



Benefit simplification

Evidence to the Work and Pensions Select Committee
inquiry

April 2007

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Executive Summary

CPAG's starting point is not (necessarily) that the system inherently needs simplification, but that the experience and administration of it needs to be much improved. We do not rule out radical simplification but to leap to system reform (including the single working age benefit) as self-evidently a good idea risks overriding sensitivity to need in favour of administrative ease. Without ensuring sensitivity to different needs and capabilities, moves to simplify risk not only being unjust in many ways but creating large groups of losers.

We would welcome simplification in the delivery of health or disability related provisions but some complexity will remain inherent given the needs. Despite this there are practical solutions Government should be developing urgently— we recommend a greater focus on both better staff training to support families and mechanistic administrative improvements, alongside more long term thinking around structural reform.

A complex system makes it more likely that administrators and (prospective) claimants alike will not understand entitlement rules and having been turned down for one benefit problems may multiply when seeking to claim the proper alternative. This complex web of provision between different Departments and tiers of government inevitably creates gaps for vulnerable people to fall through. A lack of co-ordination and co-operation between the different parts of government add to the difficulties

Scheme oversight and consistency is important, CPAG is highly critical of what we see as the failure to allow the Social Security Advisory Committee (SSAC) to cover all welfare benefits and tax credits on a statutory basis, no matter which Government department they happen to fall under.

The lack of regulations is no indication of simplicity – if claimants do not know how systems work and administrators do not administer these equitably. CPAG sees the advantages of personalisation but the degree of discretion needs to be balanced by the risks of a general lack of clarity and consequent accountability for what has been done. CPAG values the rights based approach precisely because by being clear on criteria, it strengthens the arm of claimants to challenge where decisions are wrong and this provides a powerful lever to improve decision making.

Re-balancing financial support towards more universal provision for children alongside the existing tax credits would be an important simplifying measure.

Introduction and context

1. CPAG welcomes the Committee's inquiry into simplifying the benefits system. This written evidence develops the evidence we sent to the Public Accounts Committee in December 2005 ahead of an evidence session on benefit complexity.ⁱ
2. CPAG, as well as campaigning to end child poverty, is a key second tier advice provider on welfare benefits and tax credits, we advise and train welfare rights advisers and publish a series of handbooks of which our key *Welfare benefits and tax credits handbook* (widely used by rights workers in take up work) runs to 1594 pages. Our starting contention is therefore that the benefits system is indeed complex, with multiple rules and benefits, this complexity has grown and it does

cause problems. Much of the law on benefits is complex. Often it needs to be so, for reasons discussed elsewhere given the differing groups, situations and circumstances it is seeking to cover. However, even taking this as a given does not excuse the extraordinary levels of complexity written into the law.

3. At the same time we urge caution - the current system is as complex as it is precisely because it seeks to meet varying needs. A less rule-bound system would probably imply greater discretion in decision making and this could simply result in more arbitrary decision making. We believe the key aim for policy in looking to simplify should be to simplify systems as these are experienced by claimants. This might involve system reform, or it could mean improving the administration of the current scheme.
4. We recognise the impact of complexity on claimants (for instance through difficulties in accessing entitlements, through both claimant and official error). As a simple example there are four different sets of rules on backdating which apply to DWP benefits alone – up to 3 months for some benefits without the need for special reasons; up to 52 weeks for other benefits without the need for special reasons; up to 52 weeks for housing benefit (if you can show good cause); up to one month (or 3 months in certain cases) for income support and income based job seekers allowance. A great deal of time is spent by decision makers and appeal tribunals looking at whether a person has good cause or special reason for a late claim.
5. We note the language of the Select Committee inquiry press notice is couched around benefits. This note discusses income maintenance generally not benefits specifically. One of the features of recent reform (tending towards complexity), is the greater involvement of Departments beyond the Department for Work and Pensions (DWP) (including HM Revenue and Customs and the Home Office) in income maintenance provision (we use the term 'benefits' synonymously with 'income maintenance' to include both benefits and tax credits). We urge the Committee to explore the ways in which different departments work together to deliver income maintenance policies as part of its inquiry. We argue that similar principles should apply irrespective of the provider department. In particular we continue to argue that the Social Security Advisory Committee should have statutory oversight on regulations affecting tax credits.
6. The Committee's inquiry is timely; the Freud review has opened up a debate on the viability of a single working age benefit. CPAG is interested and keen to be involved in a debate on this. We do not have a clear position as to whether this in itself is a good idea – our views would be conditioned by the principles of any proposed reform and the process of getting there (about which we know nothing). We are clear however that this should be about more than administrative efficiency, such a process needs to support the goal of tackling child poverty and so we would expect issues such as benefit adequacy and access to entitlements to be considered (in terms of take up, legal entitlement and the balance between rights and discretion in the system). We would have great concerns if moves to shift in this direction increased the extent of conditions and sanctions.
7. It is rather ironic that though the Freud report backs the concept of a single working age benefit, aimed at simplification, Freud also suggests a proposed structure of eleven different regional monopolies held by non-state providers, each managing a sub-strata of delivery contracts with (presumably) myriad individual delivery agencies. Without wishing to imply current Jobcentre plus (and

related) delivery is perfect – it is not - the delivery model Freud proposes feels anything but simple. The same irony applies to the recent welfare reform legislation, announced with discussions around simplification but proposing a highly complex scheme – we don't yet see sufficient political will to implement serious simplification.¹

8. We are pleased to see the historical focus of the inquiry because it is CPAG's view that the current system is complex because its history and the need to meet complex need has led it to be so – serious reform proposals need to engage with an accurate representation of the history.
9. The remit of the inquiry is wide and the terrain inevitably complex. Instead of providing a chapter and verse exploration of the issues, this submission first lays out some of the key problems, and discusses key areas tending towards complexity, before discussing first the law and then the balance between rights and discretion. The submission concludes on principles we urge for a better functioning system.

The problems of complexity

10. There are perhaps three key elements we would like to see in the Committee's inquiry: exploration of the extent of complexity; the consequent problems and possible solutions. The first is well established. The second may also appear to be whereas the third is much less well understood. The reason we stress these points separately is that the benefits system seeks to meet complex need, and so **CPAG's starting point is not (necessarily) that the system inherently needs simplification, but that the experience and administration of it needs to be much improved. We do not rule out radical simplification but to leap to system reform (including the single working age benefit) as self-evidently a good idea risks overriding sensitivity to need in favour of administrative ease.** Here we explore briefly some of the key problems associated with complexity – if simplification of structure or administration is to support tackling child poverty these are the problems we feel it should overcome.
11. *Non-take up.* Key means tested and disability benefits have low take up. This undermines the implied overall policy goal of getting the correct entitlements to entitled persons and families. Non-take up may be influenced by a number of factors, but complexity leading to a lack of understanding of (potential) awards is a major driver. It is no coincidence that the take-up of the near universal and relatively simple child benefit has been estimated to be 98 per centⁱⁱ whilst child tax credit has been estimated at only 82 per cent (working tax credit is lower still),ⁱⁱⁱ a pattern made more perverse since the latter is specifically aimed at reducing poverty. Non-take up may be caused by a lack of knowledge but in some cases (probably a minority) it might also represent a choice not to participate – bred by an understanding of the difficulties which might well be experienced in the benefits system, but in either case – that of difficulty in understanding and accessing entitlements or of someone who expects a bad experience and is then put off staying in the system, or applying to it, non-participation damages official anti-poverty objectives.

¹ with this in mind it is worth noting both the existence of the Benefit Simplification Unit and a specific guide from the unit, 'Simplification guide to best practice' with a forward from James Plaskitt MP and Leigh Lewis, how much difference this has made is a mute point.

12. *Claimant error.* We place concern over error above that of fraud because the statistical evidence suggests the former is a greater problem,^{iv} because fraud is falling (where error – at least claimant error - is not)^v and because an over concentration on fraud risks damaging the anti-poverty agenda by stigmatising claimants. If processes are very complex error is quite likely, especially given that poverty may be associated with other factors – such as not having English as a first language or low literacy– which will place claimants at an additional disadvantage in understanding the process of claiming. If processes are complex and if inadequate advice or support (for instance face to face advice) is available then claimant error is quite likely, leading to other problems further on (including non-take up, underpayments and overpayments).
13. *Poor decision-making, official error and inconsistency.* If administrators cannot understand the benefits that they operate then official error is very likely. High error rates, as witnessed by a well-used appeals process and one which frequently awards in favour of claimants, cause difficulties for claimants (for instance being denied their entitlements) and they cause difficulties for administration in setting these right at a later date. The voluntary sector is often needed to pick up the pieces of this by providing independent advice and assistance to appeal, yet this is, itself, an indication of broader systems failure and good quality advice is not always easily accessible to claimants.
14. *Delays.* Overworked bureaucracy or one where one bit does not ‘talk’ to the other is associated with delay, and delay associated with a poorer claimant experience and quite possibly hardship. Again this problem is not inherent to a complex system, but it probably is to a complex system which is under resourced in its operation. Delays not only cause difficulty for individuals, and can exacerbate child poverty, but have a knock on impact on the rest of the social security system (through, for instance, the social fund having to cover shortfalls of other benefits which have not yet been paid).
15. *Benefit interaction.* Since significant passporting links exist within the benefits system (including those to outside departments) the capacity for errors to arise increases. The complexity of links between benefits is probably very poorly understood and it is also quite possible claimants do not know about the existence of some passported benefits (including not only centrally provided provision but local support such as school uniform grants which may be passported from receipt of other benefits). This is worsened by departmental ineffectiveness in sharing data, as witnessed by the test case of Mrs Hinchy^{vi} taken by CPAG, in which the DWP successfully argued that even though one part of it knew about a change of circumstances other parts of the DWP could not be assumed to know about the change – such a basic inability to share records bodes ill for the effectiveness of passporting more generally. Again this factor is worsened by both complexity and poor structures to manage this; CPAG believes there is significant potential to reform the delivery of existing policy (for instance using pre-populated forms or automatic transfer of reported changes of circumstances between systems) to improve its effectiveness and to ease the burden on claimants.
16. *Stigma, time and quality of service.* More generally we would stress that a complex system which requires much of claimants (including stress, time, travel and phone calls), asks them personal questions, particularly around income and family circumstances, and potentially separates them out from their peers (through the means test) risks stigmatising claimants: undermining anti-poverty

objectives and punishing people for their poverty. A decent quality of service, delivered through the DWP or other Departments such as Her Majesty's Revenue and Customs, should be a matter of right not luck.

Meeting complex health needs

17. One area of key complexity is entitlement for those who are sick or disabled. Since judgements need to be made about the severity or impact of medical conditions some of this complexity is inherent. Despite this the current combination of insurance based (incapacity benefit, soon to be the employment and support allowance (ESA)), non-means tested categorical benefits introduced in the 1970s (disability living allowance for those below pension age) and means tested allowances still feels excessively complex. Though non-take up is less well understood for disability benefits as for means tested benefits these do suffer from very low take up which is likely to be attributable to a combination of poorly understood entitlement criteria, poor administration and stigma.²
18. Understanding the complexity of these benefits is doubly important given that they act as passports to other benefits (for instance carers allowance can only be claimed if caring for a person in receipt of the higher or middle rate of the care component of DLA or attendance allowance or constant attendance allowance for war or industrial disablement). These benefits also can increase the amount of tax credits and means tested benefits payable.
19. Government has shown significant recent interest in adult disability, with the welfare reform legalisation and the creation of the ESA. Despite a parallel focus on simplification, these reforms have focused on labour supply. The administration of the soon-to-be-with-us employment and support allowance looks in areas to introduce more, not less, complexity. An example here will be the test of good cause within the ESA, which at present will introduce two different tests of good cause, each of those tests will differ again from those applicable to other DWP benefits, which themselves have a different test of good cause to that applicable for housing benefit. It is CPAG's view that benefit simplification has been given a much lower priority than policies to get people into work.
20. To contribute to thinking around the position of families with a disabled child, CPAG recently published '*Out of reach: benefits for disabled children*'.^{vii} This study started from the understanding that take up of DLA was low and there were administrative hurdles which both made it harder for families to claim and to continue to receive entitlements (which are frequently downrated). The importance of this study to the inquiry is the practical, administrative, steps it urged to simplify the *experience* of the benefits system. Recommendations included:
 - Measures to improve the quality and accessibility of information and advice provided to families;
 - Measures to reduce inappropriate re-assessment, including automatic awards for some groups (for instance children with a terminal illness) and longer term awards;

² with people resisting filling in claim forms which require them to describe their, to their children's, most difficult incapacities

- Shorter claim forms, better use of previously collected data (including pre-populated forms), tailoring forms to make these more relevant;
- A DLA run-on for three months whilst an appeal was active to protect against the financial cliff edge if an award is downrated.
- Better working across different partner organisations (DWP, HMRC, health and local authorities including better provision of advice);
- Ensuring language and publicity used to describe conditions is appropriate, widely available and does not stigmatise children's conditions;
- Better disability awareness training for staff dealing with families or assessing forms, or the use of specialist decision makers.

21. We would welcome simplification in the delivery of health or disability related provisions but some complexity will remain inherent given the needs. Despite this there are practical solutions Government should be developing urgently– we recommend a greater focus on both better staff training to support families and mechanistic administrative improvements, alongside more long term thinking around structural reform.

Spreading the delivery of benefits

22. One of the most obvious recent structural changes has been the diversification of the ways in which benefits are delivered. There are several elements to this, firstly the number of benefits involved and secondly the number of departments which administer them. A larger number of benefits means different entitlement criteria and involving more departments has brought different approaches and cultures. Both issues increase the importance of linking or passporting rules and arrangements.
23. Until 1966 there was one safety net benefit which applied in all circumstances, provided the claimant satisfied the means test, came within one of the groups that qualified (including the unemployed, sick people and elderly people), and satisfied the other conditions of entitlement for the means tested benefit such as not being in full time work. There are now two (income support and job seekers allowance – by 2008 there will be three safety net benefits (with the development of the employment and support allowance) for those under pension age, and one for those over that (the pension credit).
24. Claiming, backdating and entitlement issues are all made more complex by the fact that there will now be four basic benefits rather than one, making it more likely that claimants will claim the wrong benefit or that administrators will wrongly disallow them. As an example, CPAG has frequently heard of lone parents from EU countries who, we understand, are often (wrongly) told that they cannot claim income based Job seekers allowance (IBJSA) - they are advised to claim income support which is then refused on the basis that they then may not count as having a right to reside. It may then be months before a claim can be corrected, worsened by the periodic presumption by Jobcentre plus staff that being turned down for income support would also mean no entitlement for IBJSA. The complexity of the example hides its simple implication – **a complex system makes it more likely that administrators and (prospective) claimants alike**

will not understand entitlement rules and having been turned down for one benefit problems may multiply when seeking to claim the proper alternative.

25. Financial support is now delivered by the Department for Work and Pensions, the HMRC, delivering tax credits and child benefit, and the Asylum Support Service delivering allowances to some asylum seekers and their families. In addition Councils pay out housing benefit and council tax credit under the instruction of the DWP, the Department for Education and Skills pay Education Maintenance Allowances and fund Free School Meals, the Department of Health fund health benefits and Social Service departments pick up a variety of groups often other wise excluded (for instance care leavers and some migrants with children). **This complex web of provision between different Departments and tiers of government inevitably creates gaps for vulnerable people to fall through. A lack of co-ordination and co-operation between the different parts of government add to the difficulties.** The lack of joined up government is amply demonstrated in practice by the lack of co-ordination between the DWP and the HMRC. It is particularly vital that there is close co-operation between DWP and the HMRC in the delivery of financial support to a claimant on a means-tested benefit who has children for whom support is provided by the HMRC. As a specific example, one key link is the process for Jobcentre plus staff to fast track claims for child tax credit, yet in practice this does not appear to happen. As a result, until this is claimed, a family on a means-tested benefit will be dependent on their adult allowance and the child benefit to survive.
26. Passporting claimants to other benefits (for example those provided by Health and by Education) are the responsibility of a variety of departments. In reality there is no certainty that those who are entitled to passported benefits will receive them and the split between the DWP and HMRC has resulted in a new system of identifying those entitled which has led to long delays. In principle better co-ordination of IT databases ought to allow one department to identify entitled families and inform another but in practice our understanding is that though Departments 'sweep' for relevant information this can build delays into delivering provision.
27. Provision across separate departments also gives the potential (and risk) of different approaches taken to policy development. Here there is a broader cultural analysis around the differences between the DWP's weekly income tests and the annual system used by HMRC or differences in the application and use of appeals, but much more specifically there is the question of scheme oversight. Here **CPAG is highly critical of what we see as the failure to allow the Social Security Advisory Committee (SSAC) to cover all welfare benefits and tax credits on a statutory basis, no matter which Government department they happen to fall under.** SSAC, in its statutory role, covers all DWP benefits, including Housing Benefit and Council Tax Benefit. The Government persist in exempting it from having any public or statutory role in relation to working tax credit, child tax credit, child benefit and guardian's allowance, despite having assured Parliament otherwise during the passage of the Tax Credits Act 2002. This dogmatic adherence to the view that HMRC administered provision is somehow different form other welfare benefits is without any justification.
28. The spread of provision across departments is discussed above - here we give a specific example of the legal ramifications of difficulties of links between different elements of provision. An example of these links recently arose in the context of income support and child support. The issue was a straightforward one, or so it

seemed. Income support purposes as a weekly means-tested benefit, but how then are payments of child support maintenance which are in arrears to be treated? The answer is purportedly given in regulations 60A to 60E of the Income Support General Regulations 1987. At the heart of the case was regulation 60C and paragraph (4) and (5) in particular. These provide:

“60C (1) The weekly amount of child support maintenance shall be determined in accordance with the following provisions of this regulation.

(2) Where payments of child support maintenance are made weekly, the weekly amount shall be the amount of that payment.

(3) Where payments of child support maintenance are made monthly, the weekly amount shall be determined by multiplying the amount of the payment by 12 and dividing the product by 52.

(4) Where payments of child support maintenance are made at intervals and those intervals are not a week or a month, the weekly amount shall be determined by dividing that payment by the number equal to the number of weeks (including any part of a week) in that interval.

(5) Where a payment is made and that payment represents a commutation of child support maintenance the weekly amount shall be the weekly amount of the individual child support maintenance payments so commuted as calculated in accordance with paragraphs (2) to (4) as appropriate.

(6) Paragraphs (2), (3) or, as the case may be, (4) shall apply to any payments made at the intervals specified in that paragraph whether or not –

(a) the amount paid is in accordance with the maintenance assessment, and

(b) the intervals at which the payments are made are in accordance with the intervals specified by the Secretary of State under regulation 4 of the Child Support (Collection and Enforcement) Regulations 1992.”

29. The appeal tribunal did not know what was meant by paragraph (5), nor was the Commissioner confident of its meaning. By the time the case reached the Court of Appeal – *Secretary of State -v- Menary-Smith* [2006] EWCA Civ 1751, the presiding Lord Justice of Appeal, Lord Justice May, said:

“The legislation which seeks to answer questions of this kind is less than completely clear. It is perhaps idle to say that it ought to be clear. Yet the legislation materially affects the week by week entitlements of parents with care to receive income support, and they and their children are by definition people who badly need the money. It is common knowledge that absent parents often get into arrears with payment of child support maintenance. It is regrettable that a combination of obscure legislation and incomplete and inaccurate presentation of the facts has brought this appeal to this court in a state in which we are unable to provide answers which will both finally determine the particular case and give guidance for future cases”.

And on paragraph (5) he said:

“I do not presently regard regulation 60C(5) as other than obscure, and Miss Lieven did not, despite valiant efforts, succeed in enlightening me”.

And he said of paragraph (4):

“Miss Lieven [for the Secretary of State] submitted that regulation 60C(4) applied and she may be right, although the administrative complications that this might raise with successive haphazard payments of arrears of child support maintenance are acute, as this case has amply illustrated.

30. If the Court of Appeal struggled to work out how the legal test was to be applied – to what is a key aspect of welfare provision – then how are those administering the scheme and on the receiving end of it meant to understand it and their rights and obligation arising under it.
31. Another example of interface difficulties concerns tax credits and DWP means-tested benefits. Perhaps the best example of the labyrinthine complexity created by one transitional rule is the decision of the Commissioner in CIS/1064/2004
32. This brief exploration shows an increase in the number of benefits and departments involved in benefit provision. We do not dismiss all of the reasons for why this greater spread has occurred (HMRC delivery has brought significant problems but it may also have reduced stigma for some families). However, a wider range of benefits makes it harder for both entitled persons and administrators to know what individuals should be claiming. **Delivering benefits through different departments requires a level of joined up government (around administering and around publicising entitlements) that usually does not exist in practice.** More complex departmental links also make it harder to co-ordinate passporting of benefits (such as access to free prescriptions and free school meals).

Administrative Complexity: revisions and supersessions

33. Even once decisions have been made about an initial award, changes to that award bring with them fierce complexity in law worth the Committee's time in examining. The Social Security Act 1998 was supposed to herald a new and simpler approach to decision-making. It has, with respect, done nothing of the sort. The high water mark for unnecessary complexity must be the rules on revision and supersession arising under section 9 and 10 of the SSA 1998. In other words, how you change an award once it has been made and is in place (e.g. for change of circumstances). Too much space would be taken up by setting out those rules here. The Committee may simply wish to apprise themselves of regulations 3 to 7 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999, which contain the rules for making such changes. Regulation 7 alone has over 35 main paragraphs, and many, many sub-paragraphs. Regulation 7 is only dealing with the date from which the change takes effect.
34. Perhaps unsurprisingly these provisions have led to difficulties of interpretation and application. They have already been considered by the Court of Appeal twice and by two Tribunals of Commissioners. The last decision of a Tribunal of Commissioners came in at 198 paragraphs and 61 pages long^{viii}. There have been well over 120 individual commissioner decisions on this area since the SSA 1998.

Restrictions

35. The third large area, and cause, of complexity we explore here is the need or desire to restrict access. Though there may be good reasons for applying conditions, and no benefit is unconditional (even child benefit means you have to have a child to qualify), increasing the extent of conditions directly increases the complexity for those experiencing and administering systems. There are both social justice issues here (with a history of tightening restrictions actively making migrant groups more vulnerable) and practical delivery issues for administrators in assessing who is entitled. To illustrate and substantiate this, this section explores two key groups briefly, first young people and benefits and secondly migrants. That it is possible to highlight these as specific groups is an indication of the targeting being used, it also illustrates the impact of restrictions.

Young people and benefits

36. Childless young people (16-24 years), have very different (and meaner) entitlements to older claimants. This section lays out some of the differences in treatment to illustrate both an adequacy point— that limitations on entitlement worsen the position of those in transition from childhood to possible parenthood - and to show a complexity point, that the policy drive to restrict entitlements creates both gaps and complexity.

37. Young people and benefits is a hugely complex area mainly due to the fact that they are not only subject to special rules of their own but also to a raft of exceptions within the general benefit rules. For example, those whose only basis for entitlement would be via availability for work are not usually eligible for jobseekers allowance but can be paid a discretionary temporary allowance between the ages of 16 and 17 only in certain circumstances. Furthermore some young people are excluded from benefit altogether (for example care leavers).

38. Between the ages of 16-20 young people may be treated either as dependants of their parents or independent. This needs to be established first as it affects either the parent's benefits or the young person's potential entitlement to benefits. For example, a young person in non-advanced education or in specified training who has to live away from their parents or a person acting in the place of their parents may be entitled to income support. There are various hurdles to get over: whether the person is independent; whether they are in non-advanced education or specified training; what their reasons are for living away from home (these can include, amongst others, estrangement or being in physical or moral danger) and finally if living with an adult where that person is substituting for their parents.

39. Those who have to sign on will also be required to join the New Deal for Young People between the ages of 18 and 24 and non attendance opens the door to sanctions. In some areas other types of employment programmes with different rules apply.

There are a specific series of differences which affect this group and which add to general benefit complexity, including lower rates of means-tested benefits, no entitlement to working tax credit unless as a disabled worker or looking after a child and the single room rent restriction placed on housing benefit.

Immigration

40. This second group illustrates not only the difficulties associated with having a group systematically treated differently, but also one where the pattern of reducing entitlements over time has increased both restrictions and complication.
41. There are various rules that claimants have to satisfy in relation to immigration status and residence which create complexity within the benefit system.
42. There are several residence tests that apply which differ for non-means tested and means-tested benefits and which have a different impact depending upon whether the claimant can rely upon European Community law. For example, the ordinary residence test delays entitlement to disability benefits for those who may be legally resident but for those who come from the European Economic Area periods of residence in those states can allow them to qualify straightaway; the habitual residence test applies to means-tested benefits but, since it is a phrase undefined in domestic law, it took eight years to obtain a final clarification of the law in the House of Lords.
43. The right to reside test introduced in May 2004 in response to the expansion of the European Union (EU) has brought immense complexity into this field. It was designed to exclude nationals from eight of the new member states (A8 states) from accessing social security benefits unless they had a right to reside in the UK. However, the test applies to all claimants not just those from the new EU member states. Deciding whether a person has a right to reside is a complex issue, requiring a thorough understanding of EC law, immigration and nationality rules, and how the test applies to nationals of the old EU, the A8 and A2 countries. CPAG has noticed poor decision-making in this area which has led to severe hardship for claimants and their families. There are also areas where the law is unclear as to whether claimants from EU states are entitled or not.
44. It is often then left to caselaw to clarify legal entitlement, both the habitual residence test and the right to reside test have generated copious caselaw, some of which has had to be dealt with by Tribunals of Commissioners.
45. Another example is asylum seekers, and the increasingly complicated manner in which successive administrations have sought to shut them out of benefit entitlement. See for example regulation 12 of the Social Security (Persons from Abroad) Miscellaneous Amendments Regulations 1986 (SI 1996/30), and the three Court of Appeal decisions and one House of Lords decision that alone gave rise to as to the meaning of the regulation^{ix}.
46. The reason for much of these differences in rules in relation to immigration and young people appears to be control; the result is incredible (and often unnecessary) complexity. CPAG would like to see these rules examined to better align entitlements for these vulnerable groups with the majority of the population.

Rights and discretion

47. Over the history of the development of social protection systems within the UK there has been a tension between the extent to which benefits are based on codified legal rights or a more discretionary basis where administrators have scope to make decisions as they see fit (presumably within a scheme of guidance or regulation). These two concepts describe poles, with a spectrum in between on

which particular schemes or benefits sit. This section uses the examples of the social fund and the advisors discretion fund to illustrate the continuing tensions between rights-based and discretionary approaches and some of the problems this creates.

48. The post war National Assistance scheme had a significant degree of discretion within it, the drawback being that it was not always clear precisely what was going on and given that administrators had significant scope to apply discretion, the ways in which decisions were taken could be stigmatising (an example often quoted includes officers demanding to see bed linen) and could vary by administrator and postcode.
49. The shift towards more codified rights based systems (through the supplementary benefits scheme reforms) allows greater clarity of what is going on and a clearer mechanism for individuals to challenge where decisions are wrong. The ability to appeal decisions both has the individual effect of reversing wrongful decisions and the scheme effect of incentivising the bureaucracy to reduce official error. At the same time the need to codify produces more regulations and will reduce flexibility, leading inevitably to charges of greater complexity. However **the lack of regulations is no indication of simplicity – if claimants do not know how systems work and administrators do not administer these equitably.**
50. Though the 1988 reforms (following the Fowler review) reinforced aspects of the rights approach, these also introduced the Social Fund and established three types of discretionary payments: crisis loans, budgeting loans and community care grants. These replaced the grants made via single payments under the (old) supplementary benefit scheme and grants made as part of urgent cases payments of supplementary benefit. The motivation of the reform may have been to cap expenditure though the single payment scheme but the result was to restrict access to grants (witnessed by the pressure on the current social fund and the extent to which claimants access alternative forms of (often exorbitant) credit), and the extent to which current awards are discretionary and budgets are devolved results in postcode lotteries of provision (where you might get a grant in one location but not another, even though the circumstances were identical).
51. The second example we quote is the Advisers Discretion Fund (ADF)³ which is used by personal advisers at Jobcentre plus to facilitate work return. Though clearly claimants do need access to a fund which can support them to overcome barriers to work (eg. a lack of suitable clothing), the key question hanging over the ADF is exactly what is going on in it? Payments are authorised by the Personal Adviser and so are dependent on the nature of their relationship with the claimant (we are not aware of safeguards to protect against discriminatory behaviour by staff, deliberate or unintended) and its existence does not seem to be advertised and there is currently no right of independent review as is the case with the social fund. Many of these downsides lead directly from this discretionary approach.
52. The tension between rights and discretion continues to be relevant, with the Government's decision to incorporate the principles of the European Convention on Human Rights into domestic law strengthening the rights approach, but at the same time moves towards greater personalisation through Jobcentre plus services increasing the extent of discretion. **CPAG sees the advantages of**

³ As an aside the historical roots of the current ADF may be traced to the single payment scheme (or an urgent cases payment) under supplementary benefit before 1988 – a further example of diversifying provision.

personalisation (for instance in designing support to facilitate return to work) but the degree of discretion needs to be balanced – personalisation carries the same risks as discretion has always done of a general lack of clarity and consequent accountability for what has been done.

Conclusions: principles of a well designed benefits system

53. As stated at the start of this submission CPAG is keen to engage in this debate but it is not yet clear in which direction moves to simplify the benefits and tax credit system are moving – there is no clear strategic direction. This makes it difficult to comment in detail about the likely impact of any reforms – for instance we have as yet had scant discussion around the implications of reform for the National Insurance scheme. We are left with the distinct feeling of a complex system, with system-generated obstacles within in it which could benefit from significant overhaul.
54. We began this submission by suggesting three key elements for your inquiry, first identification of the extent of complexity; second identifying consequent problems and third identifying solutions. The first element is seems without reasonable dispute, the benefits system is highly complex. The second (consequent problems) informs the third (solutions) and bears more consideration, the evidence in this submission suggests that though the benefits system is complex, many of the problems felt by claimants actually result from administrative system failings (e.g. of departments to effectively talk to each other, or align rules, systems or processes). Clearly such administrative failings may link with structural considerations (such as delivery through different benefits or departments) but this does imply that **there are practical, achievable steps to improve the way benefits are delivered and the complexity encountered by claimants on which urgent progress is possible.** Longer term we welcome the debate around structural reform but with the coda that achieving this should not be at the expense of sensitivity to meeting complex need – we look to simplification to deliver tangible improvements for families which support moves to halve and eradicate child poverty, not only to ease administrative burden.
55. The fact that different families have different needs is perhaps the core reason for why the income maintenance system has got as complex as it has. Any moves towards simplification, or a single working age benefit, need to consider how such financial and personal needs would be met under a simpler system – for instance families with a disabled member need a higher level of income to achieve the same standard of living as those without disabilities. Equally the current system applies different levels of conditionality to different groups because it accepts (to some extent) differences in individual capacity to work – any effective system needs the ability to cater for many different financial and personal needs. **Without ensuring sensitivity to different needs and capabilities, moves to simplify risk not only being unjust in many ways but creating large groups of losers.**
56. Given that we live in a complex, often legalised, world we feel the Committee could usefully spend time investigating how citizens are 'prepared' understand and to realise their rights. This highlights both the importance of legal education (and with perhaps a link in to the citizenship curriculum) of children as they grow up. It also highlights the importance of the advocacy role performed by independent advice services. CPAG's experience is that independent advocacy is

under significant pressure, yet its role is critical to supporting claimants manage and negotiate complex systems (from general funding difficulties, pressures generated by the review of civil legal aid and from pressures generated by repeated reform of benefits and related provision).

57. On area of complexity the Committee should consider is the extent to which under recent years the number of departments (let alone differences across devolved administrations and down to the level of local authorities) involved in benefits delivery has increased – DWP provides means tested benefits, National Insurance benefits and social fund; HM Customs and Revenue maintain child benefit and the tax credits; the Home Office provide support for some asylum seekers (local authorities for others and charities for those whose claims are rejected); DfES provides the Education Maintenance Allowance and the Department for Health provides prescription charge exemption (and others). We do not offer a view around whether DWP or HMRC should operate schemes (we do argue however that asylum seekers should be dealt with by mainstream systems), but the organising principles should be similar (and these are often not) and the linkages between departments should be good: claimants do not see discrete parts of government which may or may not talk to each other, they see government services who they expect to know what has already been told to them.
58. CPAG, as an organisation campaigning for the eradication of child poverty, remains committed to universal solutions such as child benefit.^x Universal policies are undoubtedly more costly, but they are simpler, easier to administer and much more effective – they do not suffer the same level of problems of non-take up, claimant and official error, overpayments, underpayments and work incentive problems which bedevil means tested arrangements. As part of the ‘Make Child Benefit Count’ campaign^{xi} CPAG is calling for the rate of child benefit paid for second and subsequent children to be raised to that of the first. **Re-balancing financial support towards more universal provision for children alongside the existing tax credits would be an important simplifying measure.**
59. We urge the Committee to reflect on the impact that current ‘efficiency’ savings are having on the effectiveness of administration, having sufficient, well motivated and trained staff is clearly important in helping support claimants negotiate the current system.
60. The balance between rights and discretion needs careful consideration. Moves towards personalisation have advantages in terms of gearing services to individual need but moves in this direction increase the scope for discretion which has traditionally been associated with greater risks of discrimination, variable service (such as postcode lotteries), a lack of accountability (made worse by the greater difficulties of monitoring) and in challenging wrong decisions. **CPAG values the rights based approach precisely because by being clear on criteria, it strengthens the arm of claimants to challenge where decisions are wrong and this provides a powerful lever to improve decision making.**
61. Finally, in summary, CPAG would like to see a simpler experience of the benefits system, which might include looking at the current complexity of benefit regulations and the structure of the system or its administration. We do not believe it can be taken for granted that the root cause of the poor experience too

often experienced by claimants solely results from complexity – the effectiveness of structures and bureaucracy in managing these also play a significant role.

About CPAG

CPAG is the leading charity campaigning for the abolition of poverty among children and young people in the UK and for the improvement of the lives of low income families. CPAG aims to: raise awareness of the causes, extent, nature and impact of poverty and strategies for its eradication and prevention; bring about positive policy changes for families with children in poverty; and enable those eligible for income maintenance to have access to their full entitlement. CPAG is a founder member of the campaign to End Child Poverty.

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i Child Poverty Action Group, December 2005, 'Tackling the complexity of benefit regulations', available at http://www.cpag.org.uk/info/briefings_policy/CPAG_simplification_benefits.pdf

ii As noted by Paymaster General Dawn Primarolo MP, Hansard Column 816W, 2 March 2004.

iii HMRC, Child tax credit and working tax credit take up rates 2004-05, HMRC, 2007

iv For example, in terms of overpaid benefit the DWP have estimated a fraud level of 1% for the Pension Credit, compared to 1.4% customer error and 2.6% official error (hence 1% fraud and 4% error). For income support the DWP estimate 2.1% fraud, 1.1% claimant error and 2.0% official error and for jobseekers allowance 1.9% fraud, 1.4% claimant error and 2.0% official error. In each case error costs more than fraud. See DWP, 2006, Fraud and Error in income support, jobseekers allowance and pension credit from October 2004 to September 2005, National Statistics, 2006

v see DWP, Fraud and error in income support, jobseekers allowance and pension credit from April 2004 to March 2005, 2006, National Statistics

vi This case was heard by the House of Lords in February 2005. The case related to a claimant who was overpaid one benefit (income support), as a result of another having come to an end (Disability Living Allowance). The ruling suggested that the claimant had failed to report the change, even though both benefits were administered by the same department.

vii Preston, G with Robertson, M, Out of reach benefits for disabled children, Child Poverty Action Group, 2006

viii R(IB)2/04

ix *Yildiz v. Secretary of State for Social Security* [2001] EWCA Civ 309; *R v. Chief Adjudication Officer ex parte B* [1999] 1 WLR 1695; *Krasniqi v. Chief Adjudication Officer and Anor*; *Regina v. Secretary of State for Social Security, ex parte Vijeikis* (unreported, March 5, 1998); and *M –v– Secretary of State for Social Security* [2001] UKHL 35.

x Unfortunately this is not truly universal –restrictions have been placed on this for some migrant groups.

xi See www.makechildbenefitcount.org