Citizens Advice Bureaux and People with Employment Disputes
Summary interim report

Nicole Busby, Morag McDermont, Emily Rose, Adam Sales and Eleanor Kirk
Universities of Bristol and Strathclyde

This report details interim findings from the project Citizens Advice Bureaux and Employment Disputes. It comes at a time when drastic changes are occurring to employment conditions, rights and regulation in the UK, yet at the same time funding for employment related advice is being reduced. These processes are taking place under the broader political and policy ‘austerity’ programme of the Coalition Government and are fundamentally impacting upon people’s ‘access to justice’. This project is funded by the European Research Council and is part of a broader programme of study into third sector advice agencies and public conceptualisations of legal issues. The aim of the research is to examine how CAB clients pursue their employment disputes following their first interaction with the CAB and explores barriers to justice.

Background

To date, six bureaux are participating in the study. They include: Bristol, Greater Pollok, Southwark, Stoke-on-Trent and West Dunbartonshire. The bureaux serve communities that present varying challenges: high levels of unemployment and associated poor health and wellbeing outcomes; localised deprivation amongst certain groups; and/or high levels of immigrants for whom communicating in English is not easy.

We are gathering data from CAB clients as they go through the process of attempting to resolve their dispute. Methods include observing CAB advisor / client interviews, engaging in ongoing interaction with CAB clients and attending Employment Tribunal hearings. We are also interviewing CAB managers and advisors about their roles.

How bureaux manage resources and models of survey delivery

Participating bureaux all have varying systems for delivering employment advice. These range from using generalist advisors to provide this advice, offering generalist advisors with focused training on employment matters to deliver this advice, using in-house solicitors and the services of pro bono solicitors or referring work on to local law centres. Funding is a critical factor in determining the form of employment advice provision. Bureaux attempt to weigh up financial/human resources and the needs of clients. Key emerging trends are as follows:

- Scottish bureaux rely primarily on local authority funding. However, the amount of money from this source has typically stagnated or, in some cases, decreased in recent years. Bureaux are expected to bear their share of the austerity measures being taken by local authorities.
- English bureaux draw on a diversity of sources for funding and view this as critical to their ongoing survival. In addition to local authorities, these bureaux are active in seeking money from various charities and trusts.
- The cut to the Legal Aid funding for employment matters directly affected one participating bureau. However, other bureaux are experiencing an increase in demand as sources of advice previously funded through legal aid, dry up.
Using solicitors to undertake casework does not appear sustainable in the current funding environment. There are two bureaux that use solicitors: one under a unique funding arrangement with the local authority, which is unlikely to continue once the solicitor retires; the other bureaux’s funding permits the solicitor to spend a limited amount of her time to work on specific cases.

Bureaux recognise that employment law is complex and that it takes a degree of expertise to provide adequate advice in this area. However, across the board, bureaux identified that their clients had a need for practical employment related advice.

Three bureaux were engaging in new models of service delivery in which generalist advisors were utilised to provide on-going casework in employment matters. Distinctive characteristics of this mode of service provision include:

- **The importance of specialised training and on-going support**: recognising that particular expertise was needed to advise on employment disputes these bureaux are providing training for teams of paid workers and volunteers, with trainers providing on-going support to assist with new variants of issues as they emerged. On-going support was also viewed as a form of quality control.

- **New ways of using volunteer advisors**: the typical volunteer advice model is that a client sees whoever is available. Recorded case management notes enable any advisor to pick up and carry a client’s issue forward. However, employment-trained volunteers are undertaking on-going casework with the same clients. This continuity between client and advisor is viewed as valuable for complex employment disputes.

- **Distinguishing between ‘simple’ and ‘complex’ employment cases**: a pattern of allocating less complex disputes to the generalist advisors who receive specialised training in employment matters and giving difficult cases to in-house legally trained staff or making referrals to lawyers who provide pro-bono services or who work at law centres.

- **A focus on the early intervention in disputes**: exploiting the negotiation and mediating skills generalist advisors receive in their general CAB training to interact with employers before matters get to the Employment Tribunal stage.

What the data tells us

To date, we have gathered data from 98 CAB clients. These participants tended to approach bureaux with a sense that they have been wronged in some way. However, few were able to articulate the problem in legal terms. CAB advisers engaged in complex processes of interpretation, diagnosing the client’s problem and what can be done about it, and ‘translating’ the law back to the clients.

Almost all CAB clients seek guidance about practical steps to achieve a resolution. CAB advisors generally attempt to empower clients to help themselves. However, the competencies of the client are considered when deciding how much they should do on their own. Our findings suggest that participants with greater levels of education, social resources and economic capital are better able to navigate the system and inform themselves of relevant legal processes. Those with less resources and who struggle with communicating in English, are more reliant upon the advice and support of the CAB.

Key initial findings concern the following features of resolving employment problems:

- **The law relating to the employment problem**: the advisor will typically inform the client of the (probable) law relating to their employment problem. However, often the client does not fully understand legal terms such as ‘unfair dismissal’, or how they apply to their particular situation. In a sense law remains ‘out there’, relevant only in a very vague way to the
participants. This may not matter when CAB advisors provide legal support to run the case. However, ignorance has consequences for clients where they deal with tribunal processes themselves. This is only partly offset by employment judges’ attempts to make employment courts less formal and ‘legalistic’.

- **The process**: many participants were unaware of the standard path involved to implement their legal rights. They may engage in one aspect of the process with little or no knowledge of possible subsequent courses of action, should their efforts fail to produce results. Clients could benefit from a broader understanding of the process as a whole. Some of our participants found that the guidance offered by the Employment Tribunal Service was not always helpful or informative.

- **The potential timescales**: many participants felt that the process was defined by a sense of waiting – for the employer to act, to hear back from the CAB, for news from the Employment Tribunal Service. Having a better sense of the timeframes involved at various stages may help alleviate this experience, as would having an understanding of why the process can take a very long time.

- **The roles of the various parties**: some participants were not sure what they were supposed to do during the process, or of the roles of a CAB advisor, of Acas or the Employment Tribunal. Understanding roles, would enable clients to make use of the resources available to them in a more constructive and empowered way.

- **The potential costs**: a number of participants were fearful that they would be made to pay the employer’s costs should they lose their claim. In some situations, intimidation tactics were applied by employers. Participants seldom had a sense of the psychological and emotional cost, particularly if a case goes to the Employment Tribunal.

- **Attending the Employment Tribunal**: Almost all participants who faced the prospect of, or attended an Employment Tribunal, were apprehensive about it. Few had a good sense of the process involved or what would be expected of them. Many were intimidated by the unfamiliar language and concepts used in the tribunal and were concerned that they would not be able to communicate their points articulately. Our data indicate that Employment Tribunal judges attempt to ensure that participants have their say, but this does not necessarily allow them to do so as the whole experience is power infused and alien to them.

- **Enforcement of awards**: it came as a surprise to some participants that they would not automatically receive the financial remedy awarded to them. Claimants could benefit by being informed about the chances of having to take steps to enforce any award made to them, including the costs involved in doing so.

**Directions for future research focus**

In the next phase of our data collection and research analysis, we will give particular attention to themes emerging from the data collected to data, including the following:

The newly introduced **fees** to lodge a claim and then have that claim heard at the Employment Tribunal are of critical interest. We have considered data of experiences prior to fees. In the next stage we will focus on the impact the new fees regime has. Key areas of interest include:

- Do fees act as a deterrent to CAB clients?
- What are the practical problems in seeking fee remission?
- Do CAB and clients shift towards the earlier intervention of employment problems?
- Do employers demonstrate a reluctance to settle problems out of court in the belief that they will be unlikely to be taken to an Employment Tribunal?
- Will CAB advice shift towards encouraging clients to seek legal redress in other legal arenas such as the Sheriff/County Courts?
We will draw out the impact of the **broader economic climate** to understand the ongoing effects of the recent recession: do concerns about future job prospects or about an employer’s financial circumstances become part of calculations about how to deal with employment problems?

We will consider the effect of the **varying degrees of need** clients bring to CABx, particularly with respect to their capacity to contribute towards resolving their employment problems. We will explore further what this means for the advisor’s role in assisting clients work through their problems and for clients’ perspectives on the legal process involved.

We are interested in **CAB clients’ experiences of Employment Tribunals**, including clients who are accompanied / represented by a CAB advisor and those who are unaccompanied. We will explore how experiences vary when the employer is represented / represents themselves. We are interested in how judges interact with parties in these various scenarios.

We are interested in clients’ perceptions of **the role played by Acas** in the resolution of employment disputes, and how CAB advisers interact with Acas on behalf of clients. We will be interviewing Acas conciliators to understand their perspective, particularly as to how their role has changed in view of the new procedural legislature, which enforces ‘pre action conciliation’.

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We hope that this report has stimulated questions and ideas in our readers. **We welcome any feedback or ideas for further areas to be explored by the research team.** Please contact Morag McDermont (**morag.mcdermont@bristol.ac.uk**) or Nicole Busby (**nicole.busby@strath.ac.uk**) with responses or to discuss the content of this report.