

# evidence



## Cheese for gardeners...

Lizzie Iron summarises the Citizens Advice 70th anniversary social policy impact report, *The Story of Influence*

Citizens Advice celebrates its 70th anniversary in 2009: on September 4th, 1939, 200 bureaux – including one in a horse-box – opened their doors to the war-time public, ready to answer all queries on any subject.

From the beginning, it was clear that the process of giving advice created an invaluable bank of evidence which could then be used to challenge existing provisions, and to change policies for the better. As early as 1941, the stated objectives of the service included: *'to collect information on the kind of problems... causing difficulty or distress, and to bring [them] to the notice of those who have power to prevent or solve them'*.

Examples from the early years include more clothing coupons for pregnant women and increased cheese rations for gardeners. With the expansion of consumerism in the '50s, bureaux highlighted the problems associated with hire purchase and credit agreements, submitting valuable evidence to the 1959 Molony Committee. Demographic changes in the '60s, together with the impact of the 1957 rent act, led to a national crisis of homelessness, and Citizens

Advice worked both locally and nationally with the Ministry of Housing to help relieve hardship, resulting in a commitment from Parliament to provide 'relief in certain circumstances'.

Social policy work took a further leap forward in the 1970s, when bureaux started recording policy issues on the first dedicated evidence forms. Recognising the value of this unique data-base, the Office of Fair Trading funded the first 'information retrieval officer' post, specifically to analyse and use the material, while the then National Association of Citizens Advice Bureaux continued to develop systems to support policy work. The National Association survived an investigation into its activities in 1983, which suggested that it had become too political. MPs of all parties defended the service in parliamentary debates, and the subsequent Lovelock Review resulted in more funding for the service. It also found that the social policy aim was 'proper and useful', and, furthermore, that the service could be 'open to criticism if it did not undertake this work.'

Social policy remains a twin aim of the Citizens Advice service, with two dedicated teams of social

policy officers, using the data-base of some 40,000 evidence forms submitted by bureaux each year. In 1945, Sir Wyndham Deedes, Vice Chairman of the National Council of Social Service, said: *'If all the knowledge which resides in a movement of this kind could be made available for the purposes of men who make legislation, we have a force for the welfare and well-being of mankind that is equal to none.'* We do our best!

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# Victorian values

Peter Tutton highlights the detriment caused by loans secured by bills of sale

The CAB service has been campaigning for a fairer deal for borrowers for many years. In the 1950s, we highlighted the problems faced by the lack of protection for clients taking out hire purchase (HP) agreements – our evidence and our lobbying led to improvements in the protection for consumers in arrears with HP payments.

In our 70th anniversary year, we are concerned about the lack of protection for people taking out loans secured by bills of sale. A bill of sale agreement effectively passes over ownership of goods to the creditor. As long as payments are maintained, the borrower can keep the goods. If the borrower defaults, the creditor can repossess the goods without a court order. This type of lending is not new – the legislation dates back to Victorian times. In recent years, some lenders providing credit to people with poor credit records have resurrected this type of lending, with cars or other vehicles as the security. The Office of Fair Trading (OFT) estimates that 33,000 bills of sale (BoS) agreements were made in 2008<sup>1</sup>. Although BoS lending is relatively small scale, CAB evidence highlights that consumers entering into BoS agreements can suffer severe detriment.

## The cost of BoS agreements

CAB evidence shows that credit secured by bills of sale can be

expensive. Interest charges are often very large in comparison to the amount loaned, reflected in eye-watering APRs:

A Warwickshire CAB saw a man who had borrowed £500 from a BoS lender when he got into debt whilst suffering depression. The interest rate charged was 636.4%.

A Dorset CAB saw a man who had taken a loan secured on his car for £2,650 to be able to make payments to another lender. The total cost was £5,347.60, with an APR of 312.7%.

Worryingly, these APRs can be higher than those charged by doorstep lenders. Yet these loans are given with security, are not very short term (which can inflate the APR) and do not seem to have the same collection costs as home credit products. As a result, borrowers' debt liability can become excessive, even for relatively small loans.

## Poor lending and sales practices

BoS lenders offer high cost secured credit to people who they know represent a high credit risk. They should therefore ensure that borrowers clearly understand the terms of the product before they sign up to it, and that they can afford the repayments. In some of the cases we have seen, borrowers have experienced unfair or misleading sales practices:

A Shropshire CAB saw a man who had taken out a loan with a bill of sale lender. The client, who had poor basic skills, asked the lender's representative to help him complete the application. The representative would not read the form back to the client, saying there wasn't time and if he didn't sign it now, he wouldn't get the loan.

A CAB from Kent saw a client who needed to raise £2,000 in hurry, and took out a bill of sale loan to repay £5,574.66 at an APR of 437.4%. The client kept up with payments for 12 months at the expense of falling into arrears on household bills. At the time of seeking advice, she still owed £2,000 to the lender and had started to miss payments under the agreement. The BoS lender contacted her daily about the arrears, threatening to remove her car and put a charge on her home if she defaulted again.

## Debt collection and enforcement practices

The lack of protection for borrowers against repossession drives bad debt collection practices. Borrowers experience aggressive collections action, threats of repossession, actual repossession and refusal to negotiate repayments on relatively low levels of arrears.

<sup>1</sup> Economic Narrative, Consumer White Paper, 2009

A Hampshire CAB saw a self employed man who was struggling to find the money to service a loan secured by a bill of sale on his motorbike at 240.7% APR. After missing one loan payment, he was called back from work to find two vans, one at the rear and one at the front of his home. He had to borrow £1,000 from his mother that day to prevent the bike being taken.

Some lenders are compounding the costs faced by some borrowers by clamping their cars and then demanding large release fees:

A lone parent sought debt advice from a Lincolnshire CAB after her car had been clamped a week after she had missed a payment on her £700 bill of sale loan. Her mother had to pay £700 to get it released.

Problems with BoS debts do not end with repossession of the car. Lenders aggressively pursue shortfalls after sale, including enforcement of the debt against the borrower's home by way of a charging order – a second chance at securing a previously secured debt!

Another Lincolnshire CAB saw a woman whose partner had defaulted on a payment for a loan secured by a bill of sale on his car. Although the man had asked the lender for one week's grace until he was paid, the car was clamped the following day. As they could not afford the £900 fee to have the clamp removed, his car was sold. The lender then took court action for the shortfall debt of £5,000 and applied for a charging order against their house.

## Invalid security

A bill of sale provides valid security for the loan only if it is drawn up in

the legally prescribed manner and registered with the High Court. CAB advisers have, however, reported cases where BoS lenders attempt to enforce loans with invalid bills of sale. We understand that some BoS lenders have subsequently amended future documentation, but this has not apparently stopped lenders from seeking to enforce invalid agreements:

A West Midlands CAB saw a man who had got into financial difficulties after he had to pay his son's funeral expenses. His car had been repossessed as he could not maintain payments on a bill of sale agreement. The bill of sale was nevertheless void as it did not contain a statement of the consideration, the amount secured, the rate of interest or the instalments payable. The client could have pursued a claim for this, but was not eligible for legal aid. The adviser decided to write to the bill of sale lender stating that the client would not pursue a claim if the lender would not pursue the client for any shortfall. The bureau received no response, but the client received a county court claim.

## Third party buyers

Bureaux also report cases where people have bought a second hand car through private sale in good faith. Some time later they are told that the car was subject to a bill of sale loan and therefore the lender will be taking possession. Due to the summary nature of BoS possession, it seems to be almost impossible for the new owner to dispute these claims, as the lender's agents simply remove the car:

A CAB in Surrey saw a Polish man who had bought a second hand car in cash from a private individual

via an advert. He completed all the relevant paper work and had the registration certificate. The previous owner, however, had signed away the ownership of the car to a bill of sale lender. A few months later, the lender's representative called at the client's address and demanded the car keys. He went on to threaten to smash the car windows with a hammer unless the keys were handed over. In the face of the threat, the client gave up the keys.

## Conclusions

The problems we have outlined are underpinned by the nature of bill of sale security itself. The creditors' unfettered right to repossess goods, often following minor default, creates a significant and inherent power imbalance between the parties. This leaves the borrower with no protection against harsh debt collection practices. Essentially, the bill of sale is a 19th century commercial instrument that should have no place in a 21st century mass consumer credit market which is based on principles of fair trading as the Government wishes and consumers demand.

As a minimum, we believe that the law should be amended to ensure that creditors cannot take possession of goods secured by bills of sale without first getting a court order. The court must take into account the personal and financial circumstances of the debtor and should not order repossession of the goods if the debtor can make payments.

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# Held to ransom...

**Susan Marks** describes CAB clients' experiences of the random charging regimes and unchallenged practices of the businesses that make their money enforcing private parking rules.

Consumers expect to be able to park: in Great Britain, 76 per cent of households regularly use at least one car<sup>2</sup>. Many shops, local leisure and other services provide convenient parking facilities, which act as part of their sales incentive. Parking may also be provided as part of the purchase agreement by leaseholders of private residential developments. This parking is not in the public domain, but is a provision on private land. Making sure that the parking benefits the right people is not easy, and many landowners outsource the task of policing their valuable parking spaces. The enforcement tools of choice are the clamp, the tow truck and massive fines. In too many cases, the right to monitor private parking has proved to be the equivalent of a licence to print money.

A Surrey CAB client who worked as a chauffeur parked for a few moments on a marked parking bay in a petrol station. The sign claimed the fee for release from clamping was £100 but the person clamping his car demanded £365 in cash within three minutes. The client agreed to go and get the cash but before he got back the vehicle was towed away. At the compound the gates were locked and nobody was around. When he phoned he was told the release fee was now £645.

It's easy for customers to misinterpret parking signage, or to underestimate the time they will need to remain parked, but clamping and towing puts vehicles completely outside the control of the car owners. Everything is in place for a huge imbalance of power between the person who parks and the attendant who clamps.

An elderly Gloucestershire CAB client found her car being clamped before she had even left the car park. She was immediately charged £250 which she was told also covered towing away. She told the operative she had to go and get the money but on her return a tow truck was dropping off another car and preparing to load hers. There were no obvious signs and no ID for operatives; no photograph was taken of the car to show the claimed breach of parking rules; her receipt did not have the required details of the clampers and there was no separate charge for clamping without towing away. Her complaint was rejected by the clamping firm, whom the bureau described as rogues and cowboys.

The rules and any rights on private parking and parking penalties are not familiar to the parking public, and charges can be piled on charges so that any argument of unfairness just results in more to pay.

A CAB client from Lincolnshire took her children to the local leisure centre for one and a half hours, using their car park which had previously been free. When she returned notices were up and yellow lines drawn and her car had been clamped by people sitting in the car park. There was no answer when she rang the number on the notice and when she did manage to get through they refused to come out so late to release the car, giving her an appointment for the following day. The charges were raised to £235 because the vehicle had been in the car park into the next day.

There is no requirement to provide consumers with a mechanism to challenge what is seen as unfair or disproportionate, and redress is often only available through the courts.

A disabled CAB client from North London had to pay £130 to get his car released. His blue badge was clearly displayed and newly erected signage was obscured and poorly lit. The receipt he was given had no security industry licence number and when the client queried this, he was told first that it was in the van and then that the clampers did not have their SIA number/ID with them. Trading Standards said they did not deal with this type of complaint; the credit card company said they were not liable; the clamping firm referred him to the housing association who owned the land; and they referred him back to the clamping business.

<sup>2</sup> Dept for Transport web site Transport Statistics Great Britain 2008 Households with regular use of car(s): 1951-2006

## Regulation

So where is the regulator in all this? Who is the potential champion ensuring fair play? It is the Security Industry Authority (SIA). They regulate a wide range of security sectors, such as door supervision (bouncers) and some CCTV activities, and in 2012 they will also take on supervision of bailiffs. The SIA confirm on their website that they 'exist to manage the licensing of the private security industry as set out in the Private Security Industry Act 2001.' They add that their mission is 'to regulate the private security industry effectively; to reduce criminality, raise standards and recognise quality service.' SIA license *individuals* in what is called 'the vehicle immobilisation sector' and the Home Office has recently consulted<sup>3</sup> on extending this licensing regime to the *businesses* that employ the licensed individuals who clamp, tow and collect the fines.

Citizens Advice is concerned that the SIA is not making best use of their regulatory powers to protect consumers. The Regulatory, Enforcement & Sanctions (RES) Act 2008 includes the SIA in a list of regulators that can potentially use a wide range of tools to tackle the problems, including fixed monetary penalties and stop notices. To gain access to these tools, SIA need to apply and gain a ministerial order conferring them. SIA has to show they are a good regulator, and the bonus is that, under the RES Act, there is also provision for restorative justice as a sanction. So, for example, with RES powers, SIA could require vehicle immobiliser businesses to repay fees to consumers where those fees were taken in breach of licence conditions.

The Office of Fair Trading (OFT) and local Trading Standards Services can use the new 2008 Consumer Protection from Unfair Trading Regulations (CPRs) to tackle unfair trading. This includes where a business fails to provide the information consumers need to know – in this case, information which will help drivers decide whether to park and whether to pay the fines charged. Bureaux report cases of poor or obscure signage and lack of full information about parking rules, such as when clamping will be used and timings and added charges for towing and post-towing vehicle storage. CPRs also prohibit aggressive practices, such as threatening demands for payment.

A CAB client from Devon was clamped when she parked in the car park at the property where she lives. She had parking rights to do so. A recently introduced parking scheme employed aggressive tactics and there had been several complaints. This client was clamped at 6 a.m. and, despite confirming she was a resident, had to pay £255 before the car was released.

Businesses which breach CPRs can be requested – then required – to undertake improvements, or, where proportionate, prosecuted. The OFT can also apply for RES enforcement tools, so if the SIA and the OFT joined forces, they could use restorative justice where businesses in the vehicle immobilisation sector were unfair.

Even without these new and innovative regulatory powers, SIA could develop the licence conditions that are the bread and butter of their regulatory role. Vital elements for licensing could be applied to vehicle immobilisation

businesses (and, in due course, to bailiffs). The licence regime needs to include these key elements:

- Businesses should be licensed, as well as individuals.
- SIA should undertake end-to-end regulation. It should set licence conditions, grant and repeal licences and take enforcement action to stop breaches of the conditions.
- Licence conditions need to spell out the consumer protection objective they are designed to achieve, for example proportionate fees for release from parking immobilisation.
- A facility should be in place for SIA to add new general licence conditions to tackle emerging consumer detriment, as well as provision for individual licences to incorporate specific conditions which, if breached, trigger loss of the licence.
- An alternative dispute resolution (ADR) provision should be set up to adjudicate on consumer complaints. This should be independent of SIA, mirroring the relationship between the Financial Ombudsman Service (FOS) and the Financial Services Authority (FSA) and OFT in the credit sector. Licence conditions, general consumer protection law, and what is fair and reasonable should all be within scope for consideration in reaching ADR decisions. ADR findings should be published to inform SIA, the general public, businesses, advisers and the wider enforcement community about what is and what is not acceptable.

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<sup>3</sup> Licensing of vehicle immobilisation businesses – a consultation paper. Home Office. 30 April 2009.

# The oldest sin

Richard Dunstan reports that the public spending crunch has started, and its first victims are asylum seekers

In early June, the Home Office quietly laid Regulations to abolish the higher rate of support for single asylum seekers aged 25 and over. Currently, single asylum seekers aged 18 to 24 receive £33.19 per week, but those aged 25 and over receive £42.16. Under the Regulations, from 6 July the lower rate for those aged 18 to 24 will increase by 5.2 per cent, in line with the Consumer Price Index (CPI) for September 2008, to £35.13. However, from 5 October, single asylum seekers aged 25 or over will also receive this lower rate of support. In addition – and unlike the support rate for children and adult couples – the support rate for lone parents will not be increased in line with the CPI, so will remain at £42.16.

If the rate for lone parents and single adults aged 25 and over had increased in line with the CPI, they would all now be receiving £44.35. So, for older adult asylum seekers, the abolition of the higher rate represents a 21 per cent cut, of £9.22 per week, and leaves them with just £5 a day to buy food, toiletries, clothes and other essentials.

There was no consultation on the abolition of the higher rate for those aged 25 and over, or the freeze for lone parents, and stakeholders such as Citizens Advice were only informed by a letter sent out by the UKBA on 6 July, the date the

Regulations came into force – that is, only when it was too late for stakeholder organisations to urge Members of Parliament to oppose the measures. In this letter, and in an Explanatory Memorandum accompanying the Regulations, the UKBA justifies the move by noting that the “existing support structure was modelled in 1999 on that used by the Department for Work and Pensions (DWP) for income support. This system distinguishes between persons aged under and over 25. Given that all asylum applicants have access to rent-free accommodation with utilities included, we do not consider that the essential living needs of supported asylum seekers change on the 25th birthday”.

Since the introduction of income support in 1988, single people under the age of 25 have indeed received a lower rate of income support. But the then Government’s justification for this lower rate was that “people who are young should be expected to live off a lesser amount of money than people who are a little older.”<sup>4</sup> That is, the rate for 18 to 24 year olds is a *reduction* from the standard rate. At that time, the Labour opposition described the age distinction as “intolerable” and predicted that it “cannot survive indefinitely.”<sup>5</sup>

Not only has it survived for some twenty years – twelve of them under a Labour Government – but the argument has now

been turned on its head to justify reducing the support rate for *older* asylum seekers. The fact that asylum seekers receive “rent-free accommodation with utilities included” is irrelevant, as asylum support rates are already substantially reduced from the income support rates for this very reason. The true reason for the cut in support is perhaps revealed in the Explanatory Memorandum’s comment that “[t]his is a politically important change in terms of support provision provided to asylum seekers, but there will be little public interest in the policy, interest coming primarily from those organisations concerned with the welfare of asylum seekers”.

In other words, the first victims of the public spending crunch are those for whom the Government deems the public to have least sympathy. But all those who depend on public services should heed the historical warning of Pastor Martin Niemöller: if we don’t speak out when they target asylum seekers, who will speak out when they target us?

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<sup>4</sup> Michael Portillo MP, House of Commons, 12 January 1988

<sup>5</sup> Robin Cook MP, House of Commons, 12 January 1988

# Backdating pain

Liz Phelps reviews the impact of the benefit backdating cuts as the DWP considers taking these still further

It is now a year since the DWP announced its decision to proceed with reductions to the 12 month backdating period for housing benefit, council tax benefit and pension credit, despite a highly critical report from the Social Security Advisory Committee which recommended that the cuts should not go ahead. The only concession made by DWP was that backdating for working age claimants would initially be reduced to six months rather than three, with a view to moving to a three month period at a later stage after a review at the end of 2009.

Over the past year bureaux have been monitoring the impact of the backdating cuts, and it is clear from the evidence that they have resulted in increased hardship, indebtedness and even homelessness amongst claimants whose personal circumstances meant that they had good cause for making a late claim.

A man living in London visited his local CAB when he realised his brother had got into serious council tax arrears while he was in hospital. His brother was being pursued by bailiffs for £1,500. He was in receipt of income support and disability living allowance and was entitled to full council tax benefit but had not claimed it. He would have been eligible for a period well over six months, but would only be able to apply for six months' backdating, which would not cover the debt.

A West Midlands CAB saw a young

woman facing eviction by her social landlord due to rent arrears of over £5,700. Under the old rules for housing benefit backdating, she could have claimed a backdated payment for a three month period in 2008 when the benefit had not been paid. However, due to the changes in the rules she could not now claim a full backdate for this period. Any payment would therefore not reduce her arrears enough for the warrant of eviction to be suspended.

In contrast, bureau evidence from the period before the cuts were introduced shows how the backdating provisions could be crucial in preventing homelessness.

A CAB in the South East helped a single mother avoid eviction by getting her housing benefit backdated beyond six months. She had accumulated £1,743 in rent arrears when her HB was stopped after a breakdown in communication over renewing her claim. She believed that her mail was being sent to the wrong flat due to a confusing numbering system where she lived. She was successful in getting benefit backdated for seven months with the result that almost all her arrears were paid off and the housing association did not proceed with eviction.

A man living in London avoided eviction from his home by getting his housing benefit backdated for 12 months. He had been in receipt of JSA, but this was suspended in July 2007 for late signing on. This led to his housing and council tax benefits

also being stopped. He completed several JSA forms to apply for the benefit to be reinstated but they were lost in the system. He survived from July to December 2007 mostly by begging and with some financial help from his family. He was subsequently admitted to hospital for nine months with mental health problems. Before leaving hospital he applied to have his HB and CTB backdated for 12 months. He had been threatened with possession proceedings because of his high level of arrears, but the successful backdating application enabled him to clear his debts and avoid homelessness.

Citizens Advice has submitted evidence to the DWP review, and many bureaux took part in the DWP's on-line questionnaire to monitor the changes. We believe that this evidence makes it clear that further cuts should not go ahead and that there is a strong case for re-instating the 12 month backdating provision.

The backdating rules do no more than help ensure that claimants receive the full benefit to which they were entitled. As such they play an important role in improving take-up. We hope that the new Secretary of State, Yvette Cooper, will take a fresh approach to the issue and – with her background as housing minister – will recognise the potential for backdating to make a vital contribution to keeping people in their homes.

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# Understanding the Costs of Compliance of Benefits and Tax Credits

Fran Bennett considers the case for taking the 'costs of compliance' for claimants of benefits and tax credits into account when policy changes are under consideration.

It is clear that costs are incurred by claimants of benefits and tax credits. Time, money and psychological costs at least are likely to be involved, at various stages of the claim. These can be seen as 'compliance costs' if they would not be incurred if the benefit or tax credit being claimed did not exist.<sup>6</sup> At the moment, such costs are not usually measured, or taken into account when policy changes are proposed. A recent report, which made extensive use of evidence from Citizens Advice Bureaux, made the case for doing so.

We hear a lot about the 'burdens on business' imposed by regulations, and there are methods of costing these. There have also been studies of the 'costs of compliance' involved in paying tax – including costing the time it takes to fill in a self-assessment form, and how much is paid to an accountant. There is now a cross-Europe team of civil servants working on the issue of what it costs citizens to fulfil government requirements (see [www.whatarelief.eu](http://www.whatarelief.eu)).

More generally, in the UK, government departments are advised to use cost-benefit analysis to assess the monetary value of all the effects of policy changes. However, in practice this is not always done, and – despite the recent policy emphasis on benefit

simplification – attempts to examine and cost the steps involved in the process of finding out about and claiming benefits and tax credits are only just beginning.

Would it be possible to calculate whether policy changes would increase or decrease the 'costs of compliance' for claimants, and if so by how much? To answer this question, the first requirement would be to know more about the nature and scope of these costs. The project described here was a scoping study to make a start on such an investigation. We were helped by many advisers, from Bureaux and elsewhere, who took part in discussions and sent in case studies.

## Nature of costs

The study explored the compliance costs incurred by claimants of benefits and tax credits, including time, money and psychological costs. Each stage of the claiming process was examined to see what costs were commonly involved. In addition, experiences such as things going wrong, getting advice, or challenging a decision – which do not occur in every 'customer journey' – were included. We did not set out to measure any of these costs at this stage, but to map their nature and range. In addition, we asked advisers to focus on those costs which claimants find most burdensome.

A CAB adviser described a case in which a couple was getting tax credits. HMRC did not take on board that they had separated, so working tax credit was still paid to the man as though he had a family. The overpayment was then taken off the child tax credit the woman was getting. This can be challenged, but the delay in getting the mistake sorted out left her without any money.

Time may be spent on, for example, travelling, making telephone calls, using the internet, filling in forms, going to interviews and 'signing on'. Money costs could also include travelling, making telephone calls and using the internet, as well as posting documents – although sometimes there is a trade-off between time and money costs. In addition, money costs could be caused by problems in claiming or renewing claims, and by delays in payments. In other words, whatever the cause of the compliance cost, we argued that it should be included if it affects claimants.

A CAB adviser sent us a case of a woman with ME on incapacity benefit who had been temporarily suspended and had to apply for a crisis loan. She could not get through to the Social Fund claim line on her mobile phone because of the cost. She finds completing a 14-page application form too onerous to contemplate, even with help. The very person who needs a telephone

<sup>6</sup> The use of 'compliance' here is therefore wider than the narrow meaning of being 'compliant', meaning keeping within the law, though clearly some of the things which claimants have to do (e.g. in order to establish identity) are required by the authorities in part in order to prevent fraud.

application system is unable to use it due to prohibitive costs.

Psychological costs can include stress and worry, stigma and shame, intrusion into privacy and feelings of frustration or lack of control. Although advisers may often focus on problems caused by delivery and/or by administrative error in particular, the design of benefits and tax credits is also crucial. This is particularly true of psychological costs, which can be much higher with some kinds of benefits or tax credits – such as those involving having to say how little money you have (means-tested payments), or how little you can do (disability benefits).

Conditionality can also have psychological costs. The burdens of conditionality have tended to increase for many claimants in recent years. The report argues that the ‘compliance costs’ of conditionality should be included, although any advantages gained from fulfilling conditions should in principle be offset against them.

The study also investigated which groups might have higher costs. These include groups with frequent changes of circumstances, and the more vulnerable – those with identity or immigration issues, or with literacy and numeracy difficulties, for example. Advisers are likely to see many of these more complex and costly cases.

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## Lessons

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If the purpose of studying the costs of compliance for benefits and tax credits claimants is to assess whether they are likely to change because of a new policy, these costs need to be measured. One important lesson from this research is the wide range of costs

incurred by claimants. It would not be helpful to use an average cost even for all the claimants of one specific benefit, leaving aside the huge number of benefits and tax credits. Other issues included whether the costs of intermediaries should be taken into account. Perhaps the costs incurred by advice agencies themselves should not be included. What about a claimant’s family – including their partner in particular, given that joint jobseeker’s allowance claims and jointly owned tax credits have now been introduced?

We also concluded that the perceptions and priorities of claimants themselves should be seen as central. The Netherlands is a leader in monitoring and reducing the burdens on citizens imposed by government regulations, and its research has shown that one hour of time spent fulfilling obligations is not equivalent to another hour. There is ‘good time’ and ‘bad time’; and which of these a particular hour is may depend in part, for example, on whether you know who is dealing with your case and when you will get a decision. Taking all these and other issues into account, the report discusses the pros and cons of different measurement methods, and concludes that the method(s) chosen – large-scale survey, the ‘standard cost model’ often used to measure ‘burdens on business’, or qualitative research – will vary depending on the aims being pursued by policy makers.

Current policy changes and costing experiments in the UK are largely moving in a helpful direction. Over the course of the project, the ‘costs of compliance’ for claimants moved higher up the political agenda, even if this label was not used explicitly: Sue Royston (on secondment to

the Department for Work and Pensions from Ripon CAB) ensured that claimants’ experiences were at the heart of the DWP’s Benefits Simplification programme; ‘Tell Us Once’ – which reduces the number of organisations to which a claimant has to report a change in circumstances – was set up as a pilot scheme; HM Revenue and Customs embarked on a ‘Total Cost to Serve’ exercise, to estimate the costs – to both itself and its ‘customers’ – of the interactions it has with them. The DWP is also conducting a survey of recent jobseeker’s allowance claimants, to investigate the costs they incurred in claiming.

The policy emphasis is often on identifying and reducing ‘avoidable contact’, rather than the costs of compliance to citizens or claimants. There are currently few initiatives which involve attempts to measure such costs accurately. We hope that the scoping study described in this article will help to inform the debates about how best to measure claimants’ costs of compliance, and strengthen the case for taking them into account when policy or operational changes are being considered. We are very grateful to all the advisers from Bureaux, and others, who shared their experiences and views with us during the course of the study.

*Resulting from a scoping study funded by the Nuffield Foundation, the report Understanding the Compliance Costs of Benefits and Tax Credits was written by Fran Bennett, Mike Brewer and Jonathan Shaw, and was published by the Institute for Fiscal Studies in July 2009. See [www.ifs.org.uk/publications/4558](http://www.ifs.org.uk/publications/4558).*

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# Cashing in

Tony Herbert draws attention to banks' 'right of set-off', highlighting the devastating effect it can have on CAB clients and argues that this practice should be outlawed

A CAB in Warwickshire reported a case in which their client came for help when she was on maternity leave and her baby was 2 months old. The client's partner had left her and she was in arrears with her mortgage and a range of non-priority debts. The client then found that her bank account had been emptied, leaving her unable to afford to pay for milk, nappies and other essential items for her young daughter.

Was the client a victim of fraud? Had her former partner cleaned out her bank account? No. The culprit was the client's bank which had helped itself to the client's child benefit payments to pay off an outstanding payment on her credit card, giving the client no notice and failing to leave her with money to meet her child's most basic needs.

## Right of set-off – what is it?

The actions of the bank in this case were not illegal. The bank was simply exercising its 'right of set-off'. Where this 'right' originated is not clear, but it now forms part of banking practice and means that banks have sweeping powers to 'combine' the accounts held by a customer where these are held with the same bank. This means that a bank can transfer money from an account that is in credit in order to make payments due on another account.

According to the Financial Ombudsman Service (FOS), this right does not have to be mentioned to customers in the Terms and Conditions when opening any bank account. Nor is there any expectation that a bank should warn a client that it is about to enact its right of set-off.<sup>7</sup>

The Banking Code (a voluntary code which sets standards of good banking practice) is silent about the right of set-off, although it does commit subscribers to a number of overarching principles which should apply in this area – for example to treat customers "fairly and reasonably" and to "consider all cases of financial difficulty sympathetically and positively".

The practice is covered, however, in the *Guidance for Subscribers* which underpins the Banking Code. This states that: "the subscriber should acknowledge that income should only be used to repay 'non-priority' debts once provision has been made for any 'priority' debts. The subscriber should leave the customer with sufficient money for reasonable day-to-day expenses, taking into account individual circumstances."<sup>8</sup>

## Impact on clients

It is helpful that the Banking Code Guidance provides some guidelines about how the right of set-off should be used. Unfortunately, cases reported by bureaux reveal

that these can be ignored, with money from clients' bank accounts being used to pay off non-priority debts (e.g. credit cards or loans) at the expense of priority debts (e.g. rent or mortgage payments):

A CAB in Nottinghamshire reported that their client came to the bureau for help as his credit card company had used their right of set-off to take £158.63 from the housing benefit payment that was made into the client's bank account, giving him no warning. The client is now behind with his rent and his tenancy is potentially under threat.

A CAB in South Yorkshire reported a client who had a current account, credit cards, personal loan, and a mortgage all with the same bank. He had his working hours cut and was unable to maintain full payments to non-priority debts. His bank used their right of 'set off' to take monies from his personal current account to bring his credit cards up to date. The bank did not inform the client and as they took over £200, this put him under extreme financial and personal pressure to pay his mortgage and other priority debts, forcing him to borrow money from his parents. To make matters worse, there were a series of other direct debits due to be paid from the current account and when the bank honoured these, they pushed the client into an unauthorised overdraft which he believes will cost him over £150 in charges.

<sup>7</sup> Banking: firms' right of 'set off', Financial Ombudsman Service, Ombudsman News Issue 40. September/October 2004

<sup>8</sup> The Banking Code – Guidance for subscribers, Banking Code Standards Board, March 2008, p.47

In addition, banks can fail to leave people with sufficient money for reasonable day to day expenses:

A CAB in Buckinghamshire reported a case of a client living with her two young children in a women's refuge having fled domestic violence. The client was allocated a housing association property and applied for a community care grant to furnish it, and make appropriate modifications for her youngest son who had chronic eczema. The CAB advised the client to open a new account with a bank which was unrelated to any of her other creditors as this would enable her to control all of her income. The client tried to do so but as she was living in a women's refuge with a PO Box number for the address, her requests were turned down by various banks. When the client received the community care grant into her existing account, the bank took £329.15 to make a payment on a loan account.

This practice is not widespread, but it seems to be increasing, with the number of reported cases rising by more than 20 per cent in each of the last two years. Data shows that over 50 per cent of bank customers have multiple accounts with the same bank<sup>9</sup>, while recent and significant consolidation within the banking sector would also suggest that this rising trend may continue – for example, the merger between Lloyds and HBOS has resulted in the new company possessing 33 per cent of all current accounts<sup>10</sup>

## Wider impact

We're not arguing that people should not pay off their debts, but banks' use of the right of set-off undermines

money advisers' work, which aims to help people in financial difficulties to find sustainable solutions to their debt problems.

What's more, in unilaterally using the right of set-off, banks place themselves at the head of the queue of creditors and help themselves to money owed, which contravenes the widely accepted principle of money advice, that all creditors should be treated fairly and that a debtor's available income be shared out on an equitable basis.

## The need for reform

We have previously called on banks to comply with their commitment to the Banking Code and its associated guidance. That means only using their right of set-off where they are certain that the customer can pay off priority debts, and leaving them with sufficient money for day to day expenses. We have passed evidence to the Banking Code Standards Board (BCSB) involving failings in this area and were pleased that in March 2009 the BCSB sent a warning to banks using the right of set-off inappropriately. Yet bureaux continue to report cases where the guidelines seem to have been ignored:

A CAB in the West Midlands helped a client who missed her minimum repayment of £30 because one of her children was in hospital. She subsequently found that the credit card's collections department had taken the full amount owed (£583.24) from her bank account. This had left the client and her three children – aged 5 months, 6 years and 13 years – with a maximum of £100 to survive on until their next benefit payment. Due to the bank's actions the client was not able to

pay her mortgage payment or other essential bills.

More sweeping reform is required. We hoped that this would be achieved as part of the fundamental changes in the regulation of retail banking, which will be taken over by the Financial Services Authority (FSA) in November 2009. However, like the Banking Code (which it will replace), the FSA's Banking Conduct of Business Sourcebook (BCOBS) does not mention the right of set-off, though it does provide guidance that *"a firm should deal fairly with a banking customer whom it has reason to believe is in financial difficulty"*.<sup>11</sup>

To supplement the high-level principles contained in BCOBS the British Bankers' Association (BBA) and the Building Societies Association (BSA) are currently developing industry guidance. We are yet to be consulted on this so are unsure whether the right of set-off will feature. At a fundamental level, however, we wonder about the value of such guidance in relation to the right of set-off, as previous guidance from the regulator has been ignored by banks. We also have serious misgivings over the ability of banks to determine whether someone has paid off their priority debts or to calculate how much is reasonable to allow their customers for essential daily expenses. If the right of set-off cannot be exercised responsibly, then we believe fervently that it should not be used at all – serious consideration must therefore be given to imposing an outright ban on the right of set-off.

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<sup>9</sup> Personal current accounts in the UK - An OFT market study, July 2008, p. 19

<sup>10</sup> *ibid*, p.25

<sup>11</sup> Banking Conduct of Business Sourcebook, FSA, Para 5.1.4 G

## Evidence reports published in the last six months

- **Supporting Justice** (*free, June 2009*)  
The case for publicly funded legal representation before the Asylum Support Tribunal
- **Out of Order** (*free, June 2009*)  
CAB evidence on the use of charging orders and orders for sale in debt collection
- **Hung UP** (*Leeds CAB, free, June 2009*)  
The cost of calling government from a mobile phone

## Recent briefings and responses to consultation papers June – August 2009

- Response to Welsh Assembly Government on National Energy Efficiency and Savings Plan (June)
- Response to OFT's financial services strategy (June)
- Response to BIS consultation on implementation of the Consumer Credit Directive (June)
- Citizens Advice's views for the FSA on their mortgage market review (July)

- Evidence to the DH review of age discrimination in the health system (July)
- Citizens Advice's views for DWP on the review of the standard interest rate (SMI) (July)
- Citizens Advice's views for the Ministry of Justice on limitation periods and debt recovery (July)
- Response to Home Office consultation on licensing vehicle clamping businesses (July)
- Response on DWP proposals to end excess payments of Local Housing Allowance (July)
- Response to UK consultation on European Commission Proposal for an Equal Treatment Directive (Aug)
- Response to SSAC consultation on JSA skills training conditionality pilot regulations (Aug)
- Submission to CLG consultation on private rented sector review (Aug)
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