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evidence

citizens advice bureau

Making payments fit for all

After the recent reprieve for cheques, Cathy Finnegan insists on the importance of inclusive payment methods.

Following pressure from individuals and consumer groups, the Payments Council recently announced that the 2018 target for the withdrawal of cheques has been cancelled.

The fact that the Payments Council has listened to, and acted upon, the concerns of consumers is very welcome. However, there remains a danger that the use of cheques will simply wither away, with more and more retailers refusing to accept them, and those who depend on them facing increasing financial penalties for doing so.

A CAB in Cumbria told us about a man who paid his quarterly electricity bill by cheque. He did not wish to pay by direct debit as he preferred to budget using cheques. He had been told that his electricity company was introducing a two per cent surcharge on payments made by cheque.

The Payments Council recognises the need to continue to develop alternative payment methods. We agree this is necessary but it is vital to ensure that payment methods are as inclusive and accessible as possible, so that they meet the diverse needs of those who rely on them.

Many people who visit Citizens Advice Bureaux are disadvantaged by the inaccessibility of existing payment methods. Improvements have been made in some areas, such as the development of chip and signature debit cards for people who find it difficult to use chip and PIN, but there are problems with this sort of niche solution, as awareness and acceptance amongst retailers, and even banks, is not always high.

A woman went to a CAB in Yorkshire. She was in her eighties and had a visual impairment. She had a chip and signature debit card but found that some retailers, including large high street stores and supermarkets, refused to accept it. When she spoke to her bank about this they simply issued her with a PIN number, which was unsuitable for her needs.

Currently, the accessibility of payment methods – and indeed financial services more broadly – is not covered adequately by regulation, and recent proposed changes to financial regulation will not solve this problem.

The new Finance Conduct Authority (FCA) will not have a financial inclusion objective. It will promote efficiency and choice, but this is about competition, not access or inclusivity. While product intervention powers will enable the FCA to prohibit certain financial products (or aspects of financial products) this will not enable any positive intervention. So providers will not be required to adapt services to meet the needs of a diverse range of consumers. This is a significant gap in the regulator's powers, which must be closed.

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Peer pressure?

As the Welfare Reform Bill passes through the House of Lords, Lizzie Iron reviews progress to date.

This time a year ago, there was cautious optimism around the Government's proposals for welfare reform, and the high level aims were universally welcomed. Who wouldn't want to see the benefits system simplified? And who wouldn't want work to be the rational choice for all people who can work? As the 2011 Welfare Reform Bill passes through the House of Lords over the autumn, it's time to review progress to date.

The Bill is unprecedented in the scale of the changes being introduced: not only will it sweep away a whole generation of working age benefits and replace them with one Universal Credit (UC), but it also replaces Disability Living Allowance (DLA) with a new benefit called the Personal Independence Payment (PIP); it will abolish council tax benefit and most discretionary elements of the social fund (community care grants and crisis loans for living expenses), passing both funding and control for these functions to local authorities.

The Government aims to save £18 billion from overall welfare spending, so virtually every budget is to be cut – housing benefits have already been slashed; LA allocation for council tax relief will be 10 per cent less than currently; PIP will be 20 per cent less than current funding for DLA.

Thanks to powerful – and unanimous – lobbying from the welfare sector, one important cost-cutting measure was dropped before the Bill was introduced to Parliament – ie, a proposal to reduce housing benefit (HB) by 10 per cent for people claiming jobseekers' allowance (JSA) for over a year. Government was eventually persuaded that this was illogical and unfair, and it was withdrawn before the Bill was published. In spite of persistent lobbying on other measures, however, no changes were agreed during the passage of the Bill through the Commons.

Draft regulations have been trickling out from the DWP, but many elements in the Bill are not yet fully formed, and we are contributing to the considerable work going on behind the scenes to try and address some of the trickier problems. Citizens Advice leads a loose coalition of welfare organisations and other interested groups, to pool our expertise and share the workload of influencing the Bill, while our policy officers have contributed to working groups on issues for people with disabilities, childcare, conditionality and sanctions, the future of passported benefits, localisation of council tax relief, devolution of parts of the social fund and the proposed benefit cap. Other prime concerns include the way the new Universal Credit will be paid, the calculation of housing costs, the impact of how savings will be counted, time-limiting of (Contributory) Employment and Support Allowance (c-ESA), under-occupancy in the social rented sector, the qualifying period for Personal Independence Payment (PIP), and how self employed people will be assessed for income.

Childcare

Childcare has been a problem from early in the passage of the Bill. The Government wants to make work pay for everyone, even if they only work a few hours to get started on the road to full employment. One of the key factors in making work possible for parents on low incomes – especially lone parents – is being able to find and pay for reliable childcare. For some people in the current system, up to 95.5 per cent of their childcare costs can be covered, but in Universal Credit, no-one will receive more than 70 per cent of these costs. Without increasing the funding pot for childcare costs, it will be impossible for the Government to extend support for childcare to encourage more parents into work. Yet at the same time, lone parents will be expected to seek work when their youngest child reaches school age (five years old) – but if they can't afford reliable childcare, the logic of making work a rational choice will quickly break down.

Just as we went to press with this edition of *evidence journal*, the Government announced that a further £300 million pounds will be made available to cover childcare costs. This will certainly help to spread support to more people, and we welcome the news. We will still press for an increase in the upper limit of costs to be raised from 70 per cent to 80 per cent, but in the meantime, this shows that the Government has listened to the arguments.

Greatest need

A logical approach to spending cuts is to try and target money where the need is most extreme, but unfortunately, the way the Government proposes to do this will reduce support for people who are not necessarily in the greatest need, but who still face significant

disadvantage. As more details have emerged from the DWP, we are increasingly concerned about the impact of reform on people with disabilities, many of whom could experience the triple whammy of cuts to DLA/PIP, time-limiting of contribution-based ESA, and re-distribution of money in Universal Credit. For example, the Government has announced that the additions for disabled children within the Universal Credit will change to align with the additions for disabled adults[1]. While severely disabled children will receive a very slight increase compared with current rates, many other children with significant disabilities – such as Downs Syndrome for example – will receive less than half of their current rates under Universal Credit, through replacement of the disability element of child tax credit with a 'disability addition' for a child.

Conditions and sanctions

The Government's approach to achieving all these changes uses a mixture of carrot and stick: they will provide a more personalised programme of support into work, commissioned through private providers, to be paid on results. The work provider will be paid to find the client a job, and will receive further payment when the client has been in the job for 26 weeks, with a final instalment after one year. In line with this targeted support, the system will be based on stricter conditions imposed on people seeking work, with the potential for benefits to be lost for up to three years if claimants are assessed as failing to comply. Based on the many examples we already see, of sanctions wrongly applied to vulnerable clients, we are particularly concerned about the potential distress if this harsher regime is applied without due consideration of the clients' circumstances. At the very least, the Government must ensure solid safeguards are introduced alongside this harsher regime, to ensure that individuals suffering from mental health problems, for example, are not moved further away from the labour market or into destitution.

Delivery issues

Some groups have raised questions from the beginning about the way UC will be paid. The Government argues that by paying benefits more like a working wage, people who are out of work will gradually become more accustomed to living like people with earned income. Part of this reasoning is that 'most' earnings are paid monthly, and so benefits will be delivered monthly in future. In couple households, the benefit will be paid to one nominated member of the couple – presumably on the basis that families still have just one breadwinner – which seems a strangely old-fashioned view of the way working households operate. The concern within the welfare community is that this behavioural 'nudging' represents a high risk approach for many of our clients, whose lives do not reflect the Government's assumed model. For households who have real problems budgeting their benefit income on a weekly or fortnightly basis, the proposal to pay monthly is likely to lead very quickly to rent arrears, debt and hardship. In couple relationships where the power balance is unequal – usually to the disadvantage of the woman – there is real danger that women and children will see less of the household income if the father insists that it is paid to him. We are therefore calling for a range of payment methods so that the default proposals do not undermine the purpose of benefits to protect the most vulnerable people in society.

Spending cuts are inevitable in the current economic climate, and we are just beginning to see the reality, as enquiries to bureaux reflect the impact of HB cuts. We won't know the full impact on our clients until we see future enquiry statistics – although we may never have a full record of demand, if reductions in Legal Aid and advice funding mean that we cannot fulfil the increasing need for our help.

In the meantime, as the Bill makes its way through the House of Lords, we are engaging with Peers to ensure they are as informed as they can be, to scrutinise the measures in the Bill and – if time allows – to challenge every clause that does not appear to support the Government's high level aims.

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Lizzie leaves Citizens Advice in October and any enquiries should be sent to: katie.lane@citizensadvice.org.uk

1. www.dwp.gov.uk/docs/ucpbn-1-additions.pdf

Universal Credit, universal health?

Christie Silk argues that the introduction of Universal Credit is an opportunity to improve the way that support for health costs is provided for people on low incomes

As the reforms to health and social care engage the interest of the public, it's easy to forget that the future of help with health costs lies in welfare reform. The Welfare Reform Bill will introduce the Universal Credit (UC), which will replace the means-tested benefits and tax credits through which people are automatically 'passported' to receiving full support with their health costs. This means that new eligibility criteria will have to be set – a task which could be seen either as an opportunity to reform the way support is provided for everyone on a low income, or as a narrower exercise in transposing the current passporting rules into the UC. The Government will need to take the former view if it is going to design a system which doesn't recreate the complexities and inequalities of the current arrangements.

The current system

In England, certain groups are entitled to free prescriptions, whereas in the devolved nations, free prescriptions are universal. Eligible people can also receive support for specific costs, including NHS dental charges, optical costs, wigs and fabric supports, and travel costs. However, the eligibility rules are complex, unequal and ill-publicised. This is largely because support is provided through two connected, yet ill-aligned channels:

- **Passporting** – people claiming a means-tested earnings-replacement benefit, such as income support, income-based Jobseekers Allowance or income-based Employment and Support Allowance (ESA) are automatically entitled to full support for health costs. Someone can also be entitled if they have an annual income of less than £15,276 and are receiving Child Tax Credit (CTC), CTC and Working Tax Credit (WTC), or WTC with the disability element.
- **Low Income Scheme (LIS)** – people who aren't automatically exempt from charges may be able to receive full or partial support by applying to the LIS. Their income and capital must be below a certain limit, and the amount of support that they receive depends on how much their weekly income exceeds set living allowances.

The complexity of this arrangement, which has evolved piecemeal and involves three different departments (the Department of Health (DH), the Department for Work and Pensions (DWP) and HM Revenue and Customs), has led to gaps in entitlement and poor take-up. Citizens Advice bureaux see many clients who struggle to meet regular and/or expensive health costs. People can face an intolerable predicament: pay for treatment and incur financial hardship – or go without, and risk worsening health. Moreover, the illogic of the rules leads to high administrative costs and claimant error:

A CAB saw a woman with fibromyalgia, back pain and depression who was receiving long-term incapacity benefits. She had been issued with penalty charges for incorrectly claiming free prescriptions. She couldn't afford dental treatment, so she had tried to self-medicate by taking anti-inflammatory pills, which resulted in her vomiting blood and needing a gastroscopy. Even though she had regular contact with her GP, the pharmacist and the mental health team, nobody had suggested she might be eligible for the LIS.

Prescription charges

Prescription charges are a particularly common financial burden. In 2010/11 bureaux dealt with around 10,203 enquiries about NHS health costs and charges, 15 per cent of which were about prescription charges. In theory, prescription provision is quite generous – around 60 per cent of people in England are exempt from prescription charges. However, the majority of free prescriptions are dispensed to people who are exempt because of their age or health condition, rather than because of income. Research conducted in 2008 by Ipsos MORI for Citizens Advice estimated that around 800,000 people a year didn't get all or part of their prescriptions dispensed because they couldn't afford the costs, and recent client evidence indicates that support still isn't reaching those who need it most.

Gaps in entitlement

The tax credit rules mean that many families with dependent children, and people with disabilities working at least 16 hours a week, with an annual income of less than £15, 276, automatically receive full support with their health costs. Conversely, there are many other people who do not receive the qualifying tax credit but have much lower incomes, who receive little, if any, support

from the LIS. This entitlement gap is particularly worrying for people with disabilities. For example – a person with disabilities, who, because of deterioration in their condition, reduced their working hours to fewer than 16 hours a week, would lose their automatic exemption from health costs, even though they would have a lower income and, possibly, greater treatment needs.

Poor take-up of LIS

The person described above might be eligible to receive some support from the LIS. However, evidence from CAB clients and other organisations suggests that take-up of the LIS is patchy, and that many people do not apply to the scheme because they don't know it exists.

A CAB saw a DLA claimant who had advanced Multiple Sclerosis, diabetes and arthritis, She had previously been passported to full support when she received income support, with the Severe Disability Premium (SDP). Her son moved in to care for her and claimed carers allowance, which meant she lost the SDP. Without the SDP, her income was such that she was no longer automatically exempt from health charges. She would, however, have been eligible for partial support under the LIS. Although she was in contact with the DWP, the GP, pharmacist and consultant, she hadn't been made aware of the LIS or even that she could use a prepayment certificate. She hadn't been purchasing all of her medicines for several months and couldn't afford the new glasses she had been told she needed.

The LIS is poorly communicated. Health care professionals have front line contact with patients, but they do not understand the complexities of means-testing. The DWP, conversely, has this knowledge, but because health costs are the responsibility of the DH, it does not routinely advise on this entitlement.

Universal Credit

Looking forward, we know that automatic support for health costs will be based on receipt of UC, but decisions have yet to be made about which claimants will be eligible, and how much they will receive. The Government has suggested that support could be withdrawn at an income or earnings threshold. However, withdrawing all support at a fixed threshold would create 'cliff edges', meaning that claimants would lose money suddenly when their income rises past this level. This would undermine the UC aims of a steady taper to ensure that claimants gain equally from every pound earned.

Conversely, a more comprehensive provision of support could further the UC aims of improving work incentives and simplifying the system. Alongside other health and disability organisations[1], we have developed three alternative options, which work on the premise that providing automatic support for all UC claimants – in addition to those who are currently passported – would redress the flaws of the current system and help achieve the wider objectives of the UC:

Our preferred option

- All UC claimants, who are by definition on low incomes, should be automatically exempt from all health costs, including prescription charges. Although unlikely to be cost neutral, this would have significant advantages in terms of simplicity, transparency and improving work incentives.

If this is not possible, alternatives could be:

- Claimants whose weekly income is below a prescribed level are exempt from costs, and claimants who exceed this level make a contribution towards costs. The amount of the contribution could be calculated along LIS lines, and could be paid through an upfront payment, or deducted from their UC over a fixed period.
- Claimants on higher incomes contribute a monthly amount from their UC towards their health costs, but can opt out for all or certain costs. Claimants whose weekly income is below this level are exempt from costs.

These options would make two key improvements on the current system. Firstly, it would no longer be necessary for people on low incomes (who are receiving UC) to have to make a separate application for health cost support. The UC system will hold all of the relevant information about a person's income, so there would be no need for a separate application. This would be simpler and administratively cheaper. Secondly, if full support for all UC claimants was not implemented, claimants with relatively high incomes could still receive partial support towards their prescription charges, while those on lower incomes would get them for free. Currently, people are either exempt from prescription charges or they have to pay the full amount, even if for example, they receive partial support towards their dental charges.

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1. Asthma UK, British Heart Foundation, Hughes Syndrome Foundation, National Rheumatoid Arthritis Society, Raynaud's & Scleroderma Association and Scope

At the Crossroads, what next for Gypsies and Travellers?

Gerard Crofton-Martin describes the common problems faced by Gypsy and Traveller communities

Gypsies are believed to have migrated from India in around AD 1000, first becoming part of British society in the 1500s. Irish Travellers, first recorded in Ireland in the fifth century as a nomadic group with a distinct identity, dialect and social organisation, have been living in Britain since the 1800s. Today, these two groups differ in family size, economic activity, travelling patterns, language and certain cultural traditions.

It is estimated that between 90,000 and 120,000 Gypsies and Irish Travellers live in caravans in England[1], and 2,000 in Wales[2]. Up to three times as many live in conventional housing[3]. Both Gypsies and Irish Travellers are recognised as distinct ethnic groups and are therefore protected by Race Discrimination laws.

Gypsies and Irish Travellers fare worst of any ethnic group in terms of health and education. Life expectancy for men and women is 10 years lower than the national average, while Gypsy and Irish Traveller mothers are 20 times more likely than mothers in the rest of the population to have experienced the death of a child.[4] Many members of the community have poor literacy skills, with educational attainment of Gypsy and Traveller pupils being considerably lower than their peers at every key stage[5].

Over the last three years CAB have reached out to Gypsy and Traveller communities. The numbers of clients from these communities seeking advice has more than doubled in the three year period with CAB advising on over 6,500 issues.

Many of the social policy issues identified by advisers are also experienced by the settled community. However there are some specific issues that seem to disproportionately affect Gypsies and Travellers. These include access to financial services, barriers to accessing work and significant problems relating to utilities on sites – all of which are often linked to discrimination.

Access to financial services

Many advisers working with Gypsies and Travellers report difficulties getting building and contents insurance, with anecdotal evidence suggesting that some sites are even blacklisted:

A CAB client lived in a caravan on a council-run site. The client had been unable to get home and buildings insurance for his caravan. When he tried he was told that the insurance company is not accepting applications from his post code. His post code was unique to the site and was shown as 'Travellers Site'. The client believed he was being discriminated against.

Citizens Advice is working with Gypsy and Traveller organisations and the Government, to engage with the British Bankers Association and the Associations of British Insurers to see if these issues can be successfully resolved.

Advisers also report that some Gypsies and Travellers may have difficulties opening bank accounts because of a lack of ID coupled with their homeless status.

A CAB client who was not on the electoral roll as he was homeless only had a birth certificate as ID. The client subsequently found that he was unable to open a bank account.

Finding work

Gypsies and Travellers who are looking for work may face discrimination because of their ethnicity making it more difficult to find work as an employee. Advisers also report the difficulties experienced by some Gypsies and Travellers when working with Jobcentre Plus to find work, which are often exacerbated by poor literacy skills.

A CAB client was pressurised into committing to look for work by looking in the local paper and on the internet. This was despite the fact that the client was unable to read or write. The client was also unable to log and provide the evidence that they had made phone call applications as they were unable to complete the relevant forms. The

1. Niner, P. (2002) The Provision and Condition of Local Authority Gypsy/Traveller Sites in England. London: ODPM
2. P Niner, Accommodation needs of Gypsy-Travellers in Wales (2006) Welsh Assembly Government
3. Ivatts, A. (2005) 'Inclusive School – Exclusive society: the principles of inclusion', in C. Tyler (ed.), (2005), Traveller Education: accounts of good practice. Stoke on Trent: Trentham Books
4. G Parry, P Van Cleemput, J Peters, J Moore, S Walters, K Thomas, C Cooper, The Health Status of Gypsies and Travellers in England (2004) (University of Sheffield)
5. Key Stage National Curriculum Assessment Statistics (DCSF)

client was not given guidance about looking for suitable work, taking into account their level of skills.

A CAB client who could not read or write was actively seeking work. The Jobcentre Plus gave him details of a job as car-washer, and said he must apply for it to prove he was seeking work or his money would stop. The details Jobcentre Plus provided to him said the employer would only accept applications by email. The client could not use email, because he could not write and did not have a computer.

Citizens Advice is working with the Department for Work and Pensions, raising our concerns, and suggesting ways in which Jobcentre Plus can help more Gypsy and Traveller people who may need help in finding employment, by offering effective help through DWP and Jobcentre Plus.

Utilities

Many advisers report problems associated with pre-payment meters on sites, which do not allow site residents to access social tariffs nor help them gain a credit history. Some site owners appear to overcharge for utilities as a way to increase income on sites.

A CAB client lived in a caravan on a council-run Travellers' site. The caravan was supplied by a gas cylinder but a 'day room' was also on the pitch - ie a brick-built structure next to the caravan, consisting of a kitchen area and toilet/shower, which had an electricity supply. The electricity supply was via a key meter and the client estimated he paid £60/£70 per week. The high price of electricity affected everyone on the site.

A CAB client lived on her own in a caravan on a council-run site. The caravan was supplied by gas cylinders but the 'day room' had an electricity supply. The client paid for electricity by key meter and she estimated she paid £10 per day.

A CAB client and partner lived in a static caravan on a site owned and managed by the council. The electricity was purchased by the local authority, and the amount used by each pitch was ascertained from meters in the office of the site warden, who then delivered accounts and collected money from the occupants of each pitch. Accounts were not delivered, nor money collected, frequently enough, so residents had fallen into severe arrears, as they had no way of monitoring their consumption of electricity.

Impact of Future Changes

While issues such as those above are the most commonly reported to CAB, it is important to note that a lack of designated sites means that 25 per cent of Gypsies and Travellers are homeless[6], compared with just 0.1 per cent of the settled population. The lack of sites means that Gypsies and Travellers have no alternative but to stop on unauthorised sites, and when they are evicted, their children are forced to leave their schools, while families lose continuity of healthcare provision. With new Government proposals outlined for planning systems, site provision for Gypsies and Traveller sites is once again at a crossroads.

As part of developing its localism polices, the Government proposes to give local communities a greater say in planning. However, Citizens Advice believes this will result in a lack of new sites for Gypsies and Travellers as local communities object to the possibility of any new sites in their locality. Once again, self interest by the majority could lead to further exclusion of some of the most vulnerable in society such as Gypsies and Travellers.

As highlighted in Citizens Advice's response to the Planning for Traveller Sites consultation, the problems of ill health and low literacy associated with a lack of sites could then deteriorate further, broadening the inequality between Gypsies and Travellers and the settled population. The proposed changes to Legal Aid would then compound the difficulties faced by Gypsies and Travellers.

At present, Legal Aid can be used to support casework challenging evictions from unauthorised encampments. The main types of Gypsy and Traveller cases that are eligible for Legal Aid are currently evictions from unauthorised encampments; evictions from rented sites; other issues relating to rented sites; High Court planning cases (injunctions, planning appeals, challenges to Stop Notices and direct action), and homelessness cases. Under the Government's proposals all unauthorised encampment eviction cases will be taken out of scope for Legal Aid, together with a large number of planning matters.

Gypsies and Travellers are amongst the most disadvantaged communities in society and many bureaux have invested in building up trust with these communities. However, the envisaged changes to both Legal Aid and planning law may result in continued or even greater levels of disadvantage, and an increased need for Gypsies and Travellers to use Citizens Advice Bureaux, not only for advice, but also to highlight and lobby on policy issues affecting their communities.

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6. Under the Housing Act 1996 Section 175 (2): A person is … homeless if he has accommodation but –(b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and reside in it.

Can self-regulation deliver?

Susan Marks discusses the effectiveness of self-regulation in consumer protection, and argues for a single approved scheme

What does effective self-regulation look like?

Some key elements are essential if the benefits of self-regulation are to be delivered. They have been incorporated into the three self-regulation approval regimes currently in use in the consumer protection field; TrustMark; the OFT Consumer Code Approval Scheme (CCAS); and Local Authority Assured Trader Scheme Networks (LAATSN).

Offering more than the law: For consumers to see added value when choosing a trader, self-regulation must ensure that traders are complying with all relevant consumer protection legislation and that the scheme provides better protection than the law requires. The terms of the scheme must be clearly set out for members, and be readily accessible for consumers, so that they know what it does and does not deliver.

Market coverage: The scheme needs to gain brand recognition for delivering best practice so it attracts members who want to enhance the reputation of their business and the sector, and gains consumer recognition.

Monitoring: Regular monitoring must be in place to ensure continued compliance by scheme members and to protect the scheme brand. Consumers must know that the business has an on-going commitment to the standards and that the scheme owner will take action if a business breaks the rules.

Enforcement: Disciplinary action must swiftly deal with failures to comply with the rules of the scheme. A range of sanctions, such as warnings, fines and ultimately expulsion, are usually employed to reflect the importance of the breach. There must always be a credible threat of regulation by public enforcers, where self-regulation fails. This approach ensures that self-regulation is not seen as a soft option.

Dispute resolution: A requirement to handle complaints fairly and a means for resolving disputes are essential for when the trader and a consumer cannot reach agreement. This will ensure that consumers feel confident that the self-regulation scheme provides fair treatment and an alternative to costly court action. The dispute resolution process needs to be quick because the parties have already exhausted the trader's internal complaints systems. It must be free for consumers, and enforceable against the trader, to show that the scheme provides fair treatment.

Training: Members must fully train their staff on the commitments of the code and consumer protection law.

Publicity: Consumer recognition of the added value of self-regulation can ensure that firms sign up to the scheme to get more business. To achieve this, consumers must be able to identify that a trader has adopted self-regulation and understand the value it delivers, for example by the firms using a recognised logo.

Future-proofing: The rules of the scheme need to flexible enough to address new and emerging problems. Self-regulation has the potential to deliver immediately and improve consumer expectations, whereas legislation will take time.

Consumers facing reduced incomes in the current economic climate cannot afford to lose money as a result of making the wrong decision when they buy. Enforcers such as local authority Trading Standards services are facing cuts to their budget[1] while potentially taking on the role of the national enforcement authority, the OFT.

Self-regulation

Self-regulation can help businesses to stay within the law; deliver the level of customer service that consumers want, and reduce the need for enforcement action and for legal action to gain redress.

It can be an important pre-emptive part of the consumer protection landscape. It is, however, a voluntary commitment, so its role is to help achieve consumer protection alongside legislative controls.

Self-regulation in the consumer protection field needs to:

- earn greater public recognition and trust by joining up existing approvals regimes that deliver on the key elements for effective self-regulation
- engage fully with trading standards enforcers to help meet some of the costs of enforcement.

The role for enforcement by self-regulation

The Consumer Protection from Unfair Trading Regulations (CPRs) 2008 already require enforcement authorities, such as Trading Standards and the OFT, to look beyond traditional enforcement and to encourage other 'established means' for the control of unfair commercial practices.[2] The Advertising Standards Authority code and the PhonepayPlus code are good examples.

There is evidence of how self-regulation can work alongside enforcement. In 2007 the OFT worked with the Association of

1. Protecting consumers – the system for enforcing consumer law. National Audit Office report 15 June 2011
2. Clause 19 (4), Part 4 Enforcement, Consumer Protection from Unfair trading Regulations 2008

British Travel Agents (ABTA) to tackle misleading airline ticket price indications. A number of companies had displayed their prices excluding taxes and fuel supplements. The industry was warned about the problem and guilty ABTA members were reprimanded and fined using the ABTA code, while OFT took action under the Enterprise Act 2002 against non ABTA member airlines.

To clarify their position and to set out best practice, the OFT published a policy statement[3] in 2009, detailing the criteria they would use to decide on whether it was appropriate to use self-regulation code sponsors as joint enforcers in any given case in future. The OFT statement is a valuable resource for self-regulation schemes.

A business's compliance with consumer protection law is the responsibility of that business. Self-regulation schemes should provide member businesses with the tools they need to ensure they deliver on legal obligations to their customers. Their own compliance checking should reduce the potential for consumer complaints and should be seen as an essential part of trading. Where this fails, self-regulation scheme operators should be prepared to join forces with public enforcers to punish those perpetrators who are their members.

Amalgamating existing schemes

Self-regulation is key to delivering the government's policy objective of giving consumers the confidence to choose a trustworthy trader and thus drive both competition and business standards.

Two government sponsored schemes and one local authority scheme currently provide a formal process of approval:

- The Enterprise Act 2002 created a new requirement for the OFT to create and run a scheme for approving codes of practice across business to consumer markets, the Consumer Codes Approval Scheme (CCAS).
- TrustMark was set up by the Department for Business Innovation and Skills (BIS) in 2005 for the home repairs and improvements sector.
- Local Government Trading Standards services have provided a network of local authority approved trader schemes (LAATSNs).

We believe, however, that consumer recognition is compromised because consumers see a wide variety of badges and do not know how the schemes differ.

We have proposed to the OFT CCAS, TrustMark and the LAATSNs network, that they should work towards amalgamating under a single logo, which consumers can easily recognise. A form of government branding should be maintained to encourage consumer confidence. This would take forward work begun by BIS where different schemes were proposed for inclusion on a single government website.

As part of the consumer landscape review[4], limited work is now being undertaken on OFT code approval, and existing approved codes may need a new home. This is an opportunity for a new joint branding with an existing self-regulation model that can adopt OFT approved codes.

TrustMark is well placed to take on this role, in collaboration with LAATSN, by extending its remit across business to consumer markets. A new and wider TrustMark could share a single logo but adopt an added word, 'national' or 'local', to show the scope of a two part scheme.

Both large and small businesses which comply with consumer protection laws and who trade fairly should be able to join the combined scheme. LAATSN should have a key role in developing any joint scheme, using their membership's proven track record for engagement with local traders.

A single approved self-regulation scheme should maintain awareness of consumer problems by actively encouraging consumers to report problems with members and by checking consumer blogs. One of the advantages of self-regulation is its potential ability to react quickly to consumer detriment by making changes to the rules set by scheme operators. This should reduce the need for public enforcement action, the amount of consumer detriment and, potentially, the need for new legislation.

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3. OFT1115 Policy statement – the role of self-regulation in the OFT's consumer protections work. September 2009
4. Empowering and protecting consumers – consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement. BIS June 2011

Wet, wet, wet

Alex MacDermott examines water companies' approaches to debt, and how they affect consumers and advice providers

Debt advice is nothing new. It started in the late '70s or early '80s and has gone from strength to strength, helping millions of people deal with unmanageable debt problems.

One of the fundamentals of debt advice is the concept of priority and non-priority debts. As a general principle, a debt is a priority if non-payment leads to the loss of the person's home, liberty or essential goods and services. Under this principle, mortgage and rent arrears, council tax, magistrate court fines, gas and electricity and TV licence arrears are all priority debts. But water isn't: non-payment won't lead to disconnection, so water debts are non-priority.

As such, the basis for negotiating the repayment of water and sewerage arrears are pro-rata along with other non-priority debts, or the consumer makes a nil, token or nominal offer until their situation improves.

This is a widely held understanding and common practice in the money advice sector, but some water companies don't see it this way:

A CAB in the North told us about one company that simply would not accept offers of reduced repayment toward water debts. Instead they insisted they were a priority creditor and demanded that all arrears were repaid within a set time frame. As a result they often demanded that people repay more than they could afford, jeopardising the sustainability of the clients' budgets and other repayment arrangements. The bureaux tried to work with them, but the firm would not change. As a result, all negotiations were at stalemate and the relationship between local advice agencies and the firm were breaking down.

Most water companies now accept they are non-priority creditors, and we welcome the Government's commitment not to allow water companies to use reduced flow devices or disconnection for clients in arrears. However, this does leave water companies and advisers at odds when it comes to extreme cases[1]:

One CAB recently saw a single parent who was working all the hours they could to feed their family and keep a roof over their heads. They were in receipt of all the benefits to which they were entitled and lived in council accommodation, and they weren't eligible for any special assistance from the water company's schemes. They simply could not afford to pay their water bill of £38 per month. Instead they asked the company to accept what they could pay – but were refused. As a result the water bill simply went unpaid because more pressing bills had to be settled first.

In cases like this when the client clearly cannot meet all their essential bills, water unfortunately goes to the bottom of the pile because non-payment leads to the least serious sanction.

This is not to say that our advisers encourage non-payment. Indeed while we firmly believe water arrears are non-priority debts, we equally firmly believe that paying for water usage is an essential expense. But our money advisers live and work in the real world and it would be unrealistic of us to overlook those rare and difficult cases where clients have to choose between feeding themselves or paying a bill for which non-payment won't result in the loss of any service.

We are also pleased the Government have consulted on water affordability[2] and we hope this will allow companies to build on the schemes, tariffs and partnerships they have already developed:

One company runs two schemes to help struggling consumers: the first matches arrears payments in year one and writes off any outstanding arrears at the end of year two if the consumer keeps up payments. The other simply bills people based on how much they can afford to pay – as assessed by a debt advice agency – and effectively foregoes any additional charges. Even with writing off debt and foregoing charges, the company has actually found they have collected more money from this group of customers, many of whom had historically paid them nothing at all.

Another company introduced a scheme that includes giving free meter advice, benefit entitlement checks, water audits and fitting devices to help customers reduce their usage. Since its launch, this scheme has helped over 8,000 customers: the water audits and devices have proved popular with consumers but the best gains have come from identifying unclaimed benefits – an average of £47 per week each.

1. www.defra.gov.uk/consult/files/110405-walker-consult-condoc.pdf (see section 3.5)
2. www.defra.gov.uk/consult/files/110405-walker-consult-condoc.pdf

At the same time a water company worked with a local bureau to enable the bureau to give direct financial help with their debt clients through a dedicated fund. Customers are referred to the bureau where they are assessed, to ensure they meet the criteria for the fund. If they are successful, CAB staff will award a financial sum depending on the client's circumstances. Approximately 700 customers applied to the fund in the first ten months of its existence.

With the number of people seeking advice about water debts on the rise – up from 63,000 in 2008/09 to over 88,000 in 2010/11– it is clear that advisers and water companies need to keep working together effectively. Part of this work should involve advice providers developing a clear message for consumers: water is an essential expense and bills should be paid; and if consumers won't pay when they could pay, we should even consider withdrawing or restricting services to them. In return for developing such a strong consumer message, we'd hope that water companies would continue to help us to help those customers who do engage – although comments in a recent review by OFWAT suggest this isn't always happening[3].

We would argue that by helping customers reach workable repayment solutions, and by encouraging them to engage and stay engaged with their water company, we are increasing water companies' incomes, reducing their collections costs and helping drive down costs for everyone else.

DROs and Water Bills

To demonstrate that we're trying to help and that we understand their position, we'd like to work with the water companies to agree a more consistent approach to unmetered water bills and Debt Relief Orders (DROs).

A DRO is a cheaper alternative to bankruptcy, and while this matter is complex, the underlying point is not. Unmetered bills are technically due in one payment, but water companies usually allow customers to pay them over the year. When someone falls into arrears the water company can then hold them liable for the whole bill – not just the arrears.

So for the purposes of a DRO, if someone is behind with their unmetered water bill, the whole year's bill is included in the order, and the customer should not have to pay for water until the next billing cycle starts. However, some water companies don't see it this way:

An adviser in the South of England completed a Debt Relief Order (DRO) for one of their clients. As this client was an unmetered water customer their full year's water charges were included in the DRO application. However, just after the order was made, the water company issued a new bill with a new account and reference number. They claimed they could apportion the year's charges in this way because their charging scheme allowed them to. As a result they claimed the client owed the rest of the year's water charges and that they should start making payment.

We understand that water companies think they can contract out of this part of insolvency legislation just by changing their charging scheme. We don't agree and some cases are going to court to test this practice.

It could be argued instead that – on this very specific issue – the relevant legislation and regulations have created unintended consequences: Unmetered customers are being treated differently and preferentially to metered customers, who have to keep paying after a DRO. Advisers have to put in additional work challenging water companies and reassessing clients when new bills arrive and their circumstances change; and it's hardly conducive to financial rehabilitation, with clients effectively having payment holidays from which they may never return.

We believe that we should treat all water debts subject to DROs in the same way, and get all clients to pay for their on-going usage as soon as is feasible after the DRO is approved. Many advisers would like this to happen – and, you never know, it might encourage a few more people to keep paying their water bills.

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3. www.defra.gov.uk/publications/files/ofwat-review-2011.pdf

Evidence reports published in the last six months

- **Desperate times, desperate consumers** (June 2011) CAB evidence on consumer problems caused or exacerbated by the recession
- **Double disadvantage** (June 2011) The problems of debt for disabled people
- **How to do the right thing** (October 2011) Best practice in debt collection

Recent Parliamentary briefings and responses to consultation papers

DCLG consultation on draft directions to the social housing regulator (September)

DECC call for evidence on data access and privacy, and draft licence conditions and technical specifications for smart metering roll out (September)

BIS – Transforming regulatory enforcement (September)

HM Treasury reform of financial services regulation (September)

Comments on Ofgem's statutory consultation on smart metering consumer protections (August)

SSAC consultation on passported benefits (July)

Response to CLG Select Committee inquiry into implications of welfare reform, specifically the localisation of council tax benefit and elements of the social fund (June)

Briefing on Universal Credit, highlighting how the changes will affect people with disabilities (June)

DWP consultation on A state pension for the 21st century (June)

MoJ Family Justice Review (June)

Response to the Social Security Advisory Committee's consultation on proposed housing benefit amendment regulations 2011 (June)

Response to Defra's proposals following the Walker Review of water and sewerage affordability (June)

Government Equalities Office consultation on proposed exceptions to banning of Age Discrimination (June)

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