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evidence

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Preparing for universal credit – avoiding unintended consequences

Katie Lane considers the challenges that must be addressed to ensure the delivery of universal credit does not undermine it's policy objectives

On taking office in 1997, Chancellor Brown quickly set about introducing tax credits aimed at ensuring that, together with other reforms, people would be better off in work than on out of work benefits. Although successful in improving work incentives, they introduced significant additional complexity into the benefit system.

It's not surprising then, that the current Government came to office with it's own flagship policy for radical reform, aimed this time at simplifying the system as well as improving work incentives. Designed in opposition, Iain Duncan Smith's broad proposal for one single working age benefit to replace the various means-tested benefits and tax credits, already had widespread support.

Local CAB help with over 2.3 million benefit and tax credit enquiries every year, helping people to understand what they are entitled to, how they claim, why payments haven't materialised or why they've been overpaid. It's easy to see the merits in only having to deal with one Government department for all financial support, be it for housing or children. One benefit paid on the basis of low income whether in or out of work should prevent gaps experienced when moving into work – when out of work benefits stop before wages and tax credits start.

However, it's not just the entitlement that is changing – how you claim and how the money is paid is also changing. Most people will be expected to claim universal credit online. It will be paid to one member of a household once a month in one lump sum. Currently several payments are received by either partner in a couple and, if in social housing, support for rent goes straight to the landlord. The Government's intention is to encourage financial independence and mirror the way most working people are paid. But their own research shows that only half of people in low paid work[1] are paid monthly and even these families would currently receive housing benefit and tax credits as additional payments.

For many claimants, managing monthly payments that include support for rent, will be a new challenge that they will be able to manage given the right support and financial products. For others, substantial long term support will be needed and for some people these payment methods simply won't work at all and forcing the issue too hard risks rent arrears, homelessness and hardship.

Choice of payment frequency and method is vital at least for the first couple of years until there is proper resourcing of financial support and advice services. Being able to choose a particular payment method can also help someone maintain their financial independence. In the longer term the Government must ensure that it learns from the local authority pilots and ensures alternative payment methods will always be available to all who need them on an ongoing basis.

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1. Paid under £10,000 a year. http://www.dwp.gov.uk/docs/ucpbn-2-payment.pdf

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Penalty clause

Some of the seemingly modest employment law-related provisions in the Enterprise & Regulatory Reform Bill, currently working its way through Parliament, are proving surprisingly controversial with both employers and employment lawyers. **Richard Dunstan** suggests a solution for Ministers.

You might think that the introduction of a power for employment tribunals to impose a (moderate) financial penalty, in addition to a monetary award, on 'repeat offenders' and rogue employers who fail to engage with the tribunal process would attract broad support. But you'd be wrong, as clause 14 of the Government's Enterprise & Regulatory Reform Bill – shortly to complete its passage through the House of Commons and move on to the House of Lords – has attracted robust opposition.

The clause provides for a discretionary power to impose a financial penalty of up to £5,000 on the losing respondent employer in any case where there are 'aggravating features'. The penalty would be set at 50 per cent of the value of the award, subject to a minimum of £100 and a maximum of £5,000, and would be reduced by 50 per cent for prompt payment (i.e. within 21 days). The penalty would be paid to the State, not the claimant.

Although the Bill itself does not define 'aggravating features', BIS officials have confirmed that the measure is aimed at 'repeat offenders' and other rogue employers. So, not only do law-abiding employers have nothing to fear from clause 14, but its provisions would, in theory at least, help ensure a level playing field for business by tackling those rogue employers who seek to gain an unfair competitive advantage by exploiting their workforce.

However, in June, in their oral evidence to the Committee of MPs examining the Bill in detail, the Federation of Small Businesses (FSB), the Institute of Directors, and the EEF (which represents manufacturing employers) all highlighted clause 14 as an aspect of the Bill to which they are especially opposed. In its written evidence to the Committee, the Law Society of England & Wales said that it was "not convinced of the benefits of [clause 14]", whilst the British Chambers of Commerce (BCC) went so far as to suggest that the measure could "result in a more risk-averse attitude to employing people altogether, particularly amongst [small employers]". More recently, the Employment Lawyers Association has attacked clause 14 on the grounds that the existence of a *discretionary* power to impose such a penalty would "introduce yet another factor into a settlement negotiation" and, as a result, "disputes would drag on rather than settle".

Citizens Advice has so far supported clause 14, though without much enthusiasm. For Ministers have said they "do not expect the power to be used frequently". And it is not easy to see how *infrequent* use of the power to impose a penalty would do much, if anything, to encourage legal compliance by the kind of rogue employer at which the provision is aimed.

So we have found ourselves wondering whether this unpopular and arguably ineffectual measure could, with adaptation, be put to better use. How about restricting the imposition of such financial penalties to those rogue employers who fail to pay an employment tribunal (ET) award or Acas settlement?

Between 2004 and 2008, in no fewer than three reports – *Empty justice* (2004), *Hollow victories* (2005) and *Justice denied* (2008) – Citizens Advice highlighted the widespread non-payment of ET awards by rogue employers, and the difficulty faced by individual workers in trying to enforce their unpaid award through the complex, costly and frequently ineffective County Court system. Using case studies from the advice work of Citizens Advice Bureaux, we demonstrated how rogue employers could easily drag out and frustrate such enforcement action, leaving the worker empty handed. And we argued that the delivery of such empty justice was unfair not only to workers, but also to the taxpayers who pay for the tribunal system and to the great majority of law-abiding employers.

Research by the Ministry of Justice – conducted in direct response to *Justice denied*, and published in 2009 – found that no less than 49 per cent of all ET awards go unpaid in the first instance (i.e. without the taking of enforcement action).[1] This shocking finding led the then Labour government to introduce, in April 2010, the so-called ET & Acas Fast Track enforcement regime. Under this regime, workers can pay a fee of £60 to have their unpaid award or Acas settlement enforced by one of the various firms of High Court Enforcement Officers (HCEOs).

However, as noted in the summer 2012 edition of this journal, that regime has proved to be something of a disappointment, with fewer than one in five of those with an unpaid award paying to access the regime, and the HCEOs enforcing less than 50 per cent of the awards and settlements that are referred to them. And, as far as anyone knows, the rate of non-compliance with awards has not changed since 2009.

The impact of such non-compliance on individual workers can be devastating. A woman who won an award of some £20,000 for unfair dismissal and pregnancy-related discrimination, for example, was "angry and absolutely gutted" to learn that she will not receive a penny of the award because her former employer has now gone into liquidation: "It was a complete shock to find out that I will not get anything from the company after fighting my cause for 18 months". But there is a broader impact: such a high rate of non-compliance seriously undermines confidence in the tribunal system amongst both workers and employers. That's bad enough when the ET system is free to users, but with the introduction of substantial claimant fees in 2013 it is simply indefensible.

During the Bill's Committee stage, the then BIS employment relations minister, Norman Lamb MP, acknowledged that this is "unsatisfactory [and] we have to look at ways to improve the enforcement of awards, so that those claimants found to have been unfairly treated or discriminated against get the compensation awarded to them".

Noting that "it is abhorrent for companies and employers not to pay awards that have been properly made by the tribunal", the Minister expressed his desire to "look for ways to improve the situation".

We suggest that one way to 'improve the situation' might be to rework clause 14, so that a financial penalty would be *automatically* applied where – and *only* where – an award is not paid within a specified, reasonable period (42 days, say). That would surely be acceptable to employers' bodies such as the CBI, FSB and BCC – it cannot be in the interest of their law-abiding members that rogue employers can get away with non-payment of an award. And, if Ministers believe their own rhetoric about how financial penalties, as currently proposed, would improve compliance with employment law more generally, they must surely accept that targeting penalties on those employers who fail to pay an award would also incentivise compliance.

Furthermore, the incentive provided by such a financial penalty could be bolstered by the introduction of a 'naming and shaming' scheme, with the names of companies on which a penalty has been imposed being published on a governmental website. As Norman Lamb said during the Committee stage debates, "the public ought to be aware of any existing employer that [has chosen] not to pay an award properly made by the tribunal".

However, the introduction of such penalties might also provide the key to solving one of the thorniest issues in this area: what to do in the case of unpaid awards (and settlements) that simply cannot be enforced by the HCEOs (or through the County Court system) because the employer in question has become insolvent or otherwise ceased trading. According to Ministry of Justice figures for the Fast Track regime, in 2011-12 the debtor employer had become insolvent in 34 per cent of the cases in which the HCEOs were unable to enforce the unpaid award or settlement, and could not be contacted in another 34 per cent. As the chief executive of one firm of HCEOs has noted, "if the employer company owing the [award] has gone into liquidation, or has otherwise ceased to trade, [then] there is nothing that we can do that can change that situation and make the money suddenly appear".

We have previously suggested that, in such cases, the unpaid award or settlement should be recoverable from the National Insurance (NI) Fund, in the same way as unpaid statutory redundancy pay. But that suggestion was rejected by the otherwise supportive CBI, on the grounds that this would create 'moral hazard' – rogue employers might choose not to pay awards, simply *because* the State would then pick up the tab.

That argument has already lost *some* force, with the creation of the Fast Track in 2010. But, if the financial penalties that we now propose were at least equal to the value of the unpaid award (or settlement), then with the imposition of such a penalty a rogue employer could not avoid an enduring financial liability – so there would be no 'moral hazard'. And abused workers would receive the money – and the justice – to which they are entitled.

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1. *Research into enforcement of employment tribunal awards in England & Wales*, Ministry of Justice, May 2009.

The disappearing right of appeal

James Sandbach and **Vicky Pearlman** look at changes to appeal rights and processes, focussing on changes in welfare benefits

Introduction

The right of appeal is one of the bedrock "rule of law" principles of state accountability, civil liberty, and capability to challenge, change and correct official decisions. Yet it is one that could be fast disappearing, especially as far as immigration and benefits decisions are concerned – for example of the removal of full right of appeal for family visit visa cases,[1] and the introduction mandatory consideration of revision before appeal on benefit issues.[2] Appeal rights are also be fettered where it is impossible for potential appellants to access the process, or obtain the right advice on how to appeal. Indeed, the recent furore over the removal – following intervention from the Department for Work and Pensions minister Chris Grayling – from the Ministry of Justice's website and YouTube of the Tribunals Service's video for appellants in benefit cases, owing to its encouraging tone, suggests a tendency in Government to see appeals as a pesky problem rather than an essential safety valve.[3] So is the "adjudicative principle" being beaten back by the primacy of politically led decision-making in the Ministerial bailiwick.

Welfare Reform Act and the right of appeal

A robust system of appeal is, arguably, never so important as in a time of radical reform and reinvention of the social security system. But it is under threat like never before. Bit by bit, claimant's rights to appeal are being chipped away.

The DWP has begun to telephone Employment and Support Allowance (ESA) claimants, to discuss with them the outcome of their claim (known as "Touchpoint 13"). This is intended to make the decision making process more transparent, and provide claimants with an opportunity to provide additional evidence in support of their claim. Even with the best intentions of the decision makers making the call, however, vulnerable claimants, especially those with mental health conditions or cognitive impairments, might find this telephone call intimidating, fail to understand what they are being told, and believe that they are being 'talked out' of taking their case to appeal, if they believe the decision is wrong.

On top of this, bureaux see an increasing number of clients who have had a decision verbally, but have not received a decision letter until several weeks after the telephone call, by which time their benefit payments have stopped. Many clients confuse the benefit cessation date with the start of the one month time limit within which they can appeal and so (mistakenly) believe that they are too late to appeal. For people who get advice, this can be explained and resolved, but for those that do not, they are likely to be missing out on the opportunity to appeal.

A client was found fit for work following a Work Capability Assessment (WCA). His benefit was stopped on 20 October, but he did not receive written notification of this until 5 December, 47 days later. Despite his GP continuing to issue fit notes, he received no income until he was able to start his appeal.

Another client received a telephone call from the DWP, from which he understood that he had been found fit for work. The client was extremely worried by this. On speaking to the DWP, the CAB adviser was able to ascertain that rather than being turned down for ESA, his ESA was to start in a few days, and he had been confused by the call.

The Welfare Reform Act has also introduced a mandatory consideration of revision before appeal – an additional hoop through which claimants will have to jump before they can access the appeals system. We believe that this is a totally unnecessary measure, which will result in fewer people being able to challenge the decisions made about their entitlement to benefit.

CAB advisers continue to tell us that many decisions are made which are not marginal but just clearly wrong. A fair and efficient process must ensure that the original decisions are as accurate as possible.

A client had been claiming income support with a carer premium for looking after her two year old son who had Downs Syndrome. The client's son had been receiving Disability Living Allowance (DLA) are high rate care but on renewal his DLA was stopped. The client's son had a developmental age of six months, could not feed himself, walk, talk or sit up from a lying down position. He attended physiotherapy, hydrotherapy, speech and language and sign language classes every week and the client had exercises to complete with him every day at home. At night he did not settle and woke up for long feeds and would often wake at 3am and did not return to sleep until the following day. The client was told that it could take 14 weeks for a reconsideration to take place.

Until a large majority of the cases that are overturned at appeal are clearly marginal, it is absolutely wrong to be putting additional barriers in place, which will inevitably mean that some claimants with a strong case will lose their right to appeal.

Moreover, not only will some claimants be lost from the system, but the procedure may make the reconsideration process less efficient than it is now. At present, it is in the claimant's interest to try to get the reconsideration process to work and advisers work very hard to get ESA decisions reconsidered. However, under the new system, unless the regulations are changed to allow claimants to receive ESA at the basic rate during the reconsideration process, then advisers will have to get through reconsideration as quickly as possible. This risks missing medical evidence likely to be crucial in deciding whether to overturn the decision which may get produced until after reconsideration decisions have been made.

Advisers frequently see claimants who are no longer able to appeal a decision because they have missed the time limit, but disagree with the decision. There will now be two time limits within the system – the second of which will be much stricter and less predictable, making it much harder for advisers to check on. It is likely to result in a considerable increase in the number of vulnerable people being lost from the system.

Although, for many vulnerable people, good cause could be shown for a late appeal, as long as it is not too long after the original decision, it would be virtually impossible for a claimant to do so without the support of an adviser. All this additional work, created by the second timescale and the double process, is expected to commence just at the very point when legal aid funding for welfare rights advisers is removed, leaving much less time for this sort of casework.

Legal aid reform and the right of appeal

Nowhere is the weakening of appeal rights demonstrated more clearly than in the withdrawal of legal advice funding for almost all administrative justice issues coming before tribunals. In justifying abolition of legal aid for welfare benefit appeals, Government placed considerable weight on "user-friendliness" of the social entitlement tribunal.[4] However, the tribunal has no role to play in assisting claimants over whether to appeal, helping claimants prepare their case or ascertaining further evidence; its function is strictly judicial and its procedure is adversarial. The only significant concession to Citizens Advice's lobbying for welfare rights legal aid, has been that it may still be available for pleading "points of law." However, it seems even this is threadbare as it will only be available on reconsideration or appeal to the Upper Tribunal.

It remains to be seen whether the withdrawal of legal aid for social security and immigration appeals may lead to an *Airey v Ireland*[5] Article 6 style challenge (legal aid necessary for a fair hearing) before the European Court of Human Rights. The Court does consider as a general rule, following *Salesi v Italy,*[6] that Article 6(1) can apply in the field of social insurance adjudication as civil law proceedings.

An uncertain future for administrative justice

Not only does there seem to be a down-grading of the importance of appeal rights and tribunal processes in public policy, but the relevant independent oversight body, the Administrative Justice and Tribunals Council, is facing imminent abolition with its function transferred directly to Ministers. This all seems to signal a retreat from the Franks (1957) and Leggat (1998) reports with their clear steer for independent Tribunals to be seen as "part of the machinery of adjudication rather than administration,"[7] and "decide disputes that would otherwise have to go to the courts."[8]

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1. www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2012/july/16-fam-appeal
2. www.dwp.gov.uk/docs/mandatory-consideration-consultation.pdf
3. The September reshuffle saw the interesting promotion of Chris Grayling MP to Secretary of State for Justice
4. Reform of Legal Aid in England and Wales, Ministry of Justice 2011
5. (6289/73) [1979] ECHR 3
6. 13023/87, [1998] ECHR,
7. Franks, O. (1957) *Report of the Committee on Administrative Tribunals and Enquiries*, Cmnd. 218, 5s
8. Leggatt, A. (2001). *Tribunals for Users - One System, One Service.* Ministry of Justice

Re-housing homeless people – the importance of sustainility and affordability

Geoff Fimister argues that new Government guidance must ensure that rents are genuinely affordable – and this means looking at benefit limits

Over the summer the Government consulted on the factors that local authorities should take into account when deciding whether or not accommodation in the private rented sector is suitable for use when discharging it's homelessness duties.[1].

This Homelessness (suitability of accommodation) (England) Order 2012 follows new powers for local authorities to discharge their homelessness duty through the offer of a tenancy in the private rented sector. In our view, the vital, yet missing element of the consultation document was that of affordability of the accommodation offered - as well as some associated issues around location.

Suitability and affordability

The DCLG document listed five "aspects of suitability", but affordability was not one of them. We recognise that affordability is included in the main *Homelessness Code of Guidance* (see below) and that this is the rationale for giving it only a passing mention in the consultative document, which stated (at para. 5):

> "In considering "suitability" local authorities must consider, for example, whether the accommodation is affordable for the applicant…"

However, we consider that this projected change to local authorities' options for discharging their duties in this area is so substantial – and affordability so critical to it – that a specific, high-profile mention is essential.

There is also an important question as to what is meant by "affordability". Tenants on low incomes, whether in or out of work, will generally need the support of Housing Benefit (HB) to meet their rent – but the rent eligible for HB is often restricted, leaving the tenant to make up the difference from other income. This is crucial to any discussion of affordability.

HB – and other means-tested benefits – have needs allowances ("applicable amounts"), including "premiums", which are meant to represent the cost of non-housing essentials. The same will apply to the non-housing elements of Universal Credit (UC) – to be introduced from October 2013. These allowances are not generous and are arguably too low for their ostensible purpose. But if for the sake of argument we assume that they are adequate, they still contain no element for rent (this being, of course, the purpose of the HB amount itself).

It follows that where a tenant's income is at or below the "applicable amounts" and the rent eligible for HB (or in due course the rental element of UC) is restricted, then the tenant will be left without the full amount for non-housing essentials after paying the rent.

Even where the tenant's income in such cases is above the "applicable amount", the steepness of the HB taper (65 per cent of the extra net income) means that net disposable income after rent is likely to be below that basic threshold.

Shortfalls can be problematic even if they are just a few pounds, but in fact they are often much higher – and the problem is set to worsen as more households find that the 'transitional protection' that delayed the April 2011 cuts affecting them wears off and April 2013 approaches when the overall benefit cap is introduced.

We are currently conducting research with bureaux into the effects of LHA shortfalls following the raft of cuts that began in April 2011. Analysis of emerging findings is at an early stage[2], but the following points stand out[3]:

- Although numbers analysed are as yet small, it is striking that other debt (11 cases) greatly exceeds rent arrears (three cases), which suggests that claimants may be prioritising the rent and getting into difficulties elsewhere in their budgets. Of course, especially where the HB shortfall is high, it may not be possible to sustain this avoidance of rent arrears indefinitely, so a different pattern may emerge overall and in a given case as time passes.
- Some clients reported going without essentials such as adequate diet and heating in order to pay the rent.
- The fact that 11 claimants were either looking unsuccessfully for cheaper accommodation or moving to low-quality accommodation confirms the frequent reports from bureaux that alternatives are not easily found in practice.
- The fact that half (12 cases) of the claimants were at risk of

homelessness is perhaps not surprising, but an important point nevertheless.

The earlier Homelessness (Suitability of Accommodation) Order 1996 does refer to the affordability issue, but does not explore specifically the crucial matter of the disposable income remaining to the tenant after paying the rent.

The *Homelessness Code of Guidance*[5] is much more satisfactory in this respect, stating (at para. 17.40) that:

"In considering an applicant's residual income after meeting the costs of the accommodation, the Secretary of State recommends that housing authorities regard accommodation as not being affordable if the applicant would be left with a residual income which would be less than the level of income support or income-based jobseeker's allowance that is applicable in respect of the applicant, or would be applicable if he or she was entitled to claim such benefit. This amount will vary from case to case, according to the circumstances and composition of the applicant's household.... Housing authorities will need to consider whether the applicant can afford the housing costs without being deprived of basic essentials such as food, clothing, heating, transport and other essentials".

The Code indeed goes further, continuing by advising that:

"The Secretary of State recommends that housing authorities avoid placing applicants who are in low paid employment in accommodation where they would need to resort to claiming benefit to meet the costs of that accommodation, and to consider opportunities to secure accommodation at affordable rent levels where this is likely to reduce perceived or actual disincentives to work".

This is commendable and we believe that this important principle should be incorporated into the Order.

Location

The Government consultation also addressed the issue of location when re-housing people, asking whether: '… *existing provisions on location and suitability should be strengthened so that homeless households are placed nearer to home wherever possible?"*

Recognising the problems that local authorities face in conditions of housing scarcity, it is nevertheless essential to seek to avoid breaking family and neighbourhood ties and disrupting support networks and employment possibilities (which often depend on local "word of mouth" communications). We support the Government's proposals that secondary legislation "*…could require that in considering the suitability of accommodation the local authority must take into account location and in particular:*

- distance of the accommodation from the applicant's previous home;
- disruption to the employment, caring responsibilities, or education of members of the household;
- access to amenities such as transport, shops and other necessary facilities; and
- established links with schools, doctors, social workers and other key services and support essential to the well-being of the household".

However, there must be greater recognition of future employment prospects and family connections beyond caring responsibilities which can play a key role in helping with re-settlement.

Conclusions

So, in conclusion, the new power for local authorities to discharge their homelessness duty via the offer of a twelve month tenancy in the private rented sector – rather than the social rented sector, represents a significant change. It is therefore crucial that the guidance provided on suitable accommodation, provided by the Order, should give specific reference to affordability.

In the light of considerable tightening of benefit entitlements, the Order should set out the principle that disposable income left after rent is paid should not be reduced below a threshold required for basic necessities: in benefits this is the "applicable amounts" (including premiums) (plus any earnings disregards) that would be used when calculating entitlement to housing benefit, or the corresponding non-rental components of UC.

Also, the Government's suggested approach to the importance of the location of the accommodation offered, should be extended to specifically mention the need to consider the impact of the location on future employment prospects and family connections.

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1. *Homelessness (suitability of accommodation)* (England) Order 2012 – consultation, DCLG, May 2012.
2. We have analysed 24 cases.
3. Number of effects exceeds number of cases.
4. This is likely to overlap other categories and to occur more often than specifically reported.
5. *Homelessness Code of Guidance for Local Authorities*, DCLG, July 2006.

Confused about calling costs?

0800 and 0845 numbers are an important part of the communications landscape but their costs are often shrouded in confusion and controversy. **Nick Waugh** examines whether Ofcom's proposed reforms will help resolve the problems.

The phrase 'non-geographic numbers' refers to services provided via telephone numbers that begin with 03, 08, 09 and 118. The costs of calling them vary widely from free to quite expensive and can be much more expensive to call from a mobile phone. Companies, charities and government departments often provide customer services, advice lines and other services via non-geographic numbers.

As the telephone market has evolved in recent years, and particularly as mobile phones have become much more common, the rules regarding non-geographic numbers have become increasingly outdated and consumer detriment has become more pronounced.

As such, Ofcom, the Government's communications regulator, is in the midst of finalising proposals for significant changes which it has been working and consulting on for a number of years.

080 "free phone" numbers

The most attention grabbing proposal is to make 080 numbers free to call from mobile phones. At the moment 080 numbers can be very expensive to call from a mobile phone and this has led to some significant consumer detriment with people who do not have a landline forced to pay over the odds to call essential services provided via "free phone" numbers.

For example, in recent years CABs have helped clients who simply could not afford to call the DWP to resolve issues with their benefits, or would run out of pre-paid credit mid-way through a call. The problem is particularly acute where callers have to wait on hold for a long time before their call is answered.

Recognising that this is causing significant consumer detriment and that efforts to make some 080 numbers free to call from mobiles was not an ideal situation, Ofcom is proposing to make all 080 numbers free to call from mobile phones.

Citizens Advice welcomes this decision but we are mindful of the knock-on effects it will likely have, namely the shifting of costs from mobile phone customers to the organisations providing the services. It is possible that some of these organisations will stop using 080 numbers and instead use other number ranges which are not free to call.

The experience of the DWP when it made many of its 080 numbers free to call from a mobile is that both the volume of calls and the proportion of calls from mobiles increased meaning it had to meet the additional cost of those calls under the agreement reached with the mobile phone companies. Making 080 numbers free to call from a mobile across the range will have the same effect on all service providers using the range, unless they can reach an agreement with mobile phone companies for them to forego the income they would otherwise have received from those calls.

Mobile phone companies have already displayed a willingness to do just this for charities by working with the Helpline Association and we would expect that for socially important services provided by organisations who could not hope to meet the additional costs this will continue. Others will have to choose between absorbing some or all of the additional costs or migrating to other number ranges.

From the point of view of Citizens Advice we would hope that socially important services which are migrated away from the 080 range would choose to move to the 03 range, the costs of which are linked to those for calling a standard geographic number (i.e. a number beginning with 01 or 02). Calls to 03 numbers are included in the inclusive minutes offered by almost all mobile phone companies and are often free from landlines as well. People using pre-paid mobile phones would likely have to pay to call an 03 number but it would be the same cost as calling a geographic number and it would be substantially cheaper than the costs they currently face calling an 080 number.

Changes to how call costs are advertised and charged

While the most attention grabbing change relates to 080 numbers, there will be an equally significant change to the way that the costs of calling non-geographic numbers are advertised. Some of the number ranges often see a proportion of the cost paid by the caller passed on to the service provider. In practice the amount the service provider receives can be as little as a discount on the cost paid to their telephone company for hosting the service but it can also be quite significant.

Ofcom believes that both a lack of clarity about pricing on revenue sharing ranges, and how much money is passed on to the service provider, deters consumers from making phone calls which could cost less than they believe. To address this perceived problem, Ofcom proposes to introduce an 'unbundled tariff' which will be split into an 'access charge', which goes to the consumer's own telephone company and a 'service charge' which goes to the phone company hosting the service being contacted and, in some cases, will be shared with the organisation providing the service.

The biggest practical change this will entail is that call costs will be advertised in a format like this:

"Calls to this number will cost 19p per minute [the service charge] plus your phone company's access charge"

This is quite different to the current wording which is usually along the lines of: "Calls will be charged at 25p per minute from a BT landline. Calls from other companies or mobiles may be significantly higher".

The difficulty this change poses is that consumers will have to be aware of the access charge which their phone company levies. Under Ofcom's current plans, there will be one access charge per tariff for all non-geographic numbers which will aid transparency but it is highly unlikely that consumers will have paid much attention to what it is when they signed up to their tariff. As Citizens Advice has pointed out, many of the services provided via non-geographic numbers are only used when someone encounters a problem or something goes wrong. The potential need to call such a number does not feature highly in people's minds when signing up to a telephone deal.

In addition, as the example above illustrates, the change in the way it is advertised could lead consumers to believe a call costs less than it really does, potentially leading to bill shock. We have expressed our concern about the extent to which the proposals for the unbundled tariff may not resolve the problem of consumer price awareness but Ofcom has indicated they intend to see how their proposals perform in practice before considering measures such as an access charge cap.

Proposals for 09 and 118 number ranges

Ofcom is also considering separate proposals for the 09 and 118 ranges which would see a cap placed on the service charge for services provided using these numbers. Their proposed cap would be £3 per minute for calls charged by the minute and £5 for so called 'drop calls' which enable callers to make payment for goods or services via their phone.

At present there is an effective cap on the cost to call 09 numbers of £1.53 so Ofcom's proposal represents a significant increase. Citizens Advice has a number of concerns about this, particularly in light of Ofcom's view that there is no need for additional consumer protections. As it stands we receive evidence of cases where people have run up very significant bills through calling 09 numbers, often because they have no choice[1] or because they have called an 09 number without realising the cost. An increase in the cap could mean significantly more expensive calls leading to greater consumer detriment in these circumstances. If the additional revenue available changes the behaviour of service providers the number of people suffering detriment could increase as well. We will be arguing that Ofcom should at most only uprate the existing cap by inflation.

Meanwhile, the proposal to introduce the facility to make payments by 'drop calls', capped at £5, creates an attractive opportunity for fraud and a very expensive consequence for mistakes. If consumers can be persuaded to make a small number of very short calls to such numbers they could run up large bills very quickly. We believe that a pre-call message on such numbers is essential. The additional time spent having to listen to the call before being charged would not add hassle given that the charged part of the call needs only be a few seconds long but would protect consumers from fraud.

Taken together, the proposals constitute a significant change to the way that non-geographic numbers operate at present in the UK. Whether they will resolve the issues which Ofcom has identified remains to be seen, and it is certainly the case that some of the proposed changes have been motivated with the interests of the communications industry in mind. While there is nothing inherently wrong with this, there is a need to strike the right balance between allowing communications providers the opportunity to turn a profit and limiting opportunities for a lack of transparency, sharp practice or fraud to cause detriment to consumers.

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1. Some public services and some debt collection agencies use 09 numbers for example

Debt management plans – will self-regulation work?

Helen McCarthy considers whether self-regulation of debt management plans will help put the consumer at the heart of the process

The current Government has declared itself to be a Government of deregulation. As a result, even where significant consumer detriment occurs, regulation to deal with the issue is far from a done deal. Instead the Government prefers to pursue the option of self-regulation. We see examples of this in the Lending Code – which sets standards for financial institutions to follow when they are dealing with personal and small business customers in the United Kingdom – the Mortgage Pre-Action Protocol and the recently published Good Practice Consumer Charter for Payday and Short-term Loans.

Self-regulation *can* work where it is well-targeted, for example where it applies to a relatively small number of firms, most of whom are members of a trade association and who face reputational risks if they fail to comply. Self regulation is effective only if:

- it covers all the players in the market;
- it goes further than the requirements of statutory regulation (so it is not just a cheap way of trying to enforce statutory requirements);
- there is effective monitoring of compliance, including tackling bad practice; and
- there are effective penalties for non-compliance.

The latest issue to be the subject of proposed self-regulation is the provision of debt management plans (DMPs) by fee-charging debt management companies.

This has been the subject of much discussion between the debt management companies, not for profit debt advice organisations, consumer groups and the Insolvency Service. Just before the reshuffle, the Minister responsible, Norman Lamb MP, set a deadline of the end of November 2012 for a protocol to be agreed. If agreement cannot be reached, the Government will consider other options.

In the context of financial services, the term protocol is used to refer to a supplementary self-regulatory tool setting out the steps a company should take to be able to deliver in line with best practice in that area.

But will a protocol work for DMPs? The existing debt management guidance produced by the Office of Fair Trading (OFT) is comprehensive and sets out clearly what debt management companies should be doing, yet bureaux continue to report cases of clients experiencing a range of problems with fee charging debt management companies. Examples of particular issues seen by bureaux include:

- lack of transparency around the fees charged;

A bureau in the north west reported the case of a female client who lived with her partner and child and worked part-time. She owed multiple unsecured debts and went to a debt management company for assistance with managing her debts. An agreement was set up to pay £200 per month with the company taking out £35 a month administration fees. However, the company paid significantly less to her creditors as the debts were not calculated on a pro-rata basis, causing the creditors to continue to write and harass the client. It turned out that the administration charges were actually £105 a month with an initial set up fee of £400, which she did not recall being talked about when the DMP was set up.

- up-front fees, leaving the client with less to pay off their creditors and contributing to delays in passing payments to creditors;

A bureau in the south west reported seeing a client who had signed up for a DMP with a fee-charging debt management company. She had paid £100 a month to the company (a total of £1100) but out of that only £2.66 per month was paid to one creditor. She cancelled the agreement and was told that what she had already paid would go towards the fees and administrative costs of the debt management company.

- the presentation of DMPs as solutions without considering whether other options, such as debt relief orders or individual voluntary arrangements, might be more appropriate in the circumstances;

A bureau in the Midlands saw a client who was single and lived with two dependent children. She was employed but had a number of priority and non-priority debts.

She had been approached by a fee charging debt management company and initially agreed to pay £100 a month for two months to set up a DMP, plus £35 per month fees. However, she pulled out of this within the 14 day cooling off period and decided to go to the bureau instead. The debt management company were insistent that the client continue with them and told her that Citizens Advice is in cahoots with debt collection agencies and would not be able to help her.

- failure to provide adequate information to consumers, for example about whether creditors have agreed to freeze fees and further interest charges;

A London bureau reported seeing a client in May 2012 who, with her ex-partner, had taken out what she believed to be an IVA in 2006. She had paid until the end of the agreement but had since been asked to pay a further £50 to separate out her debts and then carry on paying. The bureau contacted the debt management company and were told that the arrangement had never been an IVA but was a DMP instead. It also transpired that her debts had not reduced. A statement from one creditor showed the balance was £277.49 in 2008 and £273.97 in 2012.

- unrealistic payments – not leaving consumers with enough money to repay priority debts;

A bureau in the south saw a 79 year old client and her partner who had debts of approximately £23,000. She worked for a supermarket and the household also received some benefit payments. She had a DMP and paid £990 per month, of which £100 was the fee for the debt management company - the monthly payment is more than the client earned. As a result, the disability living allowance she received for a long-term health condition was being used to pay non-priority debts.

- cross-selling of other services such as claims management services.

A bureau in the south reported the case of a client who had signed up for a DMP some three years earlier. She had been making monthly payments of £180, of which £30 went to the debt management company in fees. She had recently been moved by the debt management company on to a new plan, where up to 90 per cent of the £180 monthly payment could go to pay fees in return for services to check whether there are any PPI mis-selling claims or claims for refunds of bank charges that the client can make. She did not appear to understand the new plan or how much it would cost. She had felt pressurised to accept the new plan after being visited in her own home.

We need to consider whether a protocol for DMPs would address the type of issues bureaux see currently. The issues highlighted above are issues which are covered by the OFT guidance, for example the guidance cites 'failing to inform the consumer that other debt options are available'[1] as an example of unfair or improper business practices in marketing and other communication. However given the limited powers and resources of the OFT to enforce this guidance, we continue to see problems in the debt management market.

A protocol *could* help if it included specific requirements over and above the guidance, such as monitoring and quality assurance. Some have suggested a quality mark for debt management companies, but to be effective this would require rigorous independent monitoring. With the new Financial Conduct Authority due to take responsibility for the regulation of consumer credit from 2014, now is not the time to be considering a shiny new accreditation and monitoring body. This kind of set up does not come cheap and the increased costs would no doubt be passed on to consumers through higher fees. Which leads neatly on to the question of costs….To be effective any DMP protocol would, as a minimum, need to go beyond the OFT guidance and address the issues of high up-front fees and continuing charges, which can be ill-afforded by those who already have debt problems, together with delays in passing on payments to creditors, which can make an already difficult situation worse and lead to default fees and harassment from creditors.

Citizens Advice would support a DMP protocol *if* it tackled some recurring issues – such as transparency, up-front fees and delays – head on *and* introduced rigorous monitoring. It must also ensure that the best interests of the consumer are at the forefront of the process. At the moment the prospects of this seem slim. In addition, a protocol is unlikely to affect the behaviour of the wild-west tail of debt management companies and therefore, better regulation must be the answer.

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1. Paragraph 3.18, r, *Debt management (and credit repair services) guidance*, OFT 366rev

Evidence reports published in the last six months

- ***Access to cash – don't bank on it –*** CAB evidence survey of the access to cash for basic bank account customers (June 2012)
- ***Disability and Universal credit –*** a briefing paper produced by Citizens Advice, The Children's Society and Disability Rights UK, for an evidence inquiry chaired by Baroness Grey-Thompson

Recent parliamentary briefings and responses to consultation papers

Response to the European Commission consultation on bank accounts (June 2012)

Response to Ofcom consultation on reforming non-geographic telephone numbers (June 2012)

Response to the Ministry of Justice's consultation on Punishment and Reform: Effective Community Sentences (June 2012)

Response to DECC's consultation on a power for Ofgem to be able to compel fuel companies to compensate consumers (July 2012)

Response to the department for Business, Innovation and Skills' consultation on consolidating Trading Standards' enforcement powers (July 2012)

Response to the Legal Services Board on enhancing consumer protection, reducing regulatory restrictions: will writing, probate and estate administration activities (July 2012)

Response to the department for Business, Innovation and Skills' consultation on Private Actions in Competition Law : options for reform (July 2012)

Response to Legal Services Board consultation - Regulation of special bodies/non-commercial bodies (July 2012)

Response to the Social Security Advisory Committee consultation on universal credit and related regulations (July 2012)

Response to Government Equalities Office consultation on removing specific Equality Act 2010 provisions in regards to employment tribunals' (August 2012)

Submission to the Work and Pensions Committee inquiry on progress towards implementation of universal credit (August 2012)

Response to OFT on use of Continuous Payment Authority by Payday lenders (August 2012)

Submission to the Parliamentary Commission on Banking Standards (September 2012)

Response to Ofcom consultation on a service charge cap on 09 and 118 numbers (September 2012)

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