able to explain why a worker of sound mind would ever agree to have an off-the-record chat with his or her employer, or how the number of such ‘conversations’ could be recorded – as it would need to be to ensure that the ‘conversations’ were not unfairly targeted at any one worker – without more of the “endless red tape” of which some employers endlessly complain.

And then it was Conservative MP and former adviser on “the international law of outer space”, Dominic Raab, calling for a suspension of the national minimum wage for young workers in small businesses, the creation of a registrar to “vet tribunal claims”, the abolition of the rights to paid holiday and a 48-hour weekly working limit, and a whole lot more.

A charter for rogues

Some of these proposals did not make it into the package announced by Vince Cable, but many others did. The qualifying period for legal protection against unfair dismissal will be increased from 12 months to two years – a charter for rogue employers that will, at a stroke, make the jobs of some three million workers even more insecure than they are already. It is far from clear how this will help deliver the boost to consumer confidence that the Chancellor, George Osborne, needs to get the economy growing once again.

And, in a further bid to cut the number of tribunal claims, the Ministry of Justice will introduce application and hearing fees for tribunal claimants. Ministers have justified such fees – which will constitute a major barrier to justice for low-paid workers – on the grounds that “it is fair to look to those who use the system to pay a contribution towards it”. But, whilst a claimant may be ‘using’ the tribunal system only because an employer has treated him or her unlawfully, there will be no fees for respondents, it seems.

At the same time, the Ministry of Justice is abolishing most legal aid for employment advice (as well as other social welfare law advice). And Citizens Advice is far from alone in thinking that this will have the perverse effect of increasing the number of employment tribunal claims.

For specialist employment advice does not lead, inexorably, to a tribunal claim in every case, as ministers appear to assume. On the contrary, more often than not it leads to a resolution of the ‘problem’ by other means, such as negotiation with the client’s employer. Such settlements, outside the formal legal system, stand a much better chance of keeping the employment relationship intact, to the benefit of the worker, the employer, and the taxpayer. And, in many other cases, the adviser concludes that the employer’s actions were indeed unfair or even unlawful, but that – perhaps due to lack of evidence – a long, time-consuming and, no doubt, stressful tribunal claim stands no realistic prospect of success so is best not pursued.

Even in those cases where the advice does lead to a tribunal claim, the early involvement of a specialist legal adviser makes the job of the tribunal that much easier – to the benefit of all, including the taxpayer. In a rare example of joined-up thinking, the Department for Business, Innovation & Skills has itself rued “the many difficulties faced by unrepresented claimants when trying to articulate their claim effectively, and the subsequent burden this can place on the employment tribunal system”.

With the loss of their legal aid-funded employment specialists, the great majority of Citizens Advice Bureaux will no longer have the expertise and capacity to conduct such negotiation with employers, and to sift out misguided or evidentially weak claims.

Put crudely, they will have little choice but to simply hand out a tribunal claim form and/or the telephone number of Acas (which ministers say they are “equipping to play a stronger role in pre-claim conciliation”) to those seeking advice in relation to any workplace problem not covered by the statutory enforcement bodies that lie behind the Pay & Work Rights Helpline – that is, any work problem other than those relating directly to the national minimum wage, the 48-hour limit on weekly working time, and the rules governing employment agencies and gangmasters.

In the somewhat more refined words of Lord Justice Carnwath, Senior President of Tribunals, “without [legal aid-funded advice], not only will many be left in ignorance of their rights, or without the ability to pursue them, but the load of tribunals may increase rather than decrease, both because cases will come to the tribunal which could (with proper advice) have been avoided or settled, and because lack of preparation may add to the length of hearings”.

Hollow victories

One measure that Vince Cable didn't include in his package, but should have, is a new, more effective mechanism for the enforcement of unpaid tribunal awards. In 2008, a Citizens Advice report, *Justice denied*, suggested that one in ten of all awards go unpaid. This prompted the Ministry of Justice to conduct its

own research on the issue. Much to the surprise of Ministry officials – who were clearly expecting their own research findings to undermine ours – this showed the true figure to be four in ten.

This shocking figure led the then Government to introduce, in April 2010, the so-called ‘Fast Track’ enforcement mechanism, under which – for a fee of £50 – an unpaid tribunal award is passed to one of several firms of High Court Enforcement Officers (HCEOs) for direct enforcement.

However, figures released by the Ministry of Justice to Citizens Advice in May 2011 show that, among the some 1,500 unpaid awards passed to the HCEOs during the ‘Fast Track’ mechanism’s first year of operation, the award was recovered in only 42.5 per cent of completed cases. In the remaining 57.5 per cent of cases, the unpaid award was deemed to be “unenforceable” by the HCEOs, and no money was recovered for the supposedly successful tribunal claimant. For these unlawfully-treated workers, the employment tribunal system, and the Fast Track process, delivered empty justice.

This matters greatly, not least because many of the reforms announced by Vince Cable, as well as the proposed tribunal fees regime, appear to assume full compliance with tribunal rulings by all respondent employers. For example, Ministers have sought to deflect criticism of the proposed application and hearing fees for claimants by indicating that those with well-founded claims will not be deterred, because they will be able to recover any fees paid, along with the tribunal award, from the respondent employer.

But the 57.5 per cent of respondent employers who are not paying

tribunal awards are clearly not going to repay hefty tribunal fees, either. Nor are they likely to pay Vince Cable’s proposed ‘civil financial penalty’ for “those employers found [by a tribunal] to have breached an individual’s employment rights”. So it is not at all clear how, as ministers have claimed, such penalties will “encourage employers to have greater regard to what is required of them in law and, ultimately, lead to fewer workplace disputes and employment tribunal claims”.

With the Bank of England cutting its growth forecasts, unemployment at a 17-year high, and consumer confidence already at its lowest level since 2001 (apart from the month of July 2008, when the global financial crisis was in full sway), you’d think that Coalition ministers would have better things to do with their time and energy than further increasing job insecurity by tinkering with workplace rights.

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Bailiff reform: Going nowhere slowly?

Peter Tutton asks why the Government has done little so far to tackle "aggressive bailiffs"

Citizens Advice was pleased that the coalition government agreement contained a specific reference to delivering more protection against bad practices by bailiffs. We have called for better controls and independent regulation of the private bailiff industry for at least ten years. Yet despite repeatedly agreeing that the private bailiff industry needs to be brought under control, the Government has not implemented anything over this period that has made any noticeable difference.

The scale and nature of the problems that CAB clients experience with bailiffs has not diminished. As many as one in twenty of the social policy problems reported by bureaux relate to bailiffs - incredible when you consider the range of problems the CAB service deals with. That is around 2,000 reports of bad practice by bailiffs a year. By way of comparison reports about payment protection insurance at the time of our super-complaint on this were running at around 500 a year.

Our analysis also shows that many, if not most, of the 25,000 or so people who have sought advice from the CAB service about bailiffs since April 2011 have low incomes or circumstances that put them in one of the 'vulnerable situations' listed in the National Standards for Enforcement Agents published by Government. For instance:

- Around 70 per cent stated incomes below £1,000 per month.
- 17 per cent were lone parent families.

- Around one in five were disabled or had a long term health problem.

As the cases cited here show, people in these vulnerable situations are still experiencing unfair and exploitative practices by bailiffs some ten years after the Government's own Enforcement White Paper made the case for bailiff regulation in 2002. By and large, these are the same unfair practices that the Government has not yet been able to bring under control; mis-stating or mis-using powers; illegal fees, intimidation tactics and refusing to recognise financial difficulties:

A client of a CAB in the West Midlands was visited by a bailiff collecting council tax. The bailiff said that if he did not pay, the bailiff would arrange for him to be sent to prison. This panicked the client into handing over £1,000 of his mother's savings as he genuinely thought the bailiff could arrest him and send him to prison.

A CAB in Wales saw a 24 year old woman who had paid a parking fine but this had already been passed to bailiffs who were enforcing their fees. They told her that if she did not pay, they would issue a warrant for her arrest and her 3 year old child would be taken into care and she would be put in jail.

A CAB in the East of England saw a 26 year old woman. About four years earlier she was made aware of a fine against her name for allegedly travelling on the railway without paying a fare. She disputed this believing it to be mistaken identity and she made a statutory declaration

to that effect. She heard nothing for years but then was visited by a bailiff. She explained why she believed she was not the liable person and produced identity. The bailiff checked with their office who apparently told him to proceed with enforcement. The bailiff then threatened the woman by saying he would take her dog and two cats if she did not pay. She was so upset that she asked her mother to pay the fine of £501.

A CAB in Wales saw a 25 year old disabled man. A bailiff had given enforcement and removal notices to his neighbour and told them to tell the man that the bailiffs would be back with a van tomorrow to take his goods and would break in with a locksmith. The bailiff also demanded £100 per week from the man, despite knowing that he only received incapacity benefit of £106 per week.

A CAB in Yorkshire saw a woman who was a lone parent with one child aged 9. She had been working 16 hours a week but this had reduced to 8 hours due to lack of work. She had been falling into arrears with priority and non-priority debt. She was visited by a van bailiff collecting council tax but she did let the bailiff in to her house and had not signed a walking possession agreement. She did offer the bailiff £50 per month and this was refused. She then offered £140 which was her rent money, also owed to same council, despite also being in rent arrears. The bailiff said he would return to take goods and was entitled to bring a locksmith if necessary. The woman was terrified

and felt threatened and intimidated. When the local authority looked at the case, they said that the demand by the bailiff had included fees of £170.50 when only £42.50 was correctly due.

A CAB in London saw a 58 year old man who had rent and council tax arrears. The council had instructed bailiffs to recover the outstanding council tax. The bailiffs levied against a car which belonged to the client's neighbour and added £150 to their fees. The CAB told the bailiffs of their mistake and they agreed to note it on their records, but told the man that they would not remove the fee.

This inactivity looks even worse when set against the progress made towards good practice in other areas. Take for instance the debt collections industry, close cousin of the bailiffs. Since the enforcement White Paper, we have seen new law (the Consumer Credit Act 2006) controlling debt collection practices implemented quickly and the Office of Fair Trading have published and revised the excellent statutory debt collection guidance. At the start of 2012, the Government's comparative record on bailiff reform is looking rather like a decade of shame.

So what should the Government do now to move forward on this issue?

Firstly, the Ministry of Justice (MoJ) must find the arguments to get over the Government's current self-imposed impasse. The world has been waiting for months for MoJ to publish a consultation taking forward reform of bailiff law set out in the Tribunal, Courts and Enforcement Act 2007 and the next steps towards independent regulation of the private bailiff

sector. We understand that this has been delayed by concerns within Government about the possible additional costs on bailiff firms.

Citizens Advice supports an approach to regulation based on proportionality, effectiveness and consumer protection. So we do not think that a light touch, or rather no touch, approach to bailiffs is justified on two grounds. The evidence of consumer detriment is such that sections of the bailiff industry itself has been calling for change. Furthermore, while the private bailiff industry is based around profit taking firms, what they do is not a typical economic activity. Instead the private bailiff industry is licensed by government to earn fees for collecting Government debt. This is in effect a form of tax farming, an activity over which consumers have no economic control with a history of consumer detriment going back at least as far as the Roman empire. So we believe there is an overwhelming case for better consumer protection and no compelling economic argument against it.

Secondly, the Government needs to bring forward an effective package of reform that will actually meet the coalition commitment to provide more consumer protection. The bailiff industry has been arguing for simplification of the law and the fee regime in particular. This will help but will not be enough by itself. CAB evidence suggests that bailiffs are not mis-stating powers and mis-charging fees simply because they do not understand the system; instead the system is just too easy to play. So simply re-coding the law could make things even worse; unless accompanied by independent conduct regulation, an independent and accessible complaints process and real options for people in financial difficulties to pay their debts in an affordable and sustainable way.

Thirdly the Government needs to be more savvy to get things moving. Up until now the Ministry of Justice has left progress in areas such as oversight and complaints handling largely in the hands of the industry. But this has given too much power to those bailiffs that are happy with the status quo. In fact, there are many forward thinking firms and individual bailiffs that broadly agree with Citizens Advice that that effective enforcement, good practice and consumer practice must go together hand in hand. MoJ can and should be the senior partner in a progressive alliance with these firms and consumer groups; working together quickly to develop affordable and effective plans for the independent oversight that can tackle problems in the private bailiff sector once and for all. If this is not achievable by the end of 2012, perhaps the whole model of private bailiff enforcement should be reconsidered.

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Back to the poll tax?

Geoff Fimister looks at the Government’s proposals to localise, cut and cash-limit council tax benefit

Much concern has been caused by the Department for Communities and Local Government (CLG) proposals for the “localisation” of council tax benefit (CTB) in England¹. Central to these is the replacement of a demand-led scheme (where local authorities are reimbursed for benefit awarded to all who meet the entitlement criteria) with a cash-limited local “pot” (where benefit spending must remain within pre-ordained constraints). This is a fundamental change with profound implications and the effects will be exacerbated by the proposed overall 10 per cent cut in spending on CTB.

Non-pensioners are the target of the cuts. The Government intends to prescribe the rules used to arrive at local CTB for pensioners, protecting their position. This is obviously welcome for pensioners (except that it may be seen as socially divisive; and creates a disincentive for the local authority (LA) to promote take-up) but correspondingly increases the impact on other claimants.

The Government has invited LAs to consider protecting other groups deemed “vulnerable”. But the more groups thus defined, the more severe the impact on those not protected. For example, an LA might choose to protect low-paid workers, leaving less money available for out-of-work lone parents or out-of-work disabled people. Groups protected in one LA might be severely squeezed in another.

Ministers have suggested that non-pensioner claimants can best be protected by LAs’ moving them

into work - for example, Grant Shapps MP, Minister of State for Housing and Local Government, in his oral evidence to the CLG Select Committee, 6 July 2011. There are several flaws in this argument:

There seems to be an assumption that LAs will in future be able to create jobs almost at will, which (although LAs certainly seek to attract and generate employment) would appear to be at odds with likely labour market realities and the effects of cuts to LA budgets:

- Some existing CTB claimants are already in work.
- Some existing CTB claimants are unable to work because of ill-health, disability or caring responsibilities and are recognised as such.
- Some existing CTB claimants have been officially deemed capable of work, but are in practice unlikely to find a job.

Ability to pay

There is no element to provide for contributions to council tax within basic benefit levels. Claimants are therefore likely to experience hardship insofar as they manage to make up CTB shortfalls from basic incomes and increasing indebtedness insofar as they do not.

Following the 1988 benefit changes and throughout the period of the poll tax (officially “community charge”) there was an 80 per cent ceiling on rate rebate and subsequently community charge benefit (CCB).

This created the notorious problem of councils’ pursuing claimants for debts which, while often individually small for the LA, were insurmountable for the claimant. This feature was dropped when council tax was introduced, the poorest claimants being entitled to 100 per cent CTB.

These brief extracts from the Citizens Advice 1992 evidence report, *Charging into the tax*, show the increase in the number of enquiries about the poll tax and CCB and the impact on CCB claimants of the 80 per cent ceiling:

“The overall enquiry statistics in England and Wales for the year April 1990 – March 1991 show a 28.3 per cent increase in enquiries concerning taxes and duties, the category including the community charge. The category covering CCB (social security) also showed an increase of 4.6 per cent from 1,595,297 to 1,668,739... A survey of debt enquiries received by bureaux conducted in May 1991 showed that of 100,120 enquiries on debt, 10.4 per cent concerned community charge arrears...

“There were numerous cases of people on income support expected to pay 20 per cent community charge who were unable to make their low income stretch any further. The standard amount included in income support levels did not cover many people’s 20 per cent liability. The same is true of other clients on benefits just above income support level...

1. CLG, *Localising support for council tax in England*, July 2011.

“A CAB in Devon and Cornwall reported the case of a single parent on income support whose weekly benefit of £41.60 included a social fund deduction of £6.05 per week. Her gas supply was disconnected and she had a key meter for electricity which was very costly due to her attempts to keep her flat warm for her six-month old baby. After food, household and baby expenses, payment of her community charge was financially impossible...

“A CAB in West London reported the case of a single parent who worked as a waitress earning a very low income whilst at the same time trying to support her 19 year old son through college. She was unable to pay any of her community charge and was facing court action for non-payment”.

The proposed system promises to replicate this arrears hazard for non-pensioners. The combination of cash-limiting, 10 per cent spending cut and pensioner protection will lead to substantial cuts in the maximum payment available. LAs to which we have spoken have suggested likely minimum contributions of at least 20 per cent.

Consequently, we are concerned that we will see increasing numbers of people with council tax arrears if this proposal is implemented. At the same time, we are seeing councils getting tougher on collection and enforcement of council tax arrears, as this very recent case shows:

A CAB in the West Midlands saw a 37 year old man with mental health problems who had an outstanding council tax debt of £1.43. A liability order was granted, resulting in court costs being added to the debt. This was then passed to bailiffs resulting in additional costs. At the time of seeking advice, his debt had grown to £116.35.

There are also problems for work incentives, in that an overlap between universal credit (UC) and localised CTB tapers (withdrawal rates) could push up the maximum overall marginal deduction rate (UC plus income tax plus national insurance contributions (NICS) plus CTB) well beyond the 76 per cent envisaged by the Department for Work and Pensions (for UC plus income tax plus NICS) in its UC proposals.

It is clear from the CLG consultation paper that this problem had been recognised but that no solution had been found. One possible approach would be an earnings disregard for council tax within UC, sufficiently generous to permit CTB withdrawal to play out before UC withdrawal commences, thus avoiding the overlap of a CTB taper with other income reductions. A few days before the end of the consultation period, the DWP produced proposals that go part of the way down this road, additional and enhanced earnings disregards being proposed within UC. This would “allow a reduction in the risk of dual tapering”. The wording is significant, being an admission by the DWP that the problem is not solved.

Coherence

We conclude from all of the above that much greater coherence would be achieved and many problems avoided if CTB were retained as a demand-led benefit, incorporated into the structure of UC and pension credit – as is to be the case with housing benefit. Work would need to be done as to how this would operate in practice – notably the relationship between benefit payment arrangements and council tax collection – but compared to the problems that would be caused by

a separate, cash-limited system, we would see this as a far preferable way forward.

There is also a growing debate as to whether LAs might have a continuing role in the future administration of UC. The Government assumes a highly automated, centralised system – but this vision is increasingly questioned.

It is also questionable as to whether it is appropriate to make major changes to CTB in isolation from any consideration of features of the mainstream council tax system such as bandings and discounts. A more comprehensive review of the system overall might produce less problematic distributional effects.

Citizens Advice has submitted evidence to the CLG consultation on these proposals and is promoting amendments to the Welfare Reform Bill to preserve the capacity for a national scheme as part of UC and pension credit. We are confident that the concerns that we have raised will have been reflected in the discussions that CLG and the DWP will have had with many other organisations. They have certainly featured in the debates on the Welfare Reform Bill in Parliament. We hope that Ministers will conclude that the universal credit/ pension credit route offers the best prospects and that there is time enough to revise the current proposals accordingly.

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Barriers to independence?

Sue Royston explores the impact of welfare reform on disabled people

The Welfare Reform Bill currently going through parliament introduces some of the biggest changes seen in the welfare system since the introduction of the welfare state over 60 years ago. It introduces two new benefits, universal credit (UC) and personal independence payment (PIP), as well as numerous other smaller changes. There have also been changes outside of the bill. This article will look in more detail at the various changes and who will be affected and voices particular concern about the combined effects on some disabled people.

Universal credit – an overview

UC will replace all means tested benefits and tax credits except council tax benefit. The basic amount for each household will be based on the amount they would be entitled to receive in the relevant out of work benefit plus an amount allocated for housing costs. Those who have no other income will receive the basic amount in full. The basic amount will be tapered away at 65 per cent, meaning people will be £3.50 better off for every £10 earned. Other income will usually be taken into account in full.

The underlying principle of UC is to significantly simplify the benefit system. For those in work, the interaction between the tax credit system and housing and council tax benefit can be incredibly complicated. If the delivery works well, UC will offer a simpler, more easily understood process and for many people, a steady gain as earnings increase.

Support for disabled people in universal credit

We are concerned, however, that many disabled people will struggle to manage on the support UC offers. People who have a significant, but not the most severe level of impairment face considerable extra costs. The gateway for any extra support in UC will be the work capability assessment (WCA) which decides if someone is fit for work. Only those with a level of impairment sufficient to be found not fit for work will receive any extra help.

Changes to the WCA were brought in in April 2011. These changes mean that, for example, someone who can self-propel a wheelchair fifty metres or is registered blind but can undertake a journey unaccompanied will be found fit for work. Of course no-one would want to claim that these groups can't work, but this does not mean that they don't face considerable disadvantage and costs compared to someone with no impairment. However, because they are found fit for work, they face the same conditionality and the same level of payment out of work as someone who has no impairment.

Because the gateway for extra support within UC is the work capability assessment, someone who is found fit for work will also receive no extra support in work. Under the present system, someone who is entitled to disability living allowance (DLA) or has recently been receiving a long-term sickness benefit would be entitled to the disability element of working tax credit. Many of those with an impairment but found fit for work will face considerable extra

costs as a result of working but will under UC only receive the same amount of support as someone without an impairment.

The severe disability premium (SDP) is paid to people whether in or out of work who receive at least middle rate care, live on their own and do not have a carer. It is only payable in means tested benefits, so supports those with a severe disability who have a low income and face many extra costs as a result of living alone.

There is no equivalent of the SDP in UC. We are also concerned that this measure may have the unintended consequence of preventing some people from working. If a disabled person is working, they frequently have much higher extra costs.

PIP replaces disability living allowance (DLA)

Currently disabled people under the age of 65 can claim help with their mobility and care costs via DLA. We agree that there is a case for reform of DLA. However we are very concerned that the reform process is being led by a decision to cut the costs of working age disability benefits by 20 per cent, rather than a desire to reform the benefit itself.

Although PIP will retain two rates of the mobility component, we have significant concerns about who may be pushed from the higher rate of mobility to the lower rate. The DWP have told us that people who can propel their own wheelchair will receive a lower number of points under the new PIP assessment system, compared to people who need to have electric wheelchairs.

PIP will have two rates of the daily living component which will replace the three rates of care component of DLA. The government has said it wants to protect those with the highest level of impairment. Although the criteria will be different, the cut in funding clearly means that more or less everyone who at present receives the lower rate of the care component (for people who cannot cook a meal for themselves or who need at least an hour's personal care each day) will lose entitlement. This is clearly a significant level of disability, yet this group will no longer be eligible for a disability benefit.

Other financial support for disabled people

Local authorities, colleges and voluntary organisations offer a range of other support for disabled people such as leisure passes, concessionary travel and reductions in charges, but they usually use receipt of DLA as a proxy for entitlement, as they do not have the resources to design a test to establish whether someone is disabled. Someone who needs over an hour of personal care each day clearly has a substantial level of impairment, yet they are unlikely to qualify for PIP. If they are also judged to be fit for work, they will not count as disabled anywhere within the benefit system, so there will be no proxy available and so are unlikely to qualify for any extra support offered to disabled people.

Conclusions

If all the welfare reforms explored here are put into practice, we are concerned that the combination of all these changes will have a very substantial impact on some disabled people. We are very concerned that

some groups of disabled young people will find that they cannot afford to move out of their parents home and live independently.¹

One example of this would be someone who is severely visually impaired – in many cases they will be found fit for work. However, if they are living on their own and doing some work they are likely to have considerably extra costs which are not met by DLA (or PIP) alone, most will be entitled to at least the mid-rate of the DLA care component and therefore the SDP.

Under the current system a severely visually impaired person, in the work-related activity group and living on their own, earning £100 per week will be left with a **disposable income of £188 per week** (plus their DLA) after housing costs are paid.

Under UC the same person will be left with a **disposable income of less than £100 per week** (plus whatever PIP is payable) after housing costs.

Other groups of disabled people are going to find that they do not qualify as disabled anywhere in the system and so are not going to be eligible for any extra support at all despite having significant extra costs especially if they are working.

An example of this would be someone with multiple sclerosis who can work for about sixteen hours each week and is in receipt of DLA lower rate care. In the current system, if he lives in rented accommodation and earns £100 per week, he will be left with a **disposable income of £142** (after housing costs) plus DLA of £20 per week.

Under the new system he will be left with a **disposable income of less than £100 per week. He will also**

be unlikely to be entitled to PIP or any extra support such as travel passes etc. So he will have no more support from anywhere in the system than someone without an impairment.

Many people in situations like this tell us that they rely on the extra support they get to enable them to continue working because it pays for things such as help with cooking, shopping and housework which they are unable to do because of the levels of fatigue they have as a result of working. All in all, we are very concerned that these policies taken together may have the unintended consequences of preventing some disabled people from being able to work.

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1. The examples assume the person lives in rented accommodation

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