A Citizens Advice Social Policy Publication

evidence

citizens advice bureau

Falling short

Anne Pardoe makes the case for abolishing the standard interest rate used to calculate support for mortgage interest (SMI)

The SMI scheme aims to help home owners in receipt of one of four means-tested benefits to stay in their home by providing payments to cover their monthly mortgage interest and provides a crucial safety net for the poorest home owners. Currently a standard interest rate, based on Bank of England average mortgage rates, is used to calculate the amount of help available to SMI claimants rather than the actual interest rate charged on each mortgage.

In February 2012 Citizens Advice published *Falling short*, which argues that the use of a standard interest rate is ineffective, inequitable and causes hardship to claimants. The report also demonstrates that the decision to reduce the standard interest rate from 6.08 per cent to 3.63 per cent, in line with market averages, in October 2010 has caused significant detriment to claimants.

Using a standard interest rate based on market averages creates a shortfall between the amount of support received and actual monthly mortgage interest payments for 50 per cent of claimants.[1] *Falling short* found that the average shortfall experienced by CAB clients was £135 per month, a significant sum for those on a benefit income. The standard interest rate is also unfair as those with below average interest rates are overpaid while those with above average mortgage interest rates experience a shortfall.

When the Government reduced the standard interest rate in October 2010, the Minister for Welfare stated that the Government expected mortgage providers to soften the impact by averaging out the rates charged to borrowers.[2] Our evidence suggests that this is not the case; lenders are passing the shortfall onto their customers and are increasingly reluctant to forebear in cases where a shortfall exists.

This policy has hit the most vulnerable particularly hard; 83 per cent of the 456 cases analysed concerned clients who would be considered to be in priority need should they require re-housing and 29 per cent reported that the change had had a negative impact on the client's mental health.

Furthermore the standard interest does not provide value for money. Analysis by the Council of Mortgage Lenders suggests that an SMI regime which was identical to the current system in every way, but paid at the claimants' actual interest rate, would save the DWP around £25 million per year in SMI payments.[3]

Falling short therefore calls on Government to alter the mechanism for calculating SMI so that the amount claimants receive reflects their actual interest rate and sets out a cost effective way of achieving this.

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1. *Equality Impact Assessment Support for Mortgage Interest*, DWP (August 2010).
2. *Financial Times* online (30 September 2010).
3. DWP (December 2011).

Contents

The Government and pensioners: Is the honeymoon over?

Alan Barton considers whether the welfare reforms signal an end to the Government's honeymoon with pensioners

Governments like to treat pensioners more favourably than people of working age – for example, free bus passes, winter fuel payments and free prescriptions. The last Government introduced pension credit to top up the incomes of people with pensions that fall below a level currently set at £142.70 a week for a single person and £217.90 for couples. This has greatly reduced pensioner poverty, and would be even more effective if take-up was higher – it is only about 62 per cent to 68 per cent.[1] More recently, the coalition agreement contains the 'triple guarantee' for the basic state pension which means this will be uprated each year by whichever is the highest of price increases, growth in average earnings or 2.5 per cent.

All this places pensioners in a more favourable financial position than people of working age who find themselves dependent on benefits. Jobseeker's allowance and income support only pay a basic £71.00 a week to a single person and £111.45 to a couple. Carers and people with disabilities or limited capability for work may get premiums on top of these amounts, but it remains the case that benefits for pensioners are substantially higher than for most people of working age. This has generally been accepted because it is recognised that pensioners with low pension incomes will be dependent on pension credit for the rest of their lives, while working age people will mostly be moving back into work after a relatively short time unless they have significant health problems or disabilities, or they are a carer.

The planned rise in state pension age to 65 for women by 2018, and to 66 for everyone by 2020 means that people will have to wait longer until they move into the more favourable regime of pension credit, and until they qualify for non-monetary benefits like bus passes and free prescriptions, but there seems to be widespread public agreement that state pension age has to rise to reflect greater longevity.

What of the Government's future plans for pensioners?

In 2011 the Government consulted on proposals for a flat rate basic state pension set at around the pension credit level of £140 a week.[2] Over time this would greatly reduce the number of pensioners dependent on means tested pension credit, although it would still leave many relying on means testing for help with their rent and council tax. Any change is unlikely to come in before 2016 and would only apply to people reaching state pension age after that time, so this proposal would not benefit existing pensioners. In the budget the Chancellor announced that the Government will go ahead with this proposal. It will be important to see the details as the reform will be cost neutral so that there will be winners – people on low state pensions who would currently get pension credit – and losers, who are likely to be people with substantial additional state pension contributions and people with occupational pensions who have been contracted out of the additional state pension.

The Welfare Reform Act contains a nasty surprise for pensioners which has so far attracted little public attention. The Act redraws the line on when people can move from working age benefits to the higher pensioner benefits. The change will hit couples where one is above and one below pension age particularly hard. At the moment, such couples can claim pension credit once one of them reaches women's state pension age – 61 at present but steadily rising to 65 by 2018 and 66 by 2020. Once universal credit is introduced in October 2013, these mixed age couples will have to claim universal credit until both of them reach state pension age. At present benefit rates, this means they will have to get by on £111.45 a week whereas they would get £217.90 under existing rules – over £100 a week less. In both cases the couple would also get housing and council tax benefits for a one bedroom property. The new rules mean that, by 2020, a pensioner with a partner five years younger than themselves will have to live in poverty to the age of 71 if their younger partner is unable to find work.

No longer able to claim pension credit, these couples will also see their help with paying council tax

1. *The Income Related Benefits: Estimates of Take-Up in 2009-10*, DWP (February 2012).
2. *A state pension for the 21st century*, Cm 8053.

cut. In the move from council tax benefit to locally administered schemes for council tax support, local authorities will have 10 per cent less money and yet be expected to ensure low income pensioners see no reduction in support. If low income pensioner households have their support maintained, non pensioner households – including mixed aged couples treated as working age – will experience cuts in the levels of support far higher than 10 per cent. Couples in social housing with one or more spare bedrooms, will have a deduction made to the housing benefit they receive for their rent. They will also be subject to the benefit cap of £500 a week. Neither of these restrictions will be applied to couples where both are over their own state pension age, nor to single pensioners.

There will be a way out of the problem – these couples could set up separate households. The pensioner will then get £142.70 just for themselves and the younger partner will get £71.00. They would also get housing benefit and council tax benefit for a one bedroom property each, a substantial extra benefit cost, so the Government must be hoping most people decide not to separate despite the strong financial incentive to do so.

Does the Government have a rationale for this change? Only partially. It says that the present system is too generous because it allows the younger member of a mixed age couple to enjoy the higher level of pensioner benefits without any expectation that they will look for work. Universal credit will require younger partners to look for work unless health problems, disabilities or caring responsibilities exempt them. This seems reasonable, although they may find it hard to get a job because of their age.

But the Government has offered no justification for the poverty that will be inflicted on the older partner. The Act allows the payment of higher amounts to certain categories of recipients of universal credit, but so far ministers have been adamant that they will not use this power to pay more to pensioners in these mixed age couples. So here is one set of pensioners who are going to have to suffer in order to keep public spending down unless the Government can be persuaded to pay more universal credit to pensioners in mixed age couples.

Another group who face a tough future are those older people with social care needs – mainly but not exclusively the over 80s. They have to look to local authorities to secure the help which they need. These services have been under increasing financial pressure in recent years. For the next few years local authorities face large cuts in their funding. The Government has put in some extra money for social care, but it is not enough to offset the combined effects of increased demand from the aging population and the other cuts on local authorities. As a result, local authorities are raising the eligibility levels for social care. In 2005 half of local authorities provided care to people defined as having moderate needs. By 2011 this had fallen to 18 per cent. Now 80 per cent of authorities restrict provision to people with substantial or critical care needs. Age UK estimates that this leaves 800,000 people with social care needs getting nothing from their local authority – they must either meet the costs themselves or go without the care they require. Social care services are not free, and local authorities have also been increasing their charges to users – the average charge rose by £150 a year from 2009/10 to 2010/11.[3]

The Government has promised a white paper on the future of adult social care in England, and is considering the proposals of the Dilnot Commission on the funding of social care. It is hard to see how the Government will be able to come up with a solution which reverses the current increasing rationing of social care to older people unless it is prepared to commit significant extra funding to the sector.

The big surprise in the recent budget was the phasing out of the income tax age allowance for pensioners. For people aged 65-74 this will rise to £10,500 in 2013/14 (from £9,940) and for those 75 and over will be £10,660 (from £10,090) and that is where it will stay. But from April 2013, no one born after 5 April 1948 will get an age allowance – they will stay on the basic personal allowance, which is set to rise, and before long pensioners will get the same tax allowance as everyone else. This will leave each pensioner who is affected about £200 a year worse off.

These examples – benefits for mixed age couples, removal of pensioners' extra tax allowances and pensioners needing social care – show that there are areas where pensioners can expect cutbacks in the support they will get from the state.

It looks as though the honeymoon between the Government and pensioners could be coming to an end!

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3. All figures from *Care in Crisis 2012*, Age UK (February 2012).

To fee or not to fee, that is the question

In December 2011, the Ministry of Justice issued a consultation paper setting out its proposals for charging fees in the employment tribunal system. Richard Dunstan outlines our response

Although there is any number of ways in which an employment tribunal (ET) fees regime could be configured, the Ministry of Justice invited consultees to choose between just two specific fee regimes. Under both of these options, all fees would be paid (at least initially) by the claimant, and the fee level would be determined by the type of claim, based on the three 'tracks' into which HMCTS already allocates ET claims for the purposes of administration and listing of hearings. So, all short track claims (for example, unpaid wages, holiday pay or redundancy pay) would attract Level 1 fees; all standard track claims (for example, unfair dismissal) would attract Level 2 fees; and all open track claims (for example, discrimination, equal pay) would attract Level 3 fees.

Under Option 1, there would be two fee-charging points: upon issue; and then, for those claims that proceed to a hearing, at a point some four to six weeks before the hearing. Level 1 claims would attract an issue fee of £150, and a hearing fee of £250; Level 2 claims an issue fee of £200 and a hearing fee of £1,000; and Level 3 claims an issue fee of £250 and a hearing fee of £1,250.

Under Option 2, there would be only one fee-charging point: upon issue. Level 1 claims would attract a single fee of £200; Level 2 claims a fee of £500; and Level 3 claims a fee of £600. However, all such claims would be subject to an arbitrary cap of £30,000, and a claim of any type for more than £30,000 would attract a (Level 4) fee of £1,750.

In discussion with Citizens Advice and others during the consultation period, Ministry of Justice officials emphasised four criteria by which, they said, ministers had assessed a number of alternative fee regimes, before settling on the above two options. These are:

- The regime must be **simple** (so that it can be understood by 'users').
- The regime must be **cost-effective** (it must not be too difficult for HMCTS to administer).
- The regime must ensure **access to justice.**
- The regime should **encourage early settlement** of the claim (that is, without a tribunal hearing).

In our view, neither of the Government's two options satisfy these four criteria. Option 1, in particular, would in practice be highly complex, especially in relation to multiple claims, so would be difficult (and costly) to administer. Option 2 would do nothing to encourage early settlement, while Option 1 would actually discourage early settlement by providing respondent employers with a strong incentive to 'hold out' until the claimant is put in the position of having to choose whether to gamble a substantial hearing fee to pursue their claim. And, most importantly of all, both options would create a substantial barrier to justice.

Furthermore, the Government has, to our mind, based its proposals on two false premises. Firstly, in defining its overall objective as transferring "some of the cost burden from the taxpayer to the users of the [ET] system", the Government has equated 'users' of the system with 'claimants'. And secondly, it has assumed that it is only 'users' – for which read 'claimants' – who benefit from the existence and functioning of the system.

However, employment tribunals, unlike other forms of workplace dispute resolution, make a determination about which party – the claimant or the respondent employer – is at fault. So an employer found to be at fault by a tribunal can be considered to have given rise to the cost of the tribunal proceedings. And it is not only (successful) claimants who benefit from the system. All workers, and all employers in the UK economy benefit, as the existence and functioning of the system encourages employers to have greater regard to what is required of them in law (thereby reducing the number of workplace disputes), and discourages the unlawful activity of rogue, exploitative employers (thereby helping to ensure a level-playing field for business competitors). In short, the employment tribunal system has a much wider social utility, far beyond those individuals who use – or are required to use – the system to enforce their statutory and/or contractual rights.

We therefore reject not only the false choice presented by the consultation paper between two equally flawed alternative fee regimes, but also the very assumptions on which those two options are based. We have, for many years, consistently opposed the introduction of fees in the tribunal system, and continue to do so. The legal provision for the charging of fees in tribunals on which the Government's proposed fee regimes rely – section 42 of the Tribunals, Courts & Enforcement Act 2007 – was subject to minimal parliamentary debate.

However, whilst we very much regret the Government's decision to introduce a fees regime in the ET system, on which it did not consult, we recognise the Government's determination to do so. In our response to the consultation, therefore, we set out an alternative ET fees regime that would have the potential to generate the some £10 million of fee income that Ministry of Justice officials have stated must be generated by any fees regime, whilst ensuring access to justice.

To our mind, the starting point for any ET fees regime must be those employers determined by a tribunal to have been at fault. For, not only have the unlawful or unfair actions of these employers given rise to the cost of the proceedings in their particular cases, by requiring the claimant(s) to make a claim in order to enforce their legal rights, but it is the prevention and deterrence of such unlawful or improper treatment that provides the raison d'etre of the ET system.

Under our alternative fees regime, therefore, all employers determined by a tribunal to be at fault would pay a fee. At its simplest, this could be a flat-rate fee, but the fee level could also vary according to whether a hearing was required to determine the claim (that is, a lower fee could be paid where the claim resulted in a default judgment, without a hearing).

This would be **simple**, and **cost-effective** to administer. It would ensure **access to justice**, and it would **encourage early settlement** of the claim (as employers could avoid the fee altogether by settling the claim).

However, it would not address the concern of ministers (and the employers' lobby groups) that "the current system can be a one way bet against [employers], with [claimants] inadequately incentivised to think through whether a formal claim really needs to be lodged". The problem, of course, is how to address that concern without creating a significant barrier to justice.

We therefore propose a nominal, flat-rate issue fee for claimants. However, as even a nominal fee could create a barrier to justice for those seeking to recover relatively small sums (in respect of for example, unpaid wages paid at the National Minimum Wage), we propose exempting entirely those generally straightforward and low-value claims relating solely to unauthorised deductions from wages (that is, formerly Wages Act claims).

We further propose that the nominal, flat-rate issue fee would be paid by all claimants, that is, including by each claimant named on a multiple claim. Such multiple claim cases can involve hundreds or even thousands of individuals, but the ET system may need to determine only one 'lead' case. And, as the consultation paper notes, "every person within a multiple claim ultimately gains the same benefit as an individual bringing a single claim. If the lead case succeeds, then all claimants covered by that lead case succeed". So charging a fee to each claimant in a multiple claim would be equitable. It would also be simple, and would not be complicated by the merging and splitting of cases by tribunals for the purposes of hearing. And it would achieve the Government's stated aim of "encouraging those in multiple claims to consider alternative forms of dispute resolution".

Clearly, within this proposed fee structure there is any number of fee level combinations, each with the capacity to raise the some £10 million that Ministry of Justice officials say must be raised by any fees regime. For example, using the 'base case' figures for 'steady state' claims and disposals set out in paragraphs 3.2 – 3.15 of the impact assessment that accompanies the consultation paper, a nominal, flat-rate issue fee of £50 would raise £4.9 million from 98,550 claimants (37,800 single claimants, and 60,750 claimants within 2,250 multiple claim cases), and a flat-rate 'at fault' fee of £600 would raise £5.1 million from the 8,500 'losing' employers.[1] Alternatively, an issue fee of £75 would raise £7.4 million from claimants, with an 'at fault' fee of £300 raising £2.6 million from 'losing' employers.

Such a fees regime would incentivise claimants to "consider whether a claim is really necessary", would encourage early settlement of claims, and would transfer some of the costs of the system from the taxpayer to the users of the system (both claimants and those employers who do not comply with their legal obligations). And, in combination with an effective system of fee remission for those on a very low income, it would ensure access to justice.

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1. Assumes: (i) that six per cent of the 45,000 single claimants would not pay the fee, under our proposed exemption for claims in respect of unauthorised deductions only; and (ii) that 10 per cent of all claimants would receive full remission of the issue fee.

Continuous payment misery?

Alex MacDermott looks at how consumers are affected by the misuse of continuous payment authorities and what they can do to put things right

Modern banking services can be wonderful: we can access cash, pay for goods and services and move our money around more conveniently than ever before. But as the world gets easier for consumers, it gets easier for rogue businesses to exploit them.

At the heart of these wonderful banking services are the 'payment instruments' many of use everyday – our debit and credit cards. These cards allow us to carry out 'payment transactions' quickly and securely. They allow us to make one off payments or set up a series of regular payments – known as a continuous payment authority or CPA. They've brought e-commerce to consumers and life just would not be the same without them. In 2010 alone 37 million people used their cards to make 717 million online transactions worth over £54 billion.[1]

The problem is that because our cards are so flexible and so accessible, businesses can use them to take money from our accounts, even if we don't want them to:

In February a 70 year old woman sought advice from a CAB in the South East after an insurance company took £781 from her bank account. She suffered from hearing loss and had a speech impediment. She found it difficult to deal with matters on the phone so needed help getting to the bottom of what had gone on. After a bit of digging it turned out that one year earlier she had allowed her grandson to use her debit card to pay for his car insurance. Then, after the year's insurance ran out, the firm automatically renewed the policy and debited another year's premium without asking the card holder if this was ok.

Another spin off of our cards functionality – the fact that firms can use them to take money from our accounts very quickly and very cheaply – means they are an ideal way of collecting small short term loans – such as payday type loans:

Around the same time in Kent, a woman came for advice about a payday loan that was getting out of control. She'd originally borrowed £150 and with interest and charges was due to repay £208.50 at the end of the month. Unfortunately, before payday came, she was hospitalised, lost her temporary job and was unable to repay the loan in full. In response to these clear financial difficulties, the lender used her card details to make repeated attempts to recover all the money. They eventually took three payments of £50 from her account but still claimed she owed them another £600. She couldn't pay this. But instead of helping her through the rough patch, the lender told her they would send someone round to her home to collect the money and in the meantime they'd keep adding £16.50 to her debt for each day it was outstanding. In this case, the agreement the client signed did say that the lender could take up to three payments per day from her account via her debit card, and that if the loan went unpaid a daily charge of £16.50 would apply.

In both of these cases the consumer gave their card details in good faith and agreed to either allow a one off payment to be made, or that a small short term loan could be collected in full on pay day. But in each case the firms they were dealing with had misused their card details and either not confirmed that the consumer was happy for another payment to be taken, or simply made repeated attempts to recover whatever they could as quickly as possible.

Obviously our cards allow firms to do this – it is partly what they are designed to do and this makes them very useful. But this does not mean firms should be doing what they've done. In fact they shouldn't be using our card details in this way and by doing so they are ignoring the consumer protections already in place.

These protections are set out in the Payment Services Regulations (2009) (PSRs). They give consumers powerful rights and great control over their debit and credit cards, but are very complex and introduce new terms that many will be unfamiliar with – such as payment instrument and payment transaction mentioned earlier. Understanding these concepts is key to understanding consumer rights:

When we make a payment or set up a CPA we are giving a firm our consent to a payment transaction or series of payments transactions to be carried out. We can withdraw this consent at anytime, as long as we do so within set time limits.[2]
By withdrawing consent we are

1. UK Cards Association Annual Report 2012.
2. Reg 55 and 67 Payment Services Regulations (2009).

effectively cancelling any payment or series of payments. If our payment service provider – our bank, building society or credit card provider – then allows a payment to go out we are entitled to a refund – including any interest and charges applied to the account as a result of the payment having been made.

You would have thought such powerful rights and controls would have been clearly and accurately explained at some point. You might think that because payment service providers are open to complaints if things go wrong, they'd ensure that every payment was authorised by the card holder. But no, they haven't. Instead, consumers have been misled by widespread rumours that are factually incorrect.

Even the Office of Fair Trading's (OFT) got it wrong when they stated that "there is, therefore, no automatic right to cancel [a CPA]".[3] This is quite simply not true. But it echoes the sort of response CAB clients are given by their banks:

In January a client sought advice after being told by her bank that they could not stop payment being taken from her account. It appears that a company had got hold of her debit card number and started taking regular payments from her account. Once they noticed this, thinking she was a victim of fraud, she asked the bank to stop any further payments. The bank did not believe her, stating that because the payee had the card details she must have given them authority to take the payments. They told her that there was therefore nothing they could do to stop the firm from taking further payments. The adviser commented that there appeared to be no way of cancelling such a payment.

Fortunately the Financial Services Authority – which regulates the payment service providers – but not the firms who use cards to take payments and recover debts – have just revamped their only consumer facing information on this: *Bank accounts: know your rights*. This document now explains that consumers can withdraw consent by contacting their payment service provider, and that the payment service provider must not insist that they contact the firm taking the payment first.[4]

This corrects the understanding of both the bank staff and the adviser in the above case. We hope the OFTs supplementary consultation on the misuse of continuous payment authorities will put right their earlier mistake and ensure the firms they regulate use our card details appropriately from now on.[5]

In the meantime we would urge advisers and consumers to start exercising their rights under the payment services regulations. If an unauthorised payment is taken from your or your client's account – complain. If the payment service provider does not give a refund – go to the Financial Ombudsman. It is up to the payment service provider to prove the payment was authorised and having an individual's card details does not in itself, prove that the payment has been authorised.[6]

My advice is don't give in to pressure from the people you owe money to. Yes, services and goods still need paying for and debt needs to be repaid, but payment transactions are completely independent of any other obligation on either party.[7] So it doesn't matter if you signed a credit agreement or subscribed to a magazine or a gym, your card is subject to the payment services regulations, and if you withdraw your consent to a payment or a continuous payment authority, no money should be taken from your account.

But consumer education and representation will only go so far to help after things have gone wrong. To stop this once and for all, we need payment service providers to retrain their staff and update their systems so consent can be withdrawn quickly and efficiently. We need a regulatory system that prevents problems happening and has sufficient enforcement powers to deter firms from breaking the rules in the first place.

Since all this will take time, wouldn't it be nice if firms could just do the right thing and not misuse the card details we give them in good faith. Some already have and we commend them for being responsible and leading the way.

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3. Paragraph 3.9 (m) *Debt Collection – OFT guidance for all businesses engaged in the recovery of consumer credit debt – update* (October 2011).
4. *Bank accounts: know your rights*, Financial Services Authority (January 2012).
5. www.oft.gov.uk/OFTwork/consultations/debt-collection-supplementary
6. Reg 60 – Payment Services Regulations 2009 .
7. Payment Service Regulations 2009 – Part 1 (2) Interpretation.

Too poor to go bankrupt

Sue Edwards examines the implications on the poorest people of the Insolvency Service's decision to reform the bankruptcy petition process

For many people with substantial debts, insolvency remedies such as bankruptcy can be a suitable way forward by providing debt relief and removing the considerable stress of dealing with their creditors. The problem is that despite many reforms, insolvency remedies do not work as well as they could:

- The cost of going bankrupt has more than doubled in nine years.
- Although insolvency practitioners have made individual voluntary arrangements (IVAs) more accessible for people on middle incomes, people on lower incomes cannot access them and we still see evidence of people getting sold inappropriate IVAs.
- Fewer and fewer people can apply for county court administration orders because the debt limit of £5,000 has not been increased for many years.
- Debt relief orders (DROs), a cheaper alternative to bankruptcy for people on low incomes who owe £15,000 or less, have helped, but the debt limit is becoming a bigger barrier.
- The legislation to introduce a statutory debt management scheme and enforcement restriction order has not yet been implemented – five years on from the Act receiving Royal Assent.
- There is no overall coordination to ensure that the remedies fit together in a way in which provides a comprehensive and accessible system of debt solutions.

Sadly, the latest insolvency reform initiative – to reform both the debtors' and creditors' petition processes – does not do much to remedy this state of affairs.

What the Insolvency Service proposes

The consultation proposes to remove both debtors' and creditors' bankruptcy petitions from the court. Applications will normally be made online and an adjudicator will make a decision as to whether to make an order.

Whilst we welcome the proposal to take debtors' petitions out of court, we are concerned that this will not significantly impact on the cost of bankruptcy and the proposals to do away with remission on the court application fee will make bankruptcy even more expensive for some people on the lowest incomes.

Although the £175 court application fee is only a small part of the £700 total fee for a debtors' petition, fee remission still represents a significant saving for people with low incomes who need the protection of a bankruptcy order. Indeed, the initial impact assessment of the Insolvency Service's 2009 consultation, *Reforming debtor petition bankruptcy and early discharge from bankruptcy*, included research commissioned by the Insolvency Service showing that 44 per cent of people applying for bankruptcy received full remission of the court application fee and another two per cent paid under £100.

So the proposal in this consultation to fix an application fee, without remission, at between £69 and £121 is likely to disadvantage around half of the people applying for a debtor's petition. Furthermore those people with the lowest incomes will be the most disadvantaged. We note that the impact assessment for this consultation states that the proposals 'are likely to have a positive impact on those people from a higher socio-economic background'. Part of this impact appears to be the result of a direct income transfer from poorer to better off (in income terms) debtors.

However even here, the impact assessment suggests that the financial benefits from the proposed changes accruing the debtors are likely to be small at around £780,000. In contrast, the annual saving for Government that would result from removing courts from the petition process is estimated as being nearly £42 million per year. Indeed the estimated savings for Government are over one and a half times as large as the estimated total application cost paid by debtors.

Cost barriers to bankruptcy may be widespread

Our statistical data suggests that a significant proportion of CAB debt clients seeking advice on bankruptcy were on low incomes or had personal circumstances that could contribute to financial vulnerability.[1] For instance:

- 56 per cent had household incomes that were less than £1,000 per month
- 42 per cent had dependent children
- 25 per cent had a disability or long

1. This analysis is based on data about 33,493 people who sought advice about bankruptcy from bureaux in England and Wales in the first three quarters of 2011/12. We were also able to gather information about the debt levels of 8,378 of these people.

term health problem

- 18 per cent were lone parents.

Worryingly a large number of CAB debt clients seeking advice about bankruptcy (61 per cent) have debts over the £15,000 DRO limit. Our data on debt levels and incomes suggests that a large proportion of those with debts over £15,000 will not be able to pay the bankruptcy fee and deposit.[2] For instance:

- 48 per cent of people with total debts over £15,000 had incomes below £1,000 per month
- 27 per cent reported incomes between £1,000 and £1,500 per month.

As a result Citizens Advice believes that there is clear scope for the Government to invest some of the savings resulting from the petition reform proposals into improving access to bankruptcy for lower income debtors. We would urge the Insolvency Service to reconsider the question of fee remission, but also to consider introducing a scheme of deposit remission for low income debtors.

Debt relief orders are not solving the access problem

The consultation acknowledges that people in receipt of lower incomes will 'lose out as a result of there no longer being fee remissions'. But it is argued that this is mitigated by the availability of DROs that offer an alternative low cost route to bankruptcy for the most vulnerable debtors.

Citizens Advice welcomed the introduction of the DRO as a way of increasing access to bankruptcy. We believe that the policy has been broadly successful in helping low income debtors who need protection from their creditors and debt relief. With over 27,000 orders made in the last four quarters, DRO applications have been growing strongly and look set to overtake bankruptcy application numbers by the end of 2012.

However CAB evidence suggests that DROs have not solved the problem of access to bankruptcy. Instead, bureaux continue to report cases of people in desperate need of protection from creditors and a fresh start who are not eligible for a DRO. For instance, the following cases are recent examples of people with debts over the £15,000 DRO limit but were not able to afford a bankruptcy application.

A CAB in Wales saw a 27 year old woman who lived in rented property with two young children. She was in receipt of means-tested benefits, and had debts of £48,000, including a secured loan shortfall and credit agreements. She was receiving many demands for payment by letter and telephone, even though she had explained to her creditors that payments were impossible. Bankruptcy should have been an option for her to consider but she could not afford the £525 deposit and it was unlikely that she ever would.

A CAB in North East England saw a 38 year old woman who was unable to work because of ill health. She had debts in excess of £15,000 and was ineligible for a DRO. However she was in receipt of benefits and was unable to afford the cost of bankruptcy. She had no money to pay her creditors who were chasing her constantly via phone and letter. This was having a significant impact on her well-being.

A CAB in Yorkshire and the Humber saw a couple who could not afford to apply for bankruptcy. Both wished to apply, but they were in receipt of means tested benefits after one lost their job. They lived in a private rented property with their three children and were becoming stressed about their situation and their debts. They had a £47,000 mortgage shortfall and other debts.

Other options

The other policy response of the Insolvency Service to removing fee remission is to provide a facility to pay the hefty bankruptcy fees by instalments. There is a precedent for this – the DRO scheme allows applicants to pay the £90 fee by instalments.

Our statistical data suggests that allowing indebted consumers to pay by instalments will help facilitate access to bankruptcy for people with debts over £15,000 and incomes over £1,500 per month. Around 14 per cent (or around 6,520 people) of CAB debt clients would benefit each year.

Whilst this is a welcome development, the fee is very large and may not improve access to bankruptcy for many people. Our statistical data also suggests that the Insolvency Service could increase access to personal insolvency remedies for those that need it by increasing the current £15,000 debt limit for DROs. The £15,000 limit was set out in the Insolvency Service consultation *Relief for the indebted*, published in 2005. With inflation, this would have to increase to something over £19,000 by the end of 2012 to maintain its real term value.

We believe that there is a compelling case to raise the DRO debt limit to £20,000 as a matter of urgency. If this does not happen, more people could face barriers to debt relief.

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2. We had data on income and debt levels for 6,281 of the people seeking advice about bankruptcy in the first three quarters of 2011/12.

Family Justice update

James Sandbach discusses the impact of the Family Justice Review on advice services

Breaking up is never easy spelt out some of challenges facing the justice system and dealing with family breakdown, especially in the context of social problems and in light of proposed changes to legal aid. Since publishing our report, there have been significant developments across family justice and wider policies on family breakdown. The final report of the Family Justice Review has been presented and at least partially accepted by Government, including the need for improved information and support for separating parents.[1] Key commitments from the government's response include:

- Using parenting agreements to emphasise the need for children to maintain a relationship with both parents and other close family members, such as grandparents, and introducing a single 'child arrangements order'.
- Transferring Cafcass to the Ministry of Justice, and the immediate appointment of a new family justice board to drive change.
- Creating a single family court across England and Wales, with a single point of entry.

As regards improving the 'front end' information and accessibility of the family justice system, the Government is relying on planned reforms to the Child Maintenance system to provide the technical infrastructure for an 'online information hub', as well as a helpline to offer support to all separating families. An expert working group has been formed by the Department for Work and Pensions (DWP), to look at coordinating support for separating families and to take forward the Review's recommendations. The Government has also announced the investment of £20 million over the next three years to support coordinated services for separating and separated parents – specifically targeted to help parents come to their own collaborative parenting arrangements, including family-based child maintenance arrangements. This funding will be used for a web and telephony service and to coordinate local services.

With regards the system more widely, the Review made a number of recommendations to simplify and streamline the divorce process and to support mediation options. One key change is that uncontested applications for 'judicial separation' or divorce will be dealt with administratively – they may not even need to be seen by a judge, let alone require attendance at proceedings, and courts will not need to consider arrangements for children in uncontested divorce cases, unless particular issues arise. However, if separating couples are in dispute and submit their applications to the Court, applicants will need to attend a Mediation Information and Assessment Meeting and, where appropriate, a Separated Parent Information Programme before their application can go any further. Judges will also have new powers to order participation in such programmes. If a case is not suitable for mediation, the mediator will have to certify this. The Government's response to the Review makes clear that it wants to go further than existing pre-application protocol arrangements to consider mediation, and introduce legislation to compel mediation before approaching the court in most cases.

Perhaps most controversially, and against the explicit advice of the Review,[2] where custody hearings do go to court, the Government proposes to change the Children's Act 1989 to include a presumption of a continuing relationship with both parents, and shared parenting as the norm – this risks moving away from the key principle of the Act that the welfare needs of the child must be the paramount consideration in any decisions made by the court. This presumption of shared parenting and responsibility is intended to apply to mediated outcomes also. A ministerial working group has been established to review the Children's Act with a view to improving access for fathers.

It is clear that the Government has 'cherry picked' in its response to the Family Justice Review. Indeed, the Review's key concerns over the lack of a single coherent organisation for family justice services, and the need for effective legal advice and information for users – seem to have been put out to the long grass. The idea of a single family service with an information and advice hub linked directly into the family courts seems to have given way to a much less clear patchwork of online access to the courts service

1. www.justice.gov.uk/publications/policy/moj/family-justice-review-response.
2. The Family Justice Review looked at a similar change legislated in Australia, and found that the outcomes had often been worse for families and children.

and other dispute resolution providers via DirectGov, and with DWP working across government to commission a new web and telephony service for separating families. It is hard to disagree with a Government initiative to "establish, as soon as possible, an improved dispute resolution process outside the courts with a coherent pathway underpinning it which families can easily navigate."[3] But it is equally hard to identify the positive steps that the Government is taking to achieve this, beyond restricting access to the courts.

The additional £20 million resources for family support services are certainly welcome. And in a separate initiative, there will be greater targeting of additional resources on some of the most dysfunctional families, and the Department of Communities is leading work on this through a special directorate with cross-departmental responsibilities across Government for work with families with the most complex needs. An additional £10 million will also be available for mediation services, under the restricted family legal aid scheme, however at the same time £170 million is being taken out of the family justice system in spend on family legal aid. The Justice Select Committee has identified a significant gap in funding for mediation: "Government may not have budgeted for enough additional mediations in its legal aid proposals. With more than 200,000 people losing eligibility for legal help and representation, the Ministry of Justice's prediction that only 10,000 extra mediations will be required seems low".[4]

Attention must now shift to how the DWP is going to deliver its responsibilities to commission a web and telephone system for information and accessing to family dispute resolution services. The approach of mandating voluntary agreements outside the formal legal process is intended to dovetail with the DWP's own reforms that will abolish the current system of statutory enforcement of child maintenance (The Child Maintenance and Enforcement Commission), and introduce a fee based system for use primarily where the arrangement of voluntary or mediated maintenance arrangements have been unsuccessful. In official speak this will be "an integrated model of relationship and family support services, which helps parents make their own, lasting arrangements, because collaborative agreements, where this is possible, are better for everyone involved."[5] Central to this 'self-help' package of post-separation finance and childcare, is using the DWP's proposed new IT platform (intended to implement welfare reform) which promises significant automation for calculating gross and net income, benefit entitlement, child maintenance liabilities etc. We know from issues we see in bureaux that users of the family justice systems find the process as complex and Kafkaesque as it is emotionally harrowing, and financially stretching. For example:

A 61 year old woman was abandoned by her husband who left to begin a relationship with someone else. Their property was undersold after repossession, leaving joint debts. She investigated completing divorce papers herself but found them complex and also that this would involve a fee; whilst eligible she was unable to obtain legal aid which would have covered the fee. She came to the CAB for help.

A CAB in the South West of England saw a 44 year old man, who was going through a divorce. He had made amicable arrangements with his wife to cover financial matters and maintenance for their children. The court then asked for a 'consent order' (statement of financial arrangements when couples agree) to be completed by the couple and advised the client to visit the CAB where help would be given, although the bureau do not offer family law advice.

A Kent CAB has reported seeing a growing number of cases where legal aid has already been withdrawn in anticipation of the reforms. One client was trying to get custody of his two children who were still living with his wife in the North East. This case had gone to court several times but has adjourned because his wife kept coming up with new evidence against him which had to be investigated. With legal aid withdrawn, the Judge has said the case could not be heard until he had legal representation which he could not afford.

Given the above, and the abolition of free legal advice for disputed issues, the one surest outcome of Family Justice Review process is that CAB advisers will be very busy indeed in dealing with family separation issues.

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3. www.education.gov.uk/publications/eOrderingDownload/CM-8273.pdf para 70
4. *The Operation of the Family Courts,* Justice Select Committee (June 2011).
5. *Strengthening families, promoting parental responsibility: the future of child maintenance,* DWP (January 2011).

Evidence reports published in the last six months

- ***How to do the right thing*** (October 2011) Examples of good practice that help consumers address and overcome periods of financial difficulty.
- ***Breaking up is never easy*** (November 2011) Separating families' advice needs and the future of family justice.
- ***Right first time*** (January 2012) An indicative study of the accuracy of ESA work capability assessment reports.
- ***Falling short*** (February 2012) The case for abolishing the standard interest rate used to calculate support for mortgage interest

Recent briefings and responses to consultation papers: January-March 2012

- DWP consultation *Bereavement Benefits for the 21st Century* (March).
- Ministry of Justice consultation on charging fees for employment tribunals (March).
- Citizens Advice briefing on the new hours rules for Working Tax Credit for couples with children (March).
- DWP on reform of Support for Mortgage Interest (February).
- Insolvency Service consultation on reforming the bankruptcy petition process (February).
- Department for Business, Innovation and Skills call for evidence on EU proposals for Alternative Dispute Resolution (February).
- Briefing for the Second Reading of the Financial Services Bill in the House of Common (February).
- Office of Fair Trading supplementary consultation on Debt Collection Guidance (January).
- Insolvency Service consultation on bank accounts for bankrupts (January).
- HM Treasury's Informal consultation on the Money Advice Service and the coordination and provision of debt advice (January).
- Department for Energy and Climate Change consultation on the Green Deal and Energy Company Obligation (January).
- Financial Service Authority and the Office of Fair Trading consultation on payment protection products (January).
- Defra draft guidance on social tariffs for water and sewerage charges (January).
- BIS consultation on building a mutual Post Office (December).

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