

Under-funded, Overstretched and Overwhelmed: the Experience of Citizens Advice Bureaux and Law Centre Advisers in Supporting Vulnerable Workers

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Summary

In the context of wider government policies regarding 'vulnerable' employment, this article examines Citizens Advice Bureaux (CAB) and Law Centre advisers' experience of supporting workers with workplace problems¹. It shows a crisis in resourcing in the face of growing demand for help in Britain's predominantly non-unionised workforce.

The background

Survey evidence suggests that between two-fifths and half of Britain's workers experience individual problems at work (Casebourne *et al.* 2006; Pollert and Charlwood 2008). Most try to resolve these without union support, since 72 per cent of UK employees are non-unionised (Mercer and Notley 2008: 17). While collective disputes have declined, applications to Employment Tribunals have increased, although the majority of workers attempt to solve individual grievances informally at work. Their need for support, in the absence of unions, is underlined by survey evidence which shows that while 86 per cent of the lower paid unorganised with problems at work attempt to resolve their problems – primarily with managers - the majority fail to find any resolution (Pollert and Charlwood 2008). The non-unionised earning below the median comprise 40 per cent of the workforce. Overall only a tenth of such workers seek external help, but those with problems in areas such as dismissal, pay, discrimination and working hours are more likely to do so (*ibid* 2008: 42). For these, the main recourse is the voluntary sector.

While non-unionism and low pay are sufficient criteria to exacerbate 'vulnerability' in terms of failure to resolve workplace grievances (Pollert and Charlwood 2008), government policy on 'vulnerable work', following high-profile evidence of fatal consequences of unregulated work after nineteen Chinese cockle-pickers downed in 2004, has relegated 'vulnerability' to the margins of employment. A parliamentary policy statement, *Success at Work: Protecting vulnerable workers, supporting good employers* (DTI 2006), describes the vulnerable worker as 'someone working in an environment where the risk of being denied employment rights is high and who does not have the capacity or means to protect themselves from that abuse. Both factors need to be present. A worker may be susceptible to vulnerability, but that is only significant if an employer exploits that vulnerability' (DTI 2006: 25). There is no allusion to the low unionisation and low pay typical of the sectors listed as high 'risks' for vulnerable work.

Following its 2006 policy statement, in June 2007, the government established a Vulnerable Worker Enforcement Forum, following the TUC's establishment of its Commission on Vulnerable Employment (CoVE). The government Forum recommended a 'joined-up' approach to addressing vulnerable work which broadly replicated its 2006 policy statement

¹ These findings are based on Pollert *et al.* (2008)

and covered four areas. The first was to raise awareness of employment rights and enhance publicity about existing enforcement bodies; the second was a 'streamlined' access route to enforcement bodies, to comprise a 'single telephone gateway'; the third was co-operation between enforcement bodies and establishment of a Fair Employment Enforcement Board; and the fourth was improved guidance on compliance with employment law to business (BERR 2008: 6). The reality of the policy for most workers is either to use 'an enhanced basic rights section' on www.direct.gov – (note, household internet access is closely income related and is restricted for the lower paid, Pollert 2007: 123) – or to use a telephone helpline (note, 0844 numbers are expensive for those relying on mobile phones). This will be run from a call-centre, with operators 'trained to identify abuses needing investigation by more than one enforcement agency' and with 'access to translation facilities where needed' (BERR 2008: 20). Our research (below) indicates the need for professional expertise in legal advice far beyond the training of call-centre operatives, and the inadequacy of telephone advice – particularly for those feeling intimidated.

The recommendations neither prioritised re-collectivisation nor simpler and cheaper access to statutory enforcement of employment rights. There were further omissions regarding recent policy pertinent to 'vulnerable' work. Firstly, proposals for new ACAS guidelines on 'good practice' in grievance resolution, which are to replace the statutory Dismissal and Disciplinary and Grievance procedures after their review by Gibbons (DTI 2007) and repeal in 2009 (House of Lords 2007) are a dilution of the previous ACAS Code of Practice. While the statutory procedures were criticised as unfair for employees prior to their enactment (e.g. Hepple and Morris 2002), the voluntary ACAS guidelines (ACAS 2008) have been characterised as 'more procedure than guidance' by respected employment law solicitors (Thompsons 2008:7) and are likely to leave employers, workers, as well as employment advice workers in greater confusion than before. Secondly, BERR is silent on the implications for employment rights enforcement of pilot experiments in 2007-08, sponsored by the Ministry of Justice, in London, Birmingham and Newcastle of mediation as an Alternative Dispute Resolution technique (Tribunals Service 2008: 16) and ACAS's growing role in mediation. There is no discussion on how mediation, rather than statutory law enforcement, may lead to poorer compromise outcomes for aggrieved workers. Thirdly, there is silence concerning the implications for employment rights enforcement of Gibbons' recommendation of a 'fast-track' in Employment Tribunals for 'employment judges to sit alone in determining cases involving issues of a purely legal nature and in straightforward monetary cases', rather than the tripartite, lay composition of Employment Tribunals (House of Commons 2008). Fourth, there is silence on the continuous programme of rationing of legal aid following the 1999 Access to Justice Act and the increasing restrictions for its provision under the Legal Service Commission (LSC) contract (Pollert 2007: 119). And fifthly, there is no mention of the chronic under-funding of the voluntary sector, including recent government cuts to Citizens Advice headquarters, the training source for CABx.

Within this context, what is the experience of vulnerable workers? Evidence was gathered by the TUC Commission on Vulnerable Employment, established in February 2007 (CoVE, <http://www.vulnerableworkers.org.uk/>), from public consultation, regional visits, personal testimonies, and commissioned research studies (TUC CoVE 2008). These included examination of temporary, agency and migrant work and a CESR research-team survey of CAB and Law Centre advisers' experience of dealing with vulnerable workers' workplace problems (Pollert *et al.* 2008). While examining workers and their problems through the lens of their advisers, this research also provides insight into the infrastructural difficulties faced by these advice organizations, thereby revealing the resource constraints for Britain's main free support provision for lower-paid, non-unionised workers.

CAB and Law Centre advice work

Even without new funding problems, these two voluntary organisations have limited resources. Citizens Advice is a generalist, volunteer-led service providing free advice on a range of issues. Its records showed that in 2006/07, only 33 per cent had an employment specialist. CABx are heavily reliant on primarily part-time volunteers for both general and specific employment advice: our study showed that approximately 90 per cent worked the equivalent of 6 to 10 hours per week. However, the CAB network is widespread compared with Law Centres. There are 433 CABx across England, Wales and Northern Ireland, compared with only 64 Law Centres across Britain, 45 per cent of which are in London. However, Law Centres generally employ paid legal professionals to provide free advice and 84 per cent provide specialist employment advice and case-work. However, many of the paid Law Centre employment advisers work part-time: in one-third of Law Centres in our study there were no paid *full-time* employment specialists and a further third reported employing one. No Law Centre reported employing more than two full-time paid employment specialists.

We conducted a survey of 88 advisers with further qualitative interviews with 40 across both organisations. Declining resources were apparent from the response rate alone - particularly from the CABx. In November 2007, CoVE invited 124 CABx recorded as having employment specialists in 2006/07² and 53 Law Centres providing employment advice to participate in the study. While the Law Centre response rate was 60 per cent, it was only 43.5 per cent for CABx. Some CABx had lost their employment specialist; others were too understaffed and overburdened to participate. One former CAB adviser described a decline in bureaux as well as adviser numbers:

"I met some people from Yorkshire who I used to work with (in the CAB) and they say that CAB 'Z' instead of having about four employment workers now have one and a volunteer - no half and a volunteer. ..CAB 'X' has gone, CAB 'Y' has gone - where I used to work - and CAB 'Z' still remains."

(Law Centre Adviser, Inner London)

We asked respondents how far they felt their bureau or centre could meet demand: 70 per cent of CAB and 80 per cent of Law Centre advisers felt they had too few or far too few advisers. Around two-thirds of both CABx and Law Centres felt that they had 'too little' or 'far too little' legal experience to assist migrant workers. Almost three-quarters of CABx and 61 per cent of Law Centres also felt that they had 'too few' or 'far too few' resources to advise and support workers who do not have English as their first language.

Inadequate funding was an overwhelming issue. Core financing was either from local councils, or the Legal Services Commission. Over three-quarters of Law Centres had experienced cuts in real terms from both sources in the three years prior to interview and 55 and 67 per cent of CABx respectively had experienced cuts in real terms from local councils and the LSC. Consequently, time spent in fund seeking had increased or greatly increased for 81 per cent of CABx and for 84 per cent of Law Centres. Predictably, time and resource for advice work suffered: half of Law Centres reported time for advice work had decreased or greatly decreased and while three quarters of CABx reported no change, qualitative

² This excluded 20 participating in another survey by a government commissioned survey, Dunstan, R. and Anderson, D. (2008) *Vulnerable workers: preliminary findings from the Citizens Advice client research*, London: BERR/Citizens Advice.

interviews revealed greater burdens on managers' roles and the need for recruiting specialist funding-raising posts:

"Yes, we have local authority funding and our manager spends I should think 70 or 80 per cent of her time chasing funds from various sources."

(CAB Adviser, East Midlands)

A particular issue to emerge was the increasingly onerous demands on time and resources of complying with the LSC contract. Many CABx had already withdrawn from LSC funding, because its 'business' model was too onerous (Citizens Advice, 2004: 15), so it affected Law Centres most, 94 per cent of which had core LSC funding. Two thirds of the latter reported advice time had decreased as a result of the LSC contract and advice quality had suffered because of its demands for quantitative throughput of cases, prompting reconsideration of this source of funding:

"They've increased the money but they are expecting us to do much more for the money...we used to be paid by the hour, so you do the work; you get paid for the work you've done. Yes, you had to quite rightly jump through hoops to demonstrate that the work you were doing needed to be done and you were doing it efficiently...Now what they do is they say, 'well we'll give you £225 for each case you open'. So you have to be opening a significant number of cases less than £225 to balance out most of them which are above £225...I am afraid that quality is going to suffer because of what the Legal Services Commission is doing and not only that, it will allow organisations into the sector, or encourage organisations into the sector that are good at doing volume, but not complexity. But because you are expected to produce buttons, you end up producing buttons...We're trying, I suppose to some extent, to wean ourselves off Legal Services Commission funding in order that we can take on things that don't meet their criteria, but meet broader criteria."

(Law Centre Adviser, North West)

We found that advisers were forced to provide unfunded free advice, because it was excluded from funding criteria:

"There aren't many CABx with Legal Aid funding for employment law. A lot of people threw it in a few years ago... I do a lot of telephone advice... but the problem we have in the bureau is that it isn't funded by the Legal Aid Contract, so all telephone advice I give isn't funded by anything, so we are in a bit of a dilemma in that we are a CAB and we've got someone here who knows the answer and so your natural inclination is to give them the answer and provide them with the advice they want, it's cutting into the time I should be spending on fundable work, it's a problem we are struggling to address at the moment."

(CAB Adviser, North East)

The LSC contract did not cover free initial advice, compared to *triage* in medical emergencies:

"Prior to [the new LSC contract] that we had been able to give everyone half an hour free advice. That was hugely helpful for vulnerable workers. Half an

hour doesn't sound like much, but one of the biggest issues we have with vulnerable workers is they're hard to reach and language barriers are even more (of a problem) It's much easier for someone to pop in or phone for half an hour advice and not have to fill in forms ..than it is to go through a lot of form filling procedures and that was a very good way of at least giving people very basic ideas about what they were entitled to, which enabled them to go away and do some more good. That's now been taken away from us and we are seeking alternative funding, but there does seem to be a move in the Government away from preventative work. [So in a sense it's a very important component of the work of giving potential clients initial advice, before it goes any further?] Indeed, I think it needs to be from specialists, there tends to be an assumption that early stage advice can be from people who aren't specialist. It's a bit like being a triage doctor or nurse, you actually need to be the most skilled person because you have to spot the person, who's about to die from internal injuries and the person who has just got a stomach ache, and that's what we have to do, we have to spot whether someone's got a major problem which they need to do something about immediately, or whether this is a long term thing where perhaps there are different ways of doing it. So I think, specialist advice is very useful at an early stage because it tends to diagnose the problem."

(Law Centre Adviser, Inner London)

The pressure on resources as well as depleting local advice support was described by one Law Centre adviser in an inner London borough:

"We are screaming anyway with the ones that do qualify [for Legal Aid] because of the amount of demand. We open our doors at 10.00am but at 9.15am there is a queue around the corner, and we can only take about six people per session, you know six people in the morning and six in the afternoon. Yes we do turn away and yes, we try not to turn away, we try to refer, but that area of referral is shrinking."

(Law Centre Adviser, Inner London)

Of the 124 CABx with employment specialists, only 12 (10 per cent) had an immigration specialist and only three in our sample. Law Centres were better resourced, although still minimally: over half had no immigration specialist, but over a third had either one or two. Around two-thirds of both CABx and Law Centres felt that they had 'too little' or 'far too little' legal experience to assist migrant workers. Almost three-quarters of CABx and 61 per cent of Law Centres also felt that they had 'too few' or 'far too few' resources to advise and support workers who do not have English as their first language. One interview revealed the difficulties – and the inadequacy of telephone advice:

"If they need a specialist, we used to have a specialist migrant adviser coming here until last year. They lost their funding for that. They've now set up a telephone project where the people on the other end do speak some of the East European languages, but these people don't want telephone advice, they want face to face advice. I think it's a little bit of the fear of who might be on the other end of the telephone, because there's a lot of intimidation that goes on by certain gangmasters. The other thing is I think they feel that sometimes they have a language in common, like Russian, but it's not their native language and they like to be able to use non-verbal communication as well. They like to show things to people and use expressions. So this is why

I think the telephone only advice service for them has not been so good. Well, they can't continue it with the face to face and the telephone, it just isn't getting the clients, they don't want to use it."

(CAB Adviser, East Midlands)

The difficulties for the CAB, a generalist advice organisation, in finding sufficient specialist advice, demonstrated the crisis in support:

"I would like to have an employment section. I think we have sufficient employment enquiries. I would like at least one full time employment specialist adviser who could represent at tribunal, at least one, because I think there's a need. We are in a particularly bad situation in this area in that there are ...if I put in a search on CLS (Community Legal Service), our legally aid-able specialist employment advice, in a forty mile radius, I might get three hits and one or two of those will be Law Centres who only deal with their own area. There's nobody locally that does specialist employment advice. We do have access to the specialist support unit (the CAB support unit providing primarily telephone advice to advisers, AP), but it is woefully inadequate for the needs. They have introduced email advice, which has helped, but if I say to you it's a bit like the doctors, you start phoning five minutes before the lines open in the hope you will be the first in the queue, because if you're not, the chances of you getting any advice on that day is minimal."

(CAB Manager, East Midlands)

One CAB adviser described the overwhelming demand from workers:

"I suppose I say that...we've never turned anybody away which is perhaps rather an odd way of looking at it. ... We kind of muddle through, somehow. As I say, we haven't had to say to anybody we're much too busy to take your case on, but we do rely heavily on the volunteer advisers to sort out the lower level stuff."

(CAB Adviser, North West)

The full report on CAB and Law Centre advisers (Pollert *et al.* 2008) provides further details of a highly committed, but under-funded, over-stretched, and overwhelmed advice service. Government policy on counteracting vulnerable work appears unaware of these problems. Our research provides a spotlight on the lived reality of employment problems and the advice resources to resolve them.

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