

evidence



Doing the right thing

Alex MacDermott looks at the problems caused by poor debt collection practices, the steps creditors should take to improve the way they collect debts and the advantages for creditors, advisers and people in debt.

Debt collection practices can have dire consequences for the person in debt: homes, possessions and essential services can be lost if people are persuaded to repay debts before paying for everyday essentials; relationships can breakdown; and the health and well being of individuals and their families can suffer.

However, at present there's no definitive guide to best practice that creditors can follow, and regulations only set out what creditors must *not* do. We want this to change. We want all creditors to co-operate with each other and help people in debt overcome their financial difficulties. Our latest report - *Do the right thing* – sets out how creditors can do this in five easy steps:

Step 1: Setting the right organisational culture

Step 2: Achieving the right motivation for debt collection staff

Step 3: Developing clear and encouraging communications

Step 4: Providing information and support

Step 5: Being willing and able to maintain and develop best practice

Creditors who follow these steps can focus on the person behind the figures and can help them deal with their debts in ways that suit their circumstances – that might mean allowing them to pay less for longer, or even writing off some of the debt. This way, the person avoids the worst effects of unmanageable personal debt - such as disconnection or repossession - because they're no longer under pressure to pay more than they can afford.

We think doing the right thing also makes good business sense: creditors use fewer resources chasing money that people just don't have; advisers spend less time negotiating and more time helping people; and the organisations that fund advice get more for their money.

If this approach is going to work, we need *all* creditors to do the right thing. Otherwise the one that keeps demanding more will undermine the good work of others. So we're calling on all creditors – including local and national Government agencies – to join us in a conversation about how debt collection practices can be

improved across the board. If readers want to be part of this conversation, to share their experience of best practice, or to learn how they could improve, they should contact the report's author, Alex MacDermott.

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Failing to benefit?

Katie Lane highlights how and why up to £16 billion of means-tested benefits and tax credits goes unclaimed every year, and calls for 80 per cent take-up targets

Despite Government commitments to tackle poverty, latest figures show that over 13 million people in the UK still live in poverty today. Over the last ten years the Government has used the tax credits and benefits system, along with the introduction of the national minimum wage, to increase the incomes of households and to make work pay. However, these benefits and tax credits fail to reach all those entitled to them, with up to £16bn unclaimed every year. While there have been specific drives to increase the take-up of various benefits - most notably pensioner benefits and, more recently, working tax credit for households without children - these drives can often be short-lived, and increases in take-up are temporary.

With recent high profile anti-fraud campaigns such as last year's £5.9m 'We're closing in' and the current 'Targeting benefit thieves', you could be forgiven for thinking that claiming benefit by those not entitled is a bigger problem than under-claiming. While £0.7bn was lost in 2007/8 due to fraudulent claims for DWP's four main means-tested benefits¹, £8.3bn of these same benefits remained unclaimed and the only significant take-up campaign last year cost just £0.8m aimed at increasing the take-up of benefits by pensioners. While it is essential to minimise fraud, we believe it is equally important to promote benefit take-up in order to

tackle poverty.

This Government has successfully focussed on pensioner poverty and child poverty, but in recent years progress has remained static for pensioners and slipped back for children. Though children are at greatest risk of being in poverty when living in a household where no adult is in work, there are still 1.4 million children in poverty living in working households.

Tackling poverty

The Government has increased the value of some benefits and tax credits by above-inflation rises, or through changes to disregards. Furthermore, receipt of means-tested benefits is used as a proxy for low income, and 'passports' recipients to a range of support such as free school meals and help with health costs. Pension credit guarantee is increasingly being used by utility companies to identify priority groups for tackling fuel poverty.

Benefits can only be effective at tackling poverty, however, if they are successfully claimed. The Government seeks to use in-work benefits to make work pay, but families in work are one of the groups least likely claim their entitlements. Official figures show:

- As many as half of all working households entitled to housing benefit do not claim it - up to half a million households lose an

average of £37.60 a week

- As many as four out of five working households without children do not claim their entitlement to working tax credit - 1.2m households miss out, and 0.47m lose more than £38 a week
- Around a third of pensioners entitled to pension credit currently do not claim it - an average of £31 a week; those entitled to guarantee credit will also lose out on further support such as measures to tackle fuel poverty.

Improving take-up

Understanding why people fail to claim is important in improving take-up. Citizens Advice evidence highlights three main barriers people face in claiming benefits:

- Lack of knowledge of benefit or entitlement
- Complexity of benefits and tax credits system
- Poor administration

Many people simply fail to realise that they are entitled to claim certain benefits. The least likely to claim are people in work and people in private rented accommodation or owner-occupiers.

The fact that benefits are managed by at least four different Government departments often means a lack of joined up information and administration for households. People who live on a

¹ JSA, IS, PC, HB only, DWP, Fraud and Error in the Benefit System: April 2008 to March 2009

combination of earnings, tax credits and means-tested benefits find it very difficult to understand their entitlement, to keep up with the reporting requirements of different departments, and to understand the resulting impact on their overall income.

Improving take-up can reduce poverty: the Child Poverty Unit's take-up task force calculated that "An additional 40,000 families could be lifted out of poverty if just 10 per cent of those not currently claiming [income related benefits and tax credits] did so." Responding in the 2009 Pre-Budget Report, the Government acknowledged the importance of joining up delivery of financial support, and announced a new online service for 2010 "that brings together information on a whole range of benefits and entitlements. It will allow front-line staff and advisers outside Government to direct families to relevant services."

While this should improve information and advice, other measures aim to share data across departments, in order to reduce the administrative burden. These include the 'in and out of work' project currently being rolled out nationally - where the claimant informs Jobcentre Plus if s/he moves in or out of work, and Jobcentre Plus passes on the information to relevant departments - and the 'tell us once' pilots which should help some families claim benefits as soon as they register the birth of a child.

Take-up can also be improved by targeted local outreach work with community groups. Around fifty bureaux have been funded by HMRC in the past three years to deliver local tax credit campaigns. We estimate that over two million individuals have been reached, and over £2.5 million in tax credits has been claimed as a result. This

not only helps the individual households, but also increases spending in the local economy. For example:

In 2009 Blackpool CAB produced flyers in English and Polish to advertise their services, distributing them via community and faith groups, schools, the PCT and local authority, and at local events. In one year they helped gain over £700,000 to boost family incomes.

In 2007/08 Brent CAB helped clients to claim an extra £260,000. They estimated that in just ten months of the campaign they gained £32 for every £1 of HMRC money. Their success depended on their ability to offer ongoing support to claimants at times of change - it was sometimes only this commitment to provide further support and advice that convinced the individual to submit a claim.

The take-up and support work of one bureau saved a client's house, as the lump sum payment made when his tax credit claim was resolved, was enough to clear mortgage arrears and stop repossession.

The need for targets

All DWP means tested benefits - with the exception of pensioner benefits - have seen a downward trend in take-up over the last ten years. We hope that the steps mentioned above will begin to reverse the trends, but we believe specific targets are necessary to inspire departments to sustain their efforts to increase take-up.

Pension credit was introduced in 2003 with a take-up target, and take-up increased until November 2006, but then reached a plateau. The DWP has now dropped the take-up target and changed to a

target for the number of successful claims. We think that this is a step in the wrong direction, as our experience suggests that continual, targeted campaigns do improve take-up.

HMRC has set a target for increasing the take-up of working tax credit for households without children by 100,000 households by 2011. They consider this target to be ambitious, but have made plans and expect to meet it. Even so, assuming that eligible numbers remain roughly constant, the improved take-up rate will still mean that at least two out of three workers entitled to support will not receive it.

We believe that a more ambitious approach and a greater commitment to increasing take-up is needed. Citizens Advice therefore calls on each Government department to set targets for the take-up of the benefits they administer, together with strategies for reaching and reviewing them. We recommend targets of 80 per cent across each claimant group i.e. regions, ethnic groups, household type and employment status, for each benefit or tax credit.

If the Government is not prepared to set such targets in the belief that they are unattainable, we suggest that this implies fundamental flaws in the design of the system, which would reinforce the growing call for radical reform. We therefore urge the Government either to set these targets, or to set up a Welfare Commission to examine the interaction of the tax, tax credit and benefits system to minimise complexity, improve take-up rates and ensure work pays.

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Time to get inside

Susan Marks calls for a united front to challenge fraudsters and scamsters

We're told there's a scam for everyone - and for scam read fraud. The OFT report that one in every 15 of us falls for at least one scam, and we are being robbed of some £3.5 billion a year. So how is it that we are so bad at spotting these criminals?

We know from research¹ that fraud operates by creating a scam out of what we are used to and are happy to accept as normal. For example, we know that to rent a flat or house we'll have to pay a deposit up-front. Often it's one month's rent in advance and a further month's rent, which the tenant gets back under the Tenancy Deposit Scheme, if there's no damage to the property between their moving in and moving out. So it can seem plausible when a landlord asks for some evidence that the tenant is going to be able to afford these sums - and what simpler way to provide this proof than to send a lump sum by money transfer, not to the landlord, but to a friend? You chose whom to send to, as the landlord is just asking for the evidence that you have the money. But money transfer isn't like that. It isn't designed for proving you have money in the bank. It's for whizzing funds quickly and easily to anywhere in the world. So that's what happens. You transfer the money, supply the reference number as proof and the fraudster strolls into a money transfer agency and collects. Many of us have never needed to use money transfer, so don't realise the significance of that all-important reference number. After all, you sent the cash to a

friend didn't you?

Money transfer is the payment avenue of choice for many of the frauds CAB clients report.

A London CAB reported their client, a Swedish woman who needed accommodation to start a new job in the UK, was devastated to find she had paid £1100 to a fraudster. She had responded to an online classified advertisement and been groomed through email contact into believing the flat she thought she was renting was owned by a landlord in Edinburgh. It seemed feasible that the landlord would not want a wasted trip to London to show her the flat so she agreed to an advance payment. The landlord failed to show up and the money, which was supposed to be refunded if she did not like the flat, was gone from what the client thought was a secure account, but it wasn't. The bureau commented on the ease of fraud over the internet.

A West Midlands CAB saw a 21 year old man who had applied for a £4,000 loan by instalments of £68 per month. The first payment was made by money transfer to New Delhi, India, followed by further payments of £100 (supposedly for a solicitor's appointment, although the solicitor didn't turn up) and £80 a few days later. However, the company had still not paid him the amount loaned, despite several phone calls from the client. The client was upset that what he thought was a genuine loan ended costing him far more and getting him into further debt.

For identity fraud you may not even have to trouble yourself with sending money. The fraudsters are happy to help themselves direct from your bank account. We are so used to being asked for our ID for the simplest of queries - including those where no other living soul would be remotely interested - that we almost expect to provide personal details to all and sundry. So when someone phones or emails to say they're checking your bank details haven't been stolen, you might just glibly give them the details, rather than challenging their ID. We're always using credit and debit cards to buy goods and services, so giving the details of these express access points to our money is common place. Why would we be suspicious?

A Leicestershire CAB client applied for a credit card from a link on a social networking website. The application required him to give his bank details and he did so. The company immediately took £99.95 from his account. Had the client read the small print, he would have seen that the membership fee was £99.95 with a £4.95 monthly charge. He did not get a card but was instead informed that he now had credit with a catalogue company to the amount of £5,000.

So having decided on the hook, the type of transaction, something people need - such as accommodation, or training to get a job during the recession - and the means for getting the money delivered, the next issue is the

¹ OFT Psychology of Scams report, May 2009

delivery mechanism for the fraud itself. The type of communication needs to relate to the specific fraud. So if people will be looking online, say, for jobs and accommodation, that's the one to use. On the other hand, for targeting those who may not be using new technology - such as the very elderly - it might be the post or a doorstep visit.

A Cheshire CAB saw a 67 year old man who was receiving treatment for cancer and who had mental health problems. He received a letter from a company asking him to send £9.99 in expectation of receiving a large cash prize. He paid it, hoping that the money would help him with his serious debt problems. However, he had heard nothing more and a friend had told him it is a scam.

Fraud can be delivered in any of the ways we normally communicate:

- by post – eg a lottery win that you need to send a small fee to collect
- by phone - such as debt write-off
- in person - itinerant property repair offers start with a knock at the door
- through publications - such as newspapers and magazine ads offering things like training courses
- through the internet - where classified advertising websites or fly-by-night professional-looking websites provide cover for non-existent traders, as in the accommodation fraud above.

The common factors here are all about ensuring the criminal is either totally untraceable, or at least putting obstacles in the way of your finding them. The fraudsters will use non-specific accommodation

addresses, pay-as-you-go mobile phone numbers, web contact that has disappeared next time you log on, or no contact details at all. It's easy because most of us are so familiar with using mobiles and the Internet - perfect for 'here-today-gone-tomorrow' communications.

A CAB client in Hampshire paid £275 for a home study course that never arrived. The client sought advice when she found that the firm had disappeared and could not be contacted by phone or letter. The website shows they have gone bust and online research indicates a scam. She was advised to report the fraud as well as registering a claim with the receivers.

Isn't there a law against this? Yes there is. In fact, there is a new Fraud Act and we also have the Unfair Commercial Practices Directive whose object is to stop the unfair trading that used to slip through the legislative net. But fraud is an opportunist skill – the perpetrators target it right, do it quickly and then disappear. Aren't there enforcement agencies out there to police these frauds? Well, yes again, but there will never be enough policemen to police these organised criminals. They change all the time and we are running to keep up and still failing. So what's to be done?

Well we could play them at their own game. They plan a joined-up approach, with the product, the delivery mechanism and the access to our money fitting together to create the fraud. So maybe we need to do the same. Maybe we need to join up and get onside together – that's all of us: consumers, enforcement agencies (like trading standards and the OFT), police, delivery mechanism providers (like money transfer agencies), internet

platforms, banks - and any others whose cash, reputation or crime-fighting abilities are affected. We all need to be on the same side and work together against fraud.

The first step is to identify a fraud as soon as the scam shows up: there is a clue in the practice - common to frauds – of persuading the victim not to tell anyone, or to keep something secret. That's the weak link and they know it. If we can get the warnings out promptly, and report what happens to us quickly, comprehensively and efficiently, then maybe we stand a chance. The mechanism for reporting fraud now exists - a single portal we can access by phone, where we're taken seriously, given a crime reference and where our information informs the policing².

It's no good thinking it's someone else's job. It's up to us - all of us.

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Fit for work?

Lizzie Iron raises concerns about the work capability assessment for employment and support allowance

From 27 October 2008 employment and support allowance (ESA) replaced incapacity benefit (IB) for new claimants who can not work because they are sick or disabled. It is a central plank of the Government's policy to help people move from incapacity benefits into work, and is designed to offer support to help them find work. Citizens Advice agrees that many disabled people would be better-off in work, and many want to work, and we welcome the principle of support.

In November 2009, we published a report on the first stage of ESA - the initial administration - and we are now publishing a second report focussing on the work capability assessment (WCA), based on evidence from bureaux. We are concerned at the number of people with serious illnesses and disabilities being found ineligible for ESA because of the WCA. If claimants are not found eligible for ESA, they may – potentially - find work immediately, but are much more likely to either be moved onto jobseeker's allowance (JSA) or be pushed out of entitlement to any benefit. JSA currently offers less support, and more conditionality – though the Government is considering ways to provide more support to JSA claimants. Depending on their circumstances, many people will be entitled to no benefit and therefore receive no support. Either of these outcomes moves them further from the labour market, not closer to work.

The process

When claimants first apply for ESA, a few are automatically granted the benefit, while most start on a basic rate (the same as JSA). By 13 weeks, claimants should have undergone the WCA to determine whether they have sufficient limitation on their ability to work to be eligible for ESA. The assessment is conducted by a health care professional (HCP) who assesses the client's level of ability across specified descriptors, covering a range of problems affecting functionality. The HCP allocates a points score, and then DWP decision-makers collate all available evidence and decide the outcome: the client may be ineligible for ESA, or allocated to the work-related activity group or the support group. To be eligible for ESA work-related activity group, the claimant must score at least 15 points, and is then expected to take steps to prepare themselves for work, supported by a programme of personalised help. Those who it is considered not reasonable to expect to take part in any work related activity are allocated to the support group, and may look for work, but have no obligation to do so.

The latest ESA WCA statistical release in January 2010, shows that, of total claims, 38 per cent have their claim closed before a decision is reached, and for seven per cent the assessment is still ongoing. Five per cent are allocated to the support group and 12 per cent to the work-related activity group, while 38 per cent are found fit for work. Of

those who have completed the WCA process, nine per cent were allocated to the support group, 22 per cent to the work related group and 69 per cent were found ineligible for ESA.

Problems with the WCA

Supported by major disability charities, the Citizens Advice report examines the test itself, and the way it is applied. We do not argue with the principle that those who can work should, but we believe that identifying fitness for work is a complex process, which needs a sophisticated tool. Assessment for ESA is stricter than it was for incapacity benefit: there are fewer exemptions which automatically entitle the claimant to the benefit and there is less scope to gain points through an accumulation of low scores. We are concerned that the assessment for ESA is finding many of the wrong people fit for work, and is causing distress and hardship for many of those who most need help.

We are particularly concerned that clients with serious mental health problems who would previously have been exempt from assessment, are now not only having to undergo assessment, but are being found ineligible for ESA:

An adviser from a community mental health team reported that almost all their new clients applying for ESA are being refused benefit. In the last few months, she has helped

ten clients appeal ESA decisions: three have been resolved, and the other seven are waiting to go to tribunal.

None of these clients would be assigned to the community mental health team if they were not seriously mentally ill. Under the IB rules, this would automatically indicate a severe mental health problem and the benefit would be awarded. The stress and worry of the ESA process is damaging the clients' mental health, hindering recovery and delaying the possibility of their eventually returning to work.

While some level of objective assessment is essential, it is also important that the outcome is realistic: bureaux are seeing some very puzzling results in which a common sense appraisal of the client's situation would not suggest they were either employable, nor likely to become so without considerable help, and yet they are found ineligible for the benefit:

An adviser from a community mental health team was very concerned and completely bemused when one of her clients had been found ineligible for ESA. She described how he was so manic that it was impossible for him to sit down for more than a few minutes at a time.

In other examples, clients find themselves in situations of trauma, or in periods of adjustment, such that they may well be able to work in the future, but may not be in an appropriate state of mind to take part in the work-search activities required for JSA at the time of assessment:

A Midlands CAB saw a client with severe anxiety as a result of domestic violence. She also had

osteoarthritis and was illiterate and innumerate. This woman clearly faced significant barriers to finding work, but she was awarded no points in the WCA. Her adviser said it was " inexplicable how anyone could consider she is fit to actively seek work"

The way the test is applied is adding to our concerns: we understand the health care professionals spend an average of 45 minutes per claimant, and we have many reports from clients describing hurried tests, in which the assessor does not look at them but at a computer screen. Clients do not routinely see the WCA report, and they are often shocked if they go to appeal, and then read the report in the appeal papers.

Typical concerns include the accuracy of the medical history in the report; common distortions of what the client said; assumptions made from the client's descriptions; answers not fully recorded and therefore leading to false conclusions; apparent failure to observe the client accurately; and a lack of understanding. For example:

A CAB in the South East reported having seen two separate WCA reports where the HCP had recorded that the client watched television all day. In both cases the adviser - who is part of a community mental health team - was aware that the clients did not own a television. In both cases it appears that the HCP made assumptions about what the client did during the day without asking the question.

A CAB client from the South West was very surprised when she read her medical history. It claimed that she had been diagnosed two years before, when it was actually four years before, and a letter had been provided confirming this.

A CAB client with high frequency deafness was reported by the HCP to have heard his name when it was called in the waiting room, and so was awarded no points under the hearing descriptor. The client pointed out that his wife had told him he was being called.

A CAB client was asked if she ever went to the supermarket. She responded that she did sometimes go with her husband if it was a good day, but was not given time to explain more than this, and was staggered to find that the HCP had used this as evidence that she could walk 800 metres. She told the bureau that it was a very small supermarket and she only went up a couple of short aisles.

A CAB client with serious mental health problems was asked by the HCP if she had been offered counselling. He recorded that she had been offered counselling but had refused. However he did not record the full answer that she had had a very bad experience of counselling in the past, so she didn't feel able to cope with counselling when it was offered again.

If the test is not fit for purpose, how can the clients possibly be assessed as fit for work? We call on the Government to work with us to ensure that the right people are protected and those who want to work are given the support to do so.

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Unreasonable demands?

Richard Dunstan questions whether justice is served by retailers' use of threatened 'civil recovery' against those accused of low-value theft

In May 2009, Tina was accused by Tesco security staff of the attempted theft of a packet of nappies. Tina contends that she was on her way to the till when she noticed that the pack of nappies she had selected was torn, exposing the nappies within. She contends that she returned to the nappy section, replaced the damaged pack on the shelf and took another, only to be stopped and accused of attempting to steal the nappies.

Tina strongly denied the accusation of theft, but was issued with a store ban and, a few days later, received a letter from Retail Loss Prevention (RLP) acting "on behalf of Tesco" and demanding £88.97 as "damages to cover [Tesco's] losses from this incident". This sum was made up of £1.47 for the value of the nappies, and £87.50 for "staff/management time investigating and/or dealing with [the] incident", the "administration costs resulting from your wrongful actions" and "apportioned security and surveillance costs". The letter ended by stating that failure to pay the sum demanded "within 21 days" would result in "further action being taken against you"

Tina ignored the letter. Three weeks later, she received a further letter from RLP, noting that Tina had "failed to make payment or deny liability", stating that "our client [Tesco] is determined to make full use of civil law remedies including court action if necessary, to recover their costs caused by your wrongful actions", and warning of the addition of "costs and interest". Tina took the letters to the local

police, who advised her to ignore them, and appeared on a local radio consumer programme to discuss her case. Since this publicity, Tina has heard no more from RLP.

In recent years, Citizens Advice Bureaux have reported dealing with a growing number of cases of such *threatened* civil recovery. The great majority of these cases involve Nottingham-based "dedicated civil litigators" Retail Loss Prevention, (RLP), who claim to have recovered millions of pounds on behalf of high street retailers such as Boots, B&Q, Co-op, Iceland, Morrisons, Primark, Tesco, TK Maxx and Waitrose. Most of the remainder involve the Bradford-based law firm Drydens Lawyers, which has issued similar demands on behalf of Asda, Debenhams, Sainsbury's and others.

In the vast majority of these CAB-reported cases, the value of the goods or cash allegedly stolen is relatively small – often just a few pounds. But letters from RLP and Drydens demand substantial sums as "damages to cover [the retailer's] losses" arising from the alleged "wrongful act" (RLP) or "the security costs incurred as a result of the incident" (Drydens), and threaten county court proceedings if prompt payment is not made. Follow-up letters from RLP have also stated that "the personal information we hold [on you] is now held on a national database of incidents of dishonesty".

Among the CAB-reported cases, many of the recipients of such

a demand are teenagers – RLP sends demands to those as young as 14 – whilst others have serious mental health problems or are otherwise vulnerable. And in many of the cases examined in detail by Citizens Advice it is highly questionable whether there was any criminal intent – in some cases, the alleged 'theft' appears to have been no more than an innocent mistake or the result of genuine confusion when using a self-service till, whilst in others the allegation appears to have been no more than overzealousness on the part of store security staff.

Martha, a woman in her 60s with such serious mental health problems that she is an in-patient (i.e. resident) of a psychiatric hospital, received repeated demands for £89.15 (including £1.65 for the value of goods allegedly stolen) from RLP after being accused of attempted theft from Wilkinsons. The demands continued, even after Martha's local CAB telephoned RLP to explain her situation. The CAB then wrote to RLP, enclosing a letter from Martha's consultant psychiatrist. In response, RLP stated that Wilkinsons were "prepared to suspend this case indefinitely" so long as Martha "is not involved, or suspected to be involved, in any further incidents" in *any* of RLP's many retailer clients' stores. However, two months later, Martha received a letter from a debt collection agency, JB Debt Recovery, demanding £89.15 and stating that "our clients [RLP] have instructed us to collect the above outstanding debt as you have ignored all previous correspondence".

Peter had just paid for about £100 of shopping in Asda when he was accused of attempting to steal two pasties that he had selected from a kiosk sited beyond the main tills and placed on top of the trolley – an accusation he strongly denied. The police were called, but decided to take no action after accepting Peter's explanation that it was an honest mistake with no intent to steal. A few days later, however, Peter received a demand for £154 from Drydens Lawyers – made up of £4 for the pasties and £150 for "security costs".

Neisha, a 14-year-old school girl, received repeated demands for £87.50 from RLP after being accused of the attempted theft of an eye pencil worth £2.93 from Boots. The demands state (incorrectly) that "under civil law, from the age of 14, a person is considered to be legally responsible for their actions". After Neisha's father protested robustly and repeatedly to both Boots and RLP, the demand was dropped.

Matt, an employee of a small building firm, received repeated demands for £88.40 from RLP for the alleged (but strongly denied) theft of a tape measure worth 90 pence from B&Q. When Matt wrote to RLP denying the alleged offence and setting out his version of events, RLP replied stating that "our client [B&Q] will rely on eye witness evidence from store and security personnel plus additional information from CCTV, data mining and other system reports to prove this claim. This evidence will be confirmed in court". Some people might have been sufficiently intimidated by such statements to pay the sum demanded, but with the support of his employer Matt stood his ground and, two months later, after two further rounds of

correspondence, the demand was dropped.

It is clear that many recipients of a civil recovery demand are sufficiently ashamed and/or intimidated by the threat of county court action and escalating costs to pay up without effective challenge. However, in extensive correspondence with Citizens Advice, both RLP and Drydens have failed to provide evidence that the county courts have consistently supported, at contested trials, the recoverability of the sort of sums they routinely demand in cases involving a relatively minor, low-value alleged offence. In the absence of such evidence, a Citizens Advice report published in December 2009 – *Unreasonable demands?* – concluded that such demands, and their seemingly hollow threat of county court action and associated escalating costs, constitute unfair business practice (as defined by the Office of Fair Trading).

Citizens Advice does not condone crime of any kind or level, and does not underestimate the cost of retail crime, which as the British Retail Consortium notes is "met by honest customers who end up paying more". However, the ends of deterring crime or recovering its cost do not justify any means. If retailers, dissatisfied with the level of governmental action against retail crime, are to seek civil redress, they must do so using means that are transparently fair and proper. *Unreasonable demands?* set out recommendations to the Ministry of Justice, the Home Office, the British Retail Consortium and others that civil recovery be limited to cases involving serious, determined or persistent offences for which there has been a criminal conviction.

This would not cause unsustainable damage to the retail sector. For the total amount recovered by RLP, Drydens and others for their retailer clients, after deducting their fees or own share of the money recovered, seems unlikely to be much more than £4.5 million per year – that is, less than 0.5 per cent of the more than £1 billion that the British Retail Consortium says crime costs the retail sector. And the crime involved can be addressed by other means.

Shortly after the publication of *Unreasonable demands?*, the Solicitors Regulation Authority issued new 'ethical' guidance to solicitors. This provides that, before taking any civil recovery action on behalf of a retailer, a solicitor "should consider whether the action being proposed is proportionate, having regard to the circumstances of the 'offence' and of the proposed defendant". And, noting the "influence and financial interests" of the civil recovery agents, the Home Office has told Citizens Advice that "it is important that the use of civil recovery in response to crime is both appropriate and proportionate".

In recent weeks, Citizens Advice has learnt of two new civil recovery agents: Civil Recovery Solutions (headed by Professor Joshua Bamfield, who set up RLP in 1998 but sold it in 2003), and Civil Recovery Limited, which has issued demands on behalf of Tesco. Threatening civil recovery in cases of low-value alleged theft would appear to be a lucrative and therefore growing business. But is it ethical, fair, appropriate and proportionate?

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The costs of dying

James Sandbach explores public policy issues raised by bureau evidence in respect of death and bereavement

What happens after you die isn't just a metaphysical or medical question: there's the death certificate, the funeral, probate and what happens to your assets and belongings; there's pension and bereavement benefits, all of which affect the situation of any bereaved person you leave behind. In fact, a whole gamut of legal and financial issues need to be sorted out before anyone you're close to can get on with their lives. How well does the state support this? Bureau evidence suggests that our systems are lacking in both sensitivity and efficiency, with additional cost burdens passed onto the bereaved - although there are faint signs that some change might be on the way.

Probate

Let's start with wills: around 27 million adults in England and Wales do not have a will, and many die without a will ("intestate"). Yet higher levels of homeownership mean that more people have assets to dispose of. Despite several reviews, the probate system has essentially remained the same for decades. If there is a will, a named executor or relative must apply in person at a Probate Registry, presenting paperwork and identification, swear an oath and pay a fee to obtain a "grant of representation" to administer the estate according to the terms of the will. If a person dies intestate, relatives must apply to the family court under the intestacy rules.

These favour the rights of surviving spouses, but don't make any provision for a surviving cohabitant or in relation to step-families. For example:

A Sussex CAB saw a man whose partner of ten years had died intestate. The house they lived in had originally belonged to his partner's father, who they had lived with and cared for, until his death some time earlier. Following the death of her father, the client's partner had inherited the house, but when she died without a will, it passed to her two brothers. The client told the CAB adviser that one of his partner's brothers had attempted to have him evicted from the house, claiming he was a squatter. As a result of the intestacy rules, this man was faced with homelessness as well as bereavement.

A Hampshire CAB reported the case of a brother and sister who had spent considerable time and effort pursuing a claim for miner's compensation in respect of their father who had died in the 1960s of a recently recognised industrial disease. Their father had left his whole estate to his wife, the clients' mother. However, she later remarried and when she died, she left everything to her husband. The clients' stepfather then died intestate, meaning that the entire estate, including the recently agreed compensation payment for their father's illness, passed to their stepfather's children, none of whom ever knew their father. The

clients felt that this situation was unjust.

Bureaux evidence also suggests that all is not well in the process of obtaining valid wills.¹ Sometimes valid wills can be hard to trace, where for example a solicitors' firm has gone out of business. Consumers can also be victims of scams perpetrated by unregulated will-writing companies. For example:

A client of a Hampshire CAB received a letter from a firm describing themselves as 'probate genealogists,' and telling him he might be entitled to a share in the estate of a person who had died intestate. They asked him to sign an agreement giving them a third (plus VAT) of anything he might receive before disclosing any details to him. Clause 1 of the agreement set no upper limit on the amount payable to the firm.

Funerals

Funeral rites are time-honoured traditions, but they can also be very expensive. A report from Calderdale CAB highlights how aspects of the existing system for administration of Social Fund funeral payments can lead to hardship for recently bereaved and financially vulnerable people.² In many cases the cost of the funeral is not covered by the payment. Consequently, many funeral directors are now asking for payments up-front from people who need to apply for a funeral payment:

¹ See Evidence Journal March 2007, "Where there's a Will"

² *Paying for a funeral*

A woman contacted a Yorkshire CAB in a very distressed state, a few days after her mother had died. On learning that the client would have to apply for a Social Fund funeral payment, the funeral directors said they would not proceed with her mother's funeral unless she paid £1,000 up-front to cover the shortfall between the payment and the cost of the funeral. As the client was on benefits, she had no means of finding this sum at such short notice.

Citizens Advice also sees evidence of excessive costs and poor selling practices by funeral providers. For example:

A Bedfordshire CAB saw a woman who had been caring for her partner until he died two weeks earlier. She was on pension credit and needed help to pay the funeral costs. She was shocked when she received an estimate of the funeral costs. Although she had asked for a simple funeral, the cost of the cremation was £2,400. She said that she didn't feel able to shop around and went to a funeral director that she'd heard of locally. They didn't offer her a price list or time to check the costs of each item. She was now worried that the funeral payment would not cover the full costs.

We also see a trend towards the bundling of probate and funeral products. People who are in a vulnerable state end up signing up to a costly service which is relatively simple to undertake:

A CAB in Northumberland saw a client whose father had died. She had arranged the funeral with a local branch of a large national funeral directors and they had given her information about their probate service. She was very upset about her father's death and agreed

to use their service. However, she later had second thoughts when she discovered that contrary to what she believed, the office was not local. She telephoned to ask the cost of the service and was told the total would be £4,500 and the work already carried out came to £1,000. The client felt that the company took advantage of her at a vulnerable time, and she was led to believe that probate was too complex to arrange without a solicitor, which is not always the case - in fact, the client is now dealing with it herself with the assistance of the CAB adviser.

Bereavement benefits

Finally, only widows or widowers can claim bereavement benefits – long term cohabiting partners are not eligible, even if they have children from the relationship. For example:

A Yorkshire CAB's client's partner had died after 26 years together. They had three children. She was unable to claim for bereavement benefit. She could not get a funeral payment either, as she was not receiving the relevant benefits, although she was on a low income, working part-time with dependent children in her care.

A Hampshire CAB saw a woman whose partner of 14 years had recently died. Both were working, but due to his sickness, they had put in a joint claim for housing and council tax benefit because they would be treated as a couple by benefits system. When he died, however, she could not claim any bereavement benefits to arrange the funeral because they were not a married couple. The local authority had now taken over her partner's

affairs. The client found this very distressing and unfair.

Time for change

Overall, our evidence suggests some processes can be unnecessarily costly and burdensome, and sometimes unfair or discriminatory – this is an unacceptable way to treat bereaved people, and there are now signs that the problem is being recognized. The Law Commission have recently consulted on intestacy, recommending that surviving cohabitants be treated more fairly.³ The Family High Court have established a new probate rules committee to establish a more efficient probate application process (including online), working with an HMCS programme for the modernization of the whole probate service. We have also discussed with the Office of Fair Trading some of the consumer problems in the probate and funerals market such as overpricing, pressure selling and shortcomings of self-regulation. We continue to campaign against discrimination over cohabitants' entitlement to bereavement benefits.

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³ Intestacy and Family Provision Claims on Death. Law Commission 2009.

Evidence reports published in the last six months

- **Paying for life - the CSA** (Calderdale CAB *free*, October 2009)
CAB evidence on collection of child maintenance arrears
- **Limited capability** (*free*, November 2009)
CAB evidence on the first year of employment and support allowance administration
- **Turning the tide** (*free*, December 2009)
Evidence on mortgage and secured loan possession actions in July 2009
- **Do the right thing** (*free*, February 2010)
Best practice in debt collection
- **Not working** (*free*, March 2010)
CAB evidence on the ESA work capability assessment

Recent briefings and responses to consultation papers December 2009 – February 2010

- Response to Ofgem consultation on vulnerable customers and disconnection (December)
- Response to HM Treasury on the money laundering regulations (December)
- Response to the Ministry of Justice's consultation on a statutory debt management scheme (December)

- Social Security Advisory Committee consultation on recovering HMRC debts from DWP benefits (December)
- Submission to Magee Review of Legal Aid (December)
- Response to the BIS review of the regulation of credit and store cards (January)
- Response to the Financial Services Authority on the Mortgage Market Review (January)
- Response to DWP's review of support for disabled customers and customers with health conditions (January)
- Response to Insolvency Service consultation on reforming debtor petition bankruptcy and early discharge from bankruptcy (February)
- Response to the Ministry of Justice's consultation on the Civil Law Reform Bill (February)
- Evidence to the Equality and Human Rights Commission's Triennial Review (February)
- Mortgage regulation – response to HM Treasury (February)
- Response to NHS Car Parking: Consultation on Improving Access for Patients (February)
- Response to BIS consultation on Post Office banking (February)



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