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evidence

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Building a fairer Britain together

John Ludlow looks at the agenda for the new coalition Government

For the first time in over 70 years, Britain has a coalition government. This has naturally meant policy compromises for both the Conservatives and the Liberal Democrats. For example, David Cameron will delay plans to raise the inheritance tax threshold and to work towards taking low earners out of the tax system, while Nick Clegg has agreed to cap immigration and to accept £6 billion of cuts this financial year.

The good news about the planned cuts is that they will apply only to non-front line services and that those on low incomes will be protected from the effect of spending constraints. But it remains to be seen where the axe will fall.

Benefits are certainly a prime target. The coalition parties have already agreed to cut tax credits and the Child Trust Fund for the better off, and we await a welfare bill which promises radical reform. At its heart will be a new single welfare to work programme, designed to streamline services and remove barriers to work. We are pleased that this recognises the need for a joined up approach across the tax, tax credits and benefits systems. Too often changes have been made to one system without recognition of the combined impact on people.

But we want to see more than this. Personalised support is needed to help people to overcome barriers, and to secure good, sustainable jobs. The Government also needs to recognise that if making work pay means freezing benefit levels, then people who genuinely can't work will be pushed further into poverty. And perhaps while the Government frets about saving money, it should remember that £16.5 billion of means tested benefits and tax credits go unclaimed. That's a scandal.

The new Government also needs to support those still facing repossession for mortgage arrears. Temporary improvements to Support for Mortgage Interest and the Mortgage Rescue Scheme should be maintained as they are particularly effective in helping low income households.

Not surprisingly, reform of the financial services sectors is firmly on the new Government's agenda, but here we have real compromise. On the one hand, Vince Cable's plan for a banking levy is agreed, but his proposal to separate retail and investment banking is consigned to an 'independent commission'. On the other, while George Osborne has managed to push the bulk of regulatory power to the Bank of England, he has fallen short of his original aim of disbanding the FSA.

The important thing is to ensure that any new structures have consumer protection at their heart. While it is important to restore business confidence, the public is entitled to see good practice rewarded and bad practice punished. Anything else is just window-dressing.

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An easy target?

Liz Phelps argues why housing benefit must not be seen as an easy target for cuts

Even before the election, it was clear that the housing benefit (HB) budget was to be a high priority target for cuts. Following media headlines of HB enabling the unemployed to live in luxury mansions, the only benefit cut announced in the 2010 Budget was to local housing allowance (LHA) rates from October 2011, by excluding from their calculation the most expensive rents across the country.[1] DWP estimates that around two per cent of claimants will be affected, mostly in London, with average losses of £24 per week (at April 2009 prices).

But it seems probable that this cut is just the start. The outgoing government had already announced the intention to " reform HB to avoid subsidising people to live in the private sector on rents that other ordinary working families could not afford" and DWP has commissioned research to establish what such rates might be. It seems likely that the new government will want to continue with this policy direction, with the aim of reducing LHA rates across the board.

However it is worth remembering that LHA was only rolled out nationally in April 2008, and that these changes are being proposed before the DWP has even completed its planned two year review. Moreover, the experience of the typical HB claimant bears little relationship to the media headlines. DWP figures show that the average weekly payment of LHA - at £112 per week - is only £9 per week higher than the figure for private tenants assessed under the old rules. Given that people transfer to LHA when they take a new tenancy, and that rents of new tenancies are usually higher than those of existing tenancies, then the figures hardly justify the size of the headlines.

It is true that the way LHA is set has resulted in some very high figures in one or two of the 156 Broad Rental Market Areas (BRMAs) in England. The focus of media attack has been the Central London BRMA which covers Westminster and parts of Camden and Kensington and Chelsea where the rental market is very different from the rest of the country, with a significant number of large luxury properties aimed at the international business market existing alongside the more normal range of rented property. The Budget 2010 measure is intended to tackle this issue.

The much larger issue, which of course does not attract any media publicity, is the opposite problem faced by households living in communities where rents far exceed the LHA rate. The full scale of that problem was made clear in an answer to a recent Parliamentary Question, that stated that 48 per cent of LHA claimants faced shortfalls between their benefit and their rent, averaging £23 per week, at August 2009. This is a huge amount for claimants on means tested benefits to find, and it can easily pitch them into rent arrears, eviction and homelessness. It certainly does not suggest the LHA system is over generous or that there is any room for cuts.

These problems become more acute where rents, and therefore LHA rates, are falling, as the current LHA rate is applied to claims on annual review. This is despite the fact that it is not landlord practice to reduce the rent to an existing tenant, even if the market generally is falling. Currently bureaux around the country are reporting that existing shortfall problems are being exacerbated by this situation:

A CAB in the East saw a student on income support with a young son. Her LHA had been cut from £700 to £600 a month on review. This meant she could not afford her rent of £715 per month and so risked homelessness.

A CAB in the South East reported a young single parent with a baby who had been homeless for two years until she moved into her current accommodation. Her rent of £750 per month had been fully met by HB but on review her LHA was to be cut by £52 per month. She faced huge problems in meeting this shortfall. However she was reluctant to move as she was keen to provide a stable home in decent accommodation for her daughter, and in any case she was bound by her tenancy agreement until the end of the fixed term. Whilst she might be entitled to a discretionary housing payment to

1 Local housing allowance rates set the amount of rent which HB will cover in the private rented sector. Rates are calculated on the basis of average rents in the area.

make up the deficit, this could not be relied upon. Her landlord had threatened to deduct any arrears from her deposit, which would make it harder for her to raise the deposit needed for a move.

A CAB in the West Midlands reported a client with a partner in receipt of disability living allowance, who had three young children of her own and had taken on the care of another three children after the death of her sister. They had been re-housed by the council into a privately rented five bedroom house to accommodate them all. The LHA was initially sufficient to meet the rent due, but was reduced from August 2009. As the LHA was paid direct to the landlord, the client was not aware for some time that arrears were accumulating. She now had rent arrears running into thousands of pounds which she could not repay.

People whose incomes are low enough to entitle them to means tested benefits cannot easily make up large shortfalls between their benefit and their rent. In addition, bureaux regularly report the difficulties claimants face in trying to find any landlord prepared to rent to people on HB, which means that shopping around for somewhere cheaper is often not an option.

A CAB in the East saw a lone parent with two children and one on the way, living in private rented accommodation in bad repair which was affecting the children's health. She was desperate to move and went to the council for help. They gave her list of agencies which rented property to people on benefit, but none of them had any landlords who would let to her.

A CAB in the North-West saw a woman who was distressed to be repeatedly refused accommodation because she was claiming benefits, at a time when she was already trying to cope with difficult domestic circumstances. She only succeeded in finding accommodation when she did not declare that she was on benefits.

This experience is confirmed by the results of a recent tenant consultation exercise undertaken by Bristol Council, which found that 80 per cent of tenants claiming HB had found it difficult to find a landlord who would accept them as a tenant. The Citizens Advice report *Let down* (2009) which detailed the findings of a CAB survey of 424 lettings agents, found that although 82 per cent offered properties within the LHA rate, almost a quarter said they did not let to tenants on HB. A further 65 per cent imposed additional conditions such as hefty payments of rent in advance, which most claimants could not afford.

There is a desperate need to find ways to encourage landlords to rent good quality property to HB claimants, and cutting LHA rates is unlikely to be the answer to this problem. The irony is that whilst one department of Government is keen to reduce HB levels in the private rented sector, another has been encouraging local authorities to explore private rented sector solutions to meet housing need because of the chronic shortage of social housing. This is an area where some joined up thinking by the new Government is badly needed.

Inevitably at £17 billion, the high cost of the HB system will make it a vulnerable target for quick cuts in the current climate. But this is not because the benefit is over generous. The reason for the size of the budget can be traced back to the 1980s and the deregulation of private rents which, along with the inadequacy of the social rented housing building programme, has meant that HB has had to take the strain. According to the Chartered Institute of Housing, HB expenditure now accounts for around 80 per cent of all government spending on housing.

A better way to reduce the HB budget therefore, would be to shift some of this support away from the benefit system and towards increased investment in the supply of social housing at submarket rents, for which there is huge demand from would-be tenants. This would deliver significant benefit savings, as the average weekly LHA payment of £112.89 to a private tenant is £40.44 per week higher than the £72.45 average HB payment to a social housing tenant. Lower rents are also a vital ingredient in making work pay, as they enable tenants on low wages to escape the poverty trap more easily. However, little progress was made on addressing the chronic shortage of social rented housing over recent years even when the economy was relatively buoyant, so it seems unlikely that this will change in the straightened times ahead, especially as none of the main parties' manifestos made any significant commitments to do so.

But in the absence of such a fundamental policy shift, any cuts to HB in the private rented sector will have huge implications for wider housing policy, and could simply result in a transfer of expenditure onto dealing with consequential homelessness. What is certain is that it will be low income tenants looking for decent homes to rent who will be the losers.

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Fit for work?

Sue Royston highlights socio-economic discrimination in the benefits system

In April we published our report ***Not Working: CAB evidence on the ESA Work Capability Assessment***. The report highlighted CAB concerns about the numbers of seriously ill and disabled people who are being found fit for work. The test as to whether someone is capable of work has become much tougher and unless someone is likely to die within six months they are usually subject to this test.

A CAB in London saw a 52 year old man had recently been diagnosed with heart disease and had had a triple bypass. About three weeks after he'd been discharged he started to feel extremely ill again. He went back to hospital and after a series of new tests was diagnosed with inoperable and incurable stomach and liver cancer and was told he was unlikely to live longer than two years. Although he was advised to continue taking regular exercise, he found walking and breathing difficult, was in constant pain and suffered a number of uncomfortable side effects from both his cancer and heart medication. At his work capability assessment he was found fit for work as the doctor decided he could walk more than 50 metres.

This raises an important issue of social justice: Most people can look forward to a number of years of healthy and active retirement before their health declines, and to receiving a state pension throughout this healthy and unhealthy period. Some people, however, can have worked all their lives and paid National Insurance contributions and then in their fifties develop an illness which is likely to kill them before pension age. Although likely to die prematurely, they are now being expected to work until their health and quality of life has declined dramatically before they become eligible for sickness benefit. Since they won't live long enough to receive any state pension, this cut back in their sickness benefit is even more unjust.

As life expectancy increases, most people receive more in retirement pension than they have paid in national insurance contributions (NICs). Those who die before pension age receive less and less while everyone else receives more. Manual workers are more likely than others to develop serious illnesses such as heart disease, diabetes, and emphysema in their fifties and are more likely to die either before they reach pension age or shortly after. This article argues that this amounts to socio-economic discrimination.

Incapacitated workers subsidise fit pensioners

The following calculation shows the extent to which those who are likely to die early are subsidizing those who have a longer life expectancy. The calculation uses today's rates throughout, and assumes both people work for 30 years on the average wage (about £25,000 per year), and pay National Insurance contributions in the expectation that they will be covered when they can't work, either because they are too ill or too old. A is 65 years old, is fit and well and has a likely life expectancy of 20 years (15 well years and five disability years). B is 55 years old and has heart disease. B is restricted to walking about 50 metres, and has a physiological age of 80 years and a likely life expectancy of five years. Whilst they both receive similar amounts per year in benefits (A receiving £4,900 in state pension and B £4,500 in sickness benefits), A will end up with £38,000 more than he paid in contributions, whilst B will have £37,500 less than he paid in.

In view of this inequity, it seems an injustice that the pressure is on the group likely to die prematurely to keep working even further into their disability years at the end of their life. When employment and support allowance (ESA) was first introduced, it was expected that more people would be found capable of work than are currently assessed as capable under incapacity benefit, and would not therefore be entitled to ESA. The proposed new work capability assessment will effectively be even tougher than the existing test.[1] In the above calculation we assumed five years of sickness benefit. The likely outcome of the new test is that more people like the man described below will die, having paid National Insurance contributions for 30 to 40 years, but receiving little or no benefit at the end of their life.

1 Building bridges to work: new approaches to tackling long-term worklessness, March 2010 www.dwp.gov.uk/docs/building-bridges-to-work.pdf

A woman contacted Citizens Advice to tell us how angry she was at the way DWP had treated her husband. He had been found fit for work even though he could hardly stand. She reported that his money had stopped again, but shortly after this he died at the age of 60.

Those who can work should

This statement, which is often used to support the argument for welfare to work measures, assumes exclusion for those over pension age. When old age pensions were first introduced, the qualifying age was 65 years because by then most people were too infirm to work. Understandably, today's society does not expect 80 year olds to work, and yet the average 80 year old with no underlying health problems would be found fit for work under the current ESA assessment process.

For those under pension age, the assessment process for ESA allows that when someone is terminally ill - defined by having less than six months to live - they are automatically entitled to ESA. Almost everyone else will be assessed using the standard test and many will be found fit for work. If, however, we re-frame the question from " Who can work?" to " Who is it reasonable to expect to work?", it is easier to see when the outcome is wholly inappropriate:

A CAB in the South West saw a client who had bowel cancer in 2008 and had a colostomy. In the spring of 2009 he became very ill again. Whilst he was undergoing investigations, he was sent for a medical and was found fit for work. The bureau believed that he should have been in the support group because he looked so ill. They helped him appeal the decision. Unfortunately later in 2009 he was diagnosed as being terminally ill. The bureau sent in the report but the decision maker decided that although he was entitled to ESA from the date of the diagnosis that he was terminally ill, the decision that he was fit for work up to that date remained.

Manual workers subsidise the better off

The changes to the ESA assessment process disproportionately affect one group of people: manual workers are more likely to develop serious illnesses such as heart disease, diabetes, and emphysema in their fifties and are more likely to die either before they reach pension age or shortly after. As part of the evidence gathering for the report we spoke to a number of doctors. One of them whose patients mainly lived in a deprived inner city area remarked that she sees many men in their mid fifties who have worked in heavy manual work all their lives and are now suffering from serious illnesses. She observed that they look much older than their years and their bodies are simply worn out.

Overall increase in life expectancy is not uniform across the population: using current figures, life expectancy at birth for a woman living in Kensington and Chelsea is 88.9 years while for men living in Glasgow it is just 70.7 years.[2] At ward level, the difference is even more extreme. There are many in Glasgow's wealthier areas whose life expectancy far exceeds the figures for Glasgow as a whole but men in the Calton area of Glasgow have the lowest life expectancy in Europe at just 54 years.[3]
This year-by-year increase in life expectancy means a large increase in the numbers of people receiving retirement pensions. This has led to huge pressure on resources, which in turn adds to pressure to save on government spending wherever possible. There is a recognition that the age of retirement will have to rise, but only to an age where the majority of us can still expect a significant period of healthy years. The increasing pensions bill should not, however, be paid by those with a much more limited life expectancy who don't feel able to keep working.

Male working class manual workers are much more likely to die before reaching pension age and therefore disproportionately suffer from the decrease in the length of time at the end of life that they can claim a sickness benefit. Citizens Advice does not necessarily have any answers to this problem. We do, however, wish to start the debate on how to tackle this example of socio-economic discrimination.

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2 National Statistics
3 WHO report on Health Inequalities 2008

Fuel

Insulating those on the lowest incomes from fuel price rises

Tony Herbert and Nina Mackellow look at how incentives to encourage carbon saving home improvements are in danger of worsening fuel poverty

The Government is bound by the Climate Change Act 2008 to reduce carbon emissions in the UK by 34 per cent on 1990 levels by 2020 and by 80 per cent by 2050. Since the fuel we use in our homes accounts for 27 per cent of the UK's emissions, it is a key target for reduction. While measures to tackle climate change are necessary and overdue, it seems inevitable that customers will end up paying for them through increased fuel bills. The financial benefits delivered by various climate change related subsidies can help to offset these increases, but those unable to afford the upfront installation costs of these will find it ever more difficult to pay the increased fuel bills which fund these subsidies. Unless a more equitable settlement is reached there is a real risk that the costs of tackling climate change will push more people into fuel poverty.

It doesn't have to be like this. With proper prioritisation and subsidy, those on the lowest incomes could - and should - be among the first to benefit from carbon abatement measures, resulting in lower fuel bills. Cutting carbon emissions could therefore go hand-in-hand with reducing fuel poverty, helping the Government to meet two key and challenging targets through one programme. Energy efficiency improvements and carbon reduction policies should therefore be key to the Government's strategy for tackling both climate change and fuel poverty.

Rising fuel poverty

There are currently around 4.6 million households in England in fuel poverty, compared with 1.2 million in 2004. This persistent rise continues, despite the Government's target to eradicate fuel poverty by 2016. The average domestic dual fuel bill has more than doubled in under six years, from £572 in January 2003 to £1,287 in September 2008. People struggling to pay their fuel bills can quickly find themselves falling into debt. Citizens Advice Bureaux dealt with 109,925 fuel debt problems in 2009/10, 33 per cent more than the previous year. For example:

A couple who were unable to work due to serious health problems sought advice from a Warwickshire CAB about their heating costs. The wife was about to go into hospital and they wanted to know whether they were eligible for any extra help with their heating costs. About 16 per cent of their income was spent on heating. The husband was very worried that they wouldn't be able to keep their house warm enough when his wife came home from hospital unless they stopped buying other essentials.

A CAB in South East Wales saw a man with long term health problems and a disability, who was struggling to pay for heating costs. His sole income was means-tested benefits but because he was under the age of 60, he did not qualify for the Winter Fuel Payment. The client had to choose between heating his home or eating as he could not afford to do both.

With bills continuing to rise and increasing numbers of people being pushed into fuel poverty, placing any additional burdens on people's bills risks exacerbating the problem.

Incentivising change

A key way the Government hopes to achieve its emissions reduction target is through a legal commitment to supply 15 per cent of the UK's energy use from renewable sources by 2020.

The main incentives designed to encourage action by individuals on this front will be funded by energy suppliers and, ultimately, customers themselves. The Renewable Heat Incentive (RHI), planned to start in April 2011, will reward households which replace existing fossil fuel heating systems with a renewable technology. Similarly, Feed-in Tariffs (FITs), available from April 2010, require energy suppliers to pay people who generate their own electricity from renewable or low carbon sources and export it to the grid. The Carbon Emission Reduction Target requires all large energy suppliers to make savings in the amount of carbon emitted by households – at least 40 per cent

1 *Programmes to reduce household energy consumption*, Public Accounts Committee, House of Commons, February 2009, p.3

of this activity must be focused on vulnerable households.

Paying but not benefiting

The previous Government proposed a range of measures to reduce carbon emissions from homes including the roll out of smart meters, pay as you save (PAYS) and subsidised home energy audits as well as FITs and RHI. It estimated that these measures would add £125 to the average energy bill by 2020 - a nine per cent increase on current bills. Other stakeholders have come to different conclusions, with one estimating levies for environmental initiatives could eventually add, on average, some £250 per year to a typical UK consumer's fuel bill. This will be on top of rises caused by the increasing cost of oil and gas in the future. Average increases of course mask the impact of such change at the extremes. The Government's analysis reveals that those on the lowest incomes will be hit the hardest since a higher proportion of their income is spent on fuel.

Yet this same analysis shows that those who can install renewable heat and insulation measures, thus reducing consumption of fossil fuels, can more than cancel out these increases. For example, households taking up both renewable heat and insulation measures could see their fuel bills fall by roughly 18 per cent, compared to an 18 per cent rise for those who do not take up any measures. Unfortunately, the upfront cost needed to make these changes means people on lower incomes cannot, under current proposals, protect themselves from price rises. The Energy Saving Trust costs the installation of internal solid wall insulation at £5,500-£8,500 and a ground source heat pump at £7,000-£13,000. The Conservatives' election manifesto pledged to give every household a £6,500 allowance to make energy efficiency improvements to their home, paid back from energy bill savings over 25 years. People on a tight budget will be reluctant to agree to a long period of repayments and may well wonder whether savings will be enough to meet them. There is also the risk that the money available cannot fund the measures required.

Since those on the lowest incomes tend to live in the least energy efficient homes, they are likely to face disproportionately large bills to bring their homes up to an adequate level of energy efficiency. This applies particularly to the 14 per cent of households who live in the private rented sector, where levels of double glazing, loft and cavity wall insulation are lowest. Even if they could afford it, private tenants cannot make changes themselves, and lack the security of tenure to push their landlord to undertake energy saving measures. Private landlords have proved particularly immune to improve the energy efficiency of their properties as it is their tenants that pick up the tab for poor insulation. Nor does the PAYS model work well for tenants, who would pay for improvements which ultimately increase the value of the landlord's property, while the exact level of savings on their fuel bills would be uncertain. Inability to pay upfront could also exclude those on low incomes from benefiting from money on offer through FITs or the RHI. Those on low incomes will not, however, be excluded from paying for these subsidies through higher fuel bills.

Sharing the benefits

Improving energy efficiency can both alleviate fuel poverty and reduce carbon emissions. Bringing the homes of the fuel poor up to the energy efficiency standards of homes built today would reduce their fuel bills by an average of 52 per cent and their carbon emissions by 59 per cent. However, the various energy efficiency initiatives are not systematically targeting the most fuel poor households first and have failed to tackle off-grid and hard to treat homes. Change is needed in this area, and it would seem to be an opportune moment for the incoming government to evaluate how well such initiatives perform and how they can be better coordinated and targeted at those in or at risk of fuel poverty.

As we move closer to 2020, the deadline by which the Government is committed to cut emissions by 34 per cent on 1990 levels, the pressure to tackle domestic emissions will only increase. Without a change in focus, the levies added to consumers' bills to pay for carbon reduction measures will push more people into fuel poverty. Those on the lowest incomes already spend the greatest proportion of their income on fuel bills yet they cannot access the measures that the levies fund, making the current system deeply regressive. If, in these financially strained times, consumers must fund the move to cleaner domestic energy, more equitable ways of distributing the burden and sharing the benefits must be found.

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2 *The UK Low Carbon Transition Plan - Analytical Annex*, July 2009, p.73-4

Too poor to go bankrupt?

Cathy Finnegan raises concerns about proposed changes to debtor petition bankruptcy

Sometimes, for people who are overwhelmed with unmanageable debt, bankruptcy can be the only way out. The consequences of debt problems can be devastating, and for some people, debt can become simply too much to bear. For example:

A 60 year old man told a Lancashire CAB that he and his 54 year old wife had both attempted suicide as a result of the stress and anxiety caused by their debt problems.

An adviser at a Yorkshire CAB attempted to contact a client when he failed to attend an appointment and was informed that the client had killed himself. The adviser believed that the client's debts were likely to have played a significant role in his suicide.

It is essential, therefore, that insolvency remedies – including bankruptcy – are available to those who need them. However, the current process for petitioning for bankruptcy involves attendance at court and the payment of a deposit and court fee. This can make it extremely difficult for some people to go bankrupt, especially those on very low incomes and those with mobility problems or with limited transport facilities. Unless they are eligible for a debt relief order, which is only available to people with debts of less than £15,000, these people may find themselves trapped, facing continual pressure from creditors and with no light at the end of the tunnel.

Proposed changes to improve access to bankruptcy

In order to address some of the problems with the current system, the Insolvency Service has proposed significant changes to the application process.[1] They argue that as debtor petitions for bankruptcy are not adversarial, they do not belong in the courts. Furthermore, they recognise that people may face delays before being allocated a time for their hearing, and some people may simply be unable to get to a court at all. This is a problem that is clear from CAB evidence. For example:

A 73 year old London CAB client wished to go bankrupt as he had debts of £20,000 that he could not pay. He had chronic obstructive pulmonary disorder, which is a serious condition that affects breathing, and was too ill to attend court. He was told that he could either arrange for someone to act as his attorney, which would require a solicitor, and would therefore incur a fee, or he could attend court and be fast-tracked so he did not have to be there for more than one or two hours. As the client was too ill to attend court at all, his wife agreed to act as his attorney and a solicitor was instructed. However, the client was then told that the court would not guarantee that it would accept an application via an attorney, which caused further anxiety to the client.

The Insolvency Service proposes that accessibility could be improved by removing debtor petition bankruptcy proceedings from the courts altogether. They envisage that people would be able to apply using an online form or a paper version, backed up by a telephone helpline. These forms would include information on alternative debt remedies to ensure that people had fully considered their options.

Citizens Advice broadly welcomes these proposals. If implemented well, they could result in improved access to bankruptcy for those who desperately need it. Unfortunately, however, there is a catch.

Problems with the proposed changes

Until 5 April 2010, the total cost of petitioning for bankruptcy was £510, of which £150 covered the court fee, and £360 the deposit to the Official Receiver. From 6 April, the deposit was increased by 25 per cent to £450, making the total payable by applicants £600. The court fee may be remitted in full or in part for applicants on low incomes, but the deposit must be paid in full by everyone. Citizens Advice has for some time expressed concern about the lack of any deposit remission, and we lobbied unsuccessfully for an amendment to the Enterprise Act 2002 which would have introduced such remission.

CAB clients tend to have income levels well below the UK average.

1 Consultation on reforming debtor petition bankruptcy and early discharge from bankruptcy, November 2009

Of those who asked for help about bankruptcy in 2007/08, and for whom we have income profile data, over 85 per cent of clients had a household income of less than £1,500 per month, and over 60 per cent had an income lower than £600 per month. Thus, a very large majority of our clients have an income that is below – and in a significant proportion of cases, far below - the median income for UK households, which in the same year was £1,703.[2]

Finding money for the deposit alone can be difficult for some clients, even when the court fee is remitted, as is possible under the current system. While clients are sometimes able to apply for charitable grants, these are by no means always available and the volume of bankruptcy applications has become so great that the main charitable trusts willing to make payments for bankruptcy have been tightening their criteria.

A CAB in Somerset saw a couple in their sixties who had serious health problems and who relied entirely on benefit income. Both had worked throughout their lives but severe and worsening health problems meant they were no longer do so. The couple's financial difficulties had begun when they had suffered a sudden drop in income due to job loss, coupled with a delay in receiving wages. The clients borrowed money from the bank and on credit cards to get by but they struggled to meet repayments, and charges and interest soon began to add up. The clients were ashamed about having got into this difficulty and did not seek help until they were over £70,000 in debt. When they came to the CAB, after debt repayments each month, they were left with £26 a week to live on. They were unable to buy food or fuel without borrowing more money. They were facing constant harassment by debt collectors and bailiffs and, according to their doctor, the situation was having a significantly detrimental effect on their physical and mental health. The only appropriate course of action was for both clients to go bankrupt, but it was impossible for them to afford to pay the deposit. With significant work from the CAB adviser, eventually the clients were able to obtain a grant from a charity to petition for bankruptcy, but only after several charities had turned them down.

By moving the process away from the courts, the Government aims to save at least £21 million. They argue that to make this saving the process would need to be self-financing, with the administration fee to cover processing the application and making the order. Thus, under the new system, there would be no fee remission or exemption whatsoever. This is clearly seen as an attractive option in the current financial climate.

The Insolvency Service has already made it more expensive to petition for bankruptcy by raising the deposit fee earlier this year. By proposing not to means test either the fee or the deposit under the new system, it is advocating a regressive shift in which the fee burden of a debtor petition for bankruptcy would be increased most for those people who are least able to pay it. When the couple from Somerset, whose case is cited above, came for help at the CAB, they needed to find £720 between them for the deposit, and were unable to do so without recourse to charity. Now, with the increase in the deposit amount, they would need to find £900. If the changes proposed by the Insolvency Service are implemented, they would also need to pay the fee on top of this, which at its current level, would mean paying a total of £1,200.

We have calculated that if the application fee remained at £150 and remission levels remained stable, the cost of continuing remission would be £4.8 million. However, given that the scheme is intended to save £21 million, continuing remission would still enable to Government to make overall savings of over £16 million. The £4.8 million needed to cover the cost of remission would have to be re-allocated from the Court Service budget to the Insolvency Service, which would mean that the process would not remain entirely self-financing. However, it would still allow substantial savings to be made by the taxpayer and it would ensure that the financial difficulties accessing bankruptcy are not made worse. The alternative is that bankruptcy will become even more expensive and therefore more difficult to access for those on the lowest incomes, and the intention of improving access to bankruptcy will be undermined.

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2 DWP (2009) *Households Below Average Income: An analysis of the income distribution 1994/95 – 2007/08.*

High time for change

Jane Phipps argues for changes to court procedure to ensure that creditors cannot enforce small debts in the High Court

It used to be rare for advisers to help people with High Court proceedings for the recovery and enforcement of debt. Most non-priority creditors take recovery and enforcement action for non-payment in the county court, where there are clear and relatively straightforward procedures which enable debtors to make offers of payment, apply to reduce instalments and to suspend bailiffs' warrants.

Over the past year, advisers have reported more creditors enforcing county court judgments in the High Court, including unpaid funeral charges, nursery fees, water charges, and charges for heating oil, as well as trade debts arising from previous businesses. It is worrying that in some of these cases, the debt is initially quite small:

A CAB in Sussex saw a man who owed £400 in water rates. As he ignored all demands for payment, the water company issued a county court claim and obtained judgment for £609.28 payable immediately in January 2009. In July, high court enforcement officers issued a notice of seizure, by which time the amount due had risen to £1,366.52. The enforcement officers stressed that a further minimum charge of £625 plus VAT would be added to this amount to cover their costs.

A West Midlands CAB saw an unemployed man who was being pursued by high court enforcement officers for non-payment of a £500 credit union loan, which he had taken out when he was in work. The client had not contacted the credit union to renegotiate payments, and had received no contact from them pursuing the debt until he received a letter from high court enforcement offers asking him to repay £1,361 or they would remove goods.

Government statistics on court procedures seems to back this view up.[1] Whist the number of actual High Court claims for debt in the Queens Bench Division have declined sharply to only 1,065 and actual judgments to 552, the number of writs of fi-fa (a mediaeval Latin term denoting the High Court equivalent of a county court bailiff's warrant) issued in the High Court in the same year was 53,122, almost 50 times as many! Whilst there can be no direct comparison between claims and judgments on the one hand, and writs of fi fa on the other, as the writs may relate to judgments made in previous years, it does not explain such a wide discrepancy.

So why are creditors now taking High Court enforcement action rather than getting county court bailiffs involved?

It's cheaper for creditors ....

Creditors have the choice to enforce county court judgments for over £600 in the High Court, providing the judgment was not for a regulated consumer credit agreement. It costs creditors just £50 to do this. In comparison, the equivalent county court fee for a warrant of execution is £100, whatever the size of the debt.

This fee, and other fees for enforcement methods, had been increased in July 2009. The Government's stated reasons for the increases included the need to ensure that the full costs of court action were covered by fee income and to ensure that creditors weigh up the appropriateness of taking enforcement action against a potentially vulnerable debtor. It is disappointing that this anomaly was not noticed and addressed at the time.

... but more expensive for debtors

Creditors cannot charge interest on county court judgments which are consumer credit debts or are under £5,000. In contrast, as soon as a county court judgment is transferred to the High Court, it starts to accrue interest at the statutory rate of eight per cent. The debt increases further with hefty fees and charges added by the High Court enforcement officers instructed to enforce the writ. The combination of this often results in relatively small debts escalating quickly and substantially:

A Suffolk CAB was helping a lone parent on a low income with her debt problems. With the help

1 Judicial and Court statistics 2008 (Ministry of Justice)

of the CAB, she made payment offers, most of which were accepted. Her debts included £500 in unpaid water rates. She had agreed repayments with the water company, but had missed a few payments. As a result, the water company issued enforcement proceedings in the high court. The client managed to agree another payment arrangement with the water company, but the use of the High Court meant additional costs of £1,000 to the original debt - almost tripling it.

A Yorkshire CAB saw a woman who had taken out a credit union loan several years earlier. The credit union obtained a county court judgment for £2,686, which was subsequently transferred to the High Court for recovery, increasing to £3,119. The client agreed to pay £30 per month off the debt, but because statutory interest of eight per cent could now be added to the debt, only about £15 of each payment went towards the debt.

It is also more difficult for debtors to take action to stop High Court enforcement officers, as the application has to be made at the nearest High Court Registry. The paperwork is complex and debtors might need to make a long and expensive journey to the nearest court with High Court jurisdiction:

A Northumberland CAB saw a widow in part-time work. She was still grieving for her late husband and was finding it difficult to cope financially. One of her debts was for her husband's funeral expenses which the funeral directors had pursued through the courts. They had applied for a writ of fi-fa in the High Court to enforce the debt. In order to apply for a stay of execution of the writ, she had to make a 140 mile round trip taking five hours.

The High Court is more effective in recovering debt than the county court...

Creditors may well argue that High Court enforcement agents are "more effective" in recovering debts, and it is only fair to allow non-consumer credit judgment creditors, often small trade creditors, the opportunity to enforce in the High Court. However, there are at least two aspects of this argument that warrants further examination.

Firstly, the annual Judicial Statistics do not show how effective High Court enforcement agents are in recovering sums owed under writs of fi-fa. In comparison, there is quite detailed information relating to the effectiveness of county court bailiffs. In 2008, where judgment creditors provided the correct address on the warrants of execution, county court bailiffs collected 83.3p in every pound.

Secondly, the more creditors choose to use High Court writs of fi-fa, particularly against debtors who can't pay, the more those debtors will seek to stay execution. Whilst applications to stay are not identified specifically in the Judicial Statistics, comment is made in the 2008 edition that "interlocutory applications increased by 33 per cent in 2008 to 11,660." The cost to the debtor of suspending a county court bailiff warrant or staying a High Court writ of fi-fa is the same - £35. However, it is more costly in terms of court time to deal with the application to stay a writ of fi-fa because all applications are scrutinised by judges, whereas county court staff deal with applications to suspend a warrant of execution.

Time to reform the rules

As Government policy on the use of civil courts has been to reserve complex, high value and public policy cases for the High Court, we would question whether it is an effective use of High Court judicial time to consider applications to stay execution on such small debts as non payment of a water bills or nursery fees, when in the county courts procedures have been streamlined to enable court staff to deal with all but the most contentious disputes about ability to pay. When creditors use the High Court for enforcement, debtors who are individuals find themselves in an intimidating and complex procedural world which is inappropriate and a likely waste of all parties' resources.

Citizens Advice believes that it is time to look again at these rules for companies. Firstly we feel that creditors with debts as low as £600 should not be able to opt to enforce them in the High Court. Furthermore, we consider that the application fee for a writ of fi-fa in the High Court should be increased so that it exceeds the equivalent county court fee, if it is to provide a deterrent to the use of punitive methods of enforcement for small debts.

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