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Typically, debt clients arrive for advice with a bursting plastic bag full of unpaid bills, red-letter demands and all manner of unopened correspondence. More often than not, they come with multiple problems, of rent or mortgage arrears or council tax demands caused by loss of a job or relationship breakdown, all of which need to be unpicked sensitively by an adviser or a lawyer. Jon Robins, LAG's communications and campaigns director, talks to those professionals on the frontline of the credit crunch (see page 9 for a report on a day at a debt advice service in Kent).

## On the frontline of the credit crunch

As the credit crunch bites, increasingly, those publicly funded legal services devoted to debt work are going to be pushed to the limit. In March 2008, Citizens Advice reported that mortgage arrears cases had shot up by 35 per cent in January and February 2008 compared with the first two months of 2007.<sup>1</sup> Citizens advice bureaux (CAB) across the country dealt with 215,000 new debt problems in the first two months of 2008.

### Access for all

LAG is calling for debt advice desks in every county court so that those at real risk of losing their homes have, at the very least, proper, independent legal advice before going into court. The Legal Services Commission (LSC) funds 94 such non-means tested schemes which can provide an invaluable service; but there are 230 county courts.

All too often, homeowners arrive at court without any advice (if they turn up at all) or having been given misleading information from their lenders. Frequently, they sign up to repayment schemes that are hopelessly one-sided and with which they cannot keep up, or else they sign away their homes unnecessarily. Obviously, LAG would like to see homeowners receiving proper legal advice on their rights before court; however, the eligibility rules mean that many will be disqualified. Homeowners will not be entitled to legal aid if they have £100,000

equity in the property.

Rightly, the LSC has identified the importance of debt within the legal aid scheme. Debt and money issues were among the most commonly reported problems in Pascoe Pleasence's *Causes of action* research which informed the thinking behind the government's vision for community law provided via Community Legal Advice Centres and Community Legal Advice Networks.<sup>2</sup> The case for debt advice was reinforced by the LSC's experiences through its telephone helpline, the then Community Legal Service (CLS) Direct (now named Community Legal Advice (CLA)). In 2004/2005, 33 per cent of callers reported debt problems. In 2006 and 2007, in the run-up to Christmas, the LSC took its anti-debt message directly to shoppers via poster campaigns on the high street and in pubs and job centres as well as on roadshows. 'Only Santa should be in the red this Christmas' was the headline of the less than festive December 2006 press release.

'One of the benefits of the reform process has been that the LSC is thinking in some innovative ways about providing services', reflects Professor Richard Moorhead, deputy head of Cardiff Law School. 'You have to wonder how effective that kind of provision would be and how many people would be dissuaded from making purchases at Christmas. I do not know myself.'

Professor Moorhead has looked at the profile of debt work in his own research (notably, in the two CLS papers, *Quality and cost* and *Quality and access*).<sup>3</sup> 'The research tends to confirm the view in the industry that there are two approaches to debt work', he says. 'One approach is that you deal with a presenting debt problem very quickly and cheaply and that fits well with fixed fees. The other is that the adviser sits down the client, looks at other debts, works out a scheme for dealing with them before moving on to income and benefit maximisation.' Can the two approaches be characterised as pared-down private practice versus the holistic approach of not for profit (NFP) agencies? 'Up to a point', he replies. 'Based on the evidence around quality, the [holistic] service is going to be much more effective in the long run,' he says. But how that will survive under fixed fees is 'a worry', he adds.

Some commentators are uneasy about where, in the allocation of scarce legal aid resources, sorting out people's money problems fits in the legal aid scheme alongside more pressing and obviously legal issues such as, for example, protecting human rights. 'The basis of how you negotiate with creditors and clients is based upon legal sanctions', argues Sophie Brookes, the LSC's social welfare law policy manager. 'The division between our debts, priorities or non-priority, is all down to what are the

creditors' legal options. For priority debts, there are issues around loss of home and, potentially, loss of liberty, if you push your luck on council tax. If you are talking about fuel bills and heating: if you have children or if you are vulnerable, elderly or ill, it might not be loss of life but it is not a million miles from it.' Sophie Brookes says that she 'appreciates that criminal legal aid and human rights work is always going to have to come before debt' but 'clearly the impact that [debt advice] can have is highly significant'.

### Debt advice in the future

In 2006/2007, the LSC funded 83,790 matter starts relating to debt work plus a further 37,497 via the CLA helpline. In total, the LSC spent £20 million on certificated debt work through 370 contracts comprising 252 NFP agencies (including 202 CAB) and 118 solicitors' firms.

However, to put that funding into context, Citizens Advice receives most of its money for this work from the Treasury. In April 2006, it was awarded £33 million over two years to provide more face-to-face debt advice from the government's £45 million Financial Inclusion Fund (FIF) and employed 350 new advisers. There has been a cut in that funding this year which has led to redundancies. 'The FIF money is targeted on local areas of deprivation and so is not national nor is it a complete funding package', explains Lisa Colclough, national money advice policy and development officer at Citizens Advice. 'About 25 per cent of all bureaux funding comes from LSC contracts; typically, debt and welfare benefits are our main two areas.' She adds that debt work represents over 30 per cent of CAB work. 'It is the biggest area of work now, having overtaken benefits, and 40 per cent is consumer credit or unsecured debt. But, worryingly, what we are seeing is big increases in the numbers of people coming to see us relating to mortgage

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debt, fuel debt and council tax debt.' As she puts it, people have 'some personal choice over consumer credit debts'. 'Obviously, they do not have to take on more', she says. 'But fuel, mortgage and council tax, if they go up you have to pay them, or else.'

Now bureaux have to deal with two very different ways of funding, ie, fixed fees and FIF money which, Lisa Colclough says, is 'much more flexible'. 'What is not helpful is this segmenting of advice by funding', she says. 'You would not have invented a system that evolved in this way. [The funding] tends to be for the same client group but whether you can access it totally depends on which part of the country you are in. What you have not got is a joined-up scheme to advise based upon need.'

How will debt work fare under fixed fees? 'It is the equivalent of about four hours' work for debt under the old regime and so there will be some quick wins', reckons Lisa Colclough. 'But most of the people we deal with have multiple debts, and they are in complex situations and take a long time to resolve. One of the worrying things is how advisers are going to do that within the ethos of a holistic, client-focused service.'

'The basic problem with debt advice is that 59 per cent of NFP debt work involves multiple debts which have an average cost of about one and a half times the fixed fee', reckons Adam Griffith, legal services policy officer at the Advice Services Alliance (ASA). According to the ASA's paper, *Case lengths, case costs and fixed fees* (May 2007), the average debt case in the NFP sector was 5.2 hours, and the average multiple debt case is 5.7 hours.<sup>4</sup> 'It is somewhere in the middle between the fixed fee and the exceptional escape limit [three times the fixed-fee ceiling]', comments Adam Griffith. 'Our view of fixed fees and debt is that the only way to make it work is to find lots of clients with one debt, and preferably a non-priority debt. This is not easy to do for many agencies.' According to the ASA's research, 19 per cent of private practice cases were reported as multiple debt cases.

The Money Advice Liaison Group (MALG), which involves the likes of Citizens Advice and the Money Advice Trust (MAT) as well as banks, recently produced a briefing note for creditors and debt-collecting companies on the likely impact of fixed fees.<sup>5</sup> It concluded that they should anticipate 'less scope for ... follow-through work'; a greater likelihood of agreements failing; less negotiation,

risking the development of a "'take it or litigate" culture'; "'sticking-plaster solutions"' with less scope for longer-term attempts to rehabilitate the person in debt; as well as reduced budgeting and income maximisation work which may lead to more insolvency.

Debt work came out 'reasonably well' from the introduction of fixed fees compared with other areas of advice, acknowledges Jim Fearnley, head of research and policy at the MAT (who co-authored the MALG's briefing). He also says: 'I have to respect the view of some colleagues who say that this is not necessarily the end of the world because they say there are a good proportion of cases they can bring in in four hours or less.' He adds though that that is 'a minority view'.

■ A version of this article was published in the *Observer* 13 April 2008.

- 1 Available at: [www.citizensadvice.org.uk/press\\_20080318](http://www.citizensadvice.org.uk/press_20080318).
- 2 Pascoe Pleasence, Nigel Balmer and Alexy Buck, *Causes of action: civil law and social justice*, 2nd edition, Legal Services Research Centre, 2006, £24.95 is available at: [www.tsoshop.co.uk](http://www.tsoshop.co.uk) and at: [www.lsrc.org.uk/publications/cofa2006.pdf](http://www.lsrc.org.uk/publications/cofa2006.pdf).
- 3 *Quality and cost: final report on the contracting of civil, non-family advice and assistance pilot*, 2001, £25.95, and *Quality and access: specialist and tolerance work under civil contracts*, 2004, £29, are available at: [www.tsoshop.co.uk](http://www.tsoshop.co.uk).
- 4 Available at: [www.asauk.org.uk/fileLibrary/pdf/CaseLCFF.pdf](http://www.asauk.org.uk/fileLibrary/pdf/CaseLCFF.pdf).
- 5 *Changes to the legal aid scheme and how these are likely to affect delivery of money advice services*, briefing note 1, February 2008, available at: [www.moneyadvicetrust.org/content.asp?ssid=27](http://www.moneyadvicetrust.org/content.asp?ssid=27).

## Case study: 'I thought I was going to lose my home ...'

In the unprepossessing, 1970s concrete block that is Dover Magistrates' Court, District Judge Parnell has a busy day ahead of him. He will hear, assuming that everybody turns up (and that is a fairly big assumption), 35 cases relating to serious, home-threatening debt.

A quick flick through today's court list reveals six 'MPs', 'mortgage possession' cases where lenders are taking legal action to reclaim properties; seven 'SPs', 'suspended possession' cases where, if the homeowner defaults one more time, lenders can go for immediate eviction; and eight 'ICOs', where the lenders are seeking 'interim charging orders' over people's homes for other kinds of debt. Some of the names on the court list are the big high street mortgage providers but they are outnumbered by the new breed of sub-prime lenders, including, on today's list, G-MAC, Kensington Mortgages and Topaz Finance.

### Traumatised and ill-informed

Much of the action takes place in the court's waiting room where anxious homeowners strike deals with the mortgage companies' agents (usually local lawyers, often trainees, instructed to act on behalf of the company) to either pay back arrears in stages or give up possession of their homes. 'People often arrive traumatised,' says Jacqui O'Carroll, a money adviser who runs a court desk on possession days which happen twice a month in Dover. She manages the legal services unit at Shepway CAB. 'Homeowners arrive unsure of what is going on, totally ill-informed and prepared to lose their home because they think there is no alternative,' Jacqui O'Carroll says. They believe there is no alternative because, she asserts, 'that is what they have been told – even the big five lenders will tell them that'.

Most people arrive at court having received no advice despite the fact that many risk losing their homes. People do not need to be eligible for legal advice to receive help at the court. 'There is a

huge amount of misinformation put out by some lenders and as the credit crunch bites hard, people need to be aware of their rights, not forced out of their homes or into signing up to one-sided deals which they cannot keep up with. People need to get advice early and services should be available for them to do so,' says Steve Hynes, LAG's director. 'As a last resort, there should be an advice service in every court.'

'Does anybody need help?' Jacqui O'Carroll asks when no one knocks on the door of her court desk office. Occasionally, she takes a more proactive approach and interjects between homeowners and mortgage company representatives as they bash out deals: 'Would you like to have a quick chat with me before you agree to anything?'

Two themes emerge quickly: homeowners committing themselves unnecessarily to unrealistic repayment schemes that they cannot afford, or even agreeing to give up their houses. Often, people are told that they have to clear arrears in two years by their lenders. 'Absolute nonsense,' says Jacqui O'Carroll. 'People need to realise that they do not have to listen to these people. It is not up to G-MAC, Topaz or anybody else. It is up to the district judge to decide what is reasonable and they do not want to see someone out of their homes if they can help it.'

### A huge relief

Charles Baker, a 32-year-old plumber from Deal in Kent, who is two months behind on his mortgage, is already having a bad morning. He arrives 25 minutes late for his 11 am hearing having had a wasted journey to Canterbury County Court. Confusingly, Canterbury County Court is sitting at Dover Magistrates' Court. On arriving at the right court, Charles Baker claims to have been referred by the court usher straight to a woman with whom he spends ten minutes talking about his finances, how he got into the mess and what he can pay. 'Very easy on the eye she was, very charming,' says Charles

Baker. The next time he sees her is in court and she is considerably less charming. She has been instructed by his mortgage company, Topaz Finance, to acquire his house. 'I had not a clue,' says Charles Baker after the court is adjourned. 'I have just been singing like a canary and the next thing I know is we are in court and she is going all guns blazing.'

District Judge Parnell takes a break in the hearing where Topaz Finance's lawyer pushes for possession for non-payment and Charles Baker protests that his latest instalment has actually been paid. According to Charles Baker, the lawyer accused him of lying over the last payment. A call has to be made to the mortgage company which establishes that, 'yes', he was telling the truth. In the end, Charles Baker agrees to pay the current monthly instalments of £840 plus £160 to clear the arrears in roughly 15 payments.

Jacqui O'Carroll tells him he could have paid less, but he wants to clear the debt. 'Why go with Topaz? There are much, much better deals out there', she says. Charles Baker admits to 'a bit of credit history,' putting him off limits for the mainstream lenders. 'In my younger years, I saw a car and I thought that I had to have it', he says ruefully. The idea was to have a clean financial bill of health for two years, and then switch providers. 'I have blown that now,' he says.

How did he fall behind with the payments? 'I began a home improvement project, an extension, and I thought I could juggle the finances. Christmas came and interest rates went up – and that was that,' he says.

Unlike many of the people who Jacqui O'Carroll saw that day, Charles Baker is confident that he can handle the repayments. Eventually, he comes out of court with a suspended possession order; one default and the mortgage company can serve an eviction warrant without going to court. 'It is a huge relief. I thought I was going to lose my house,' he says.