Using lie detectors to identify benefit fraud

Govt in early stages of investigations

Following reports that the DWP is considering using lie detectors to identify fraudulent benefit claims, the government has confirmed that the DWP is in ‘the early stages of conducting preliminary investigations’ into their use by insurance companies to detect signs of stress in the voice that can betray false claims.

The government’s statement – given in a parliamentary written answer in the Commons on 24 January – follows the DWP having denied in December 2004 that it was considering using lie detectors to identify fraudulent benefit claimants, despite documents obtained by The Independent newspaper suggesting the opposite. The documents showed ministers were being urged to secretly pilot the plans.

In his written answer, Work and Pensions Minister, Chris Pond, said that whilst the government has made no formal assessment of the value of such technology, and has no current plans to introduce such measures –

‘We are in the early stages of conducting preliminary investigations into how voice stress analysis technology is currently used in the private sector.’

NB – The DWP recently announced that it has cut fraud and error in income support and JSA claims by half since 1997. Over the period the Department would have paid out £1 billion more in benefits if it had not cut fraud and error to current levels.

Incacity benefit to be abolished

‘Sickness ... represents a pause in people’s working life, not a full stop’

The government has announced that incapacity benefit is to be scrapped, and two new benefits introduced to differentiate between those who have a severe condition and those with more potentially more manageable conditions.

Announcing the reforms in January 2005 as part of the DWP’s five year plan for welfare benefit reform, Secretary of State for Work and Pensions, Alan Johnson, said that they would be the biggest change in incapacity benefits since they were created –

‘It doesn’t make sense to have a system that lumps everyone together – treating in exactly the same way the person with back pain and the person with terminal cancer.

And for people with conditions that the right support can make more manageable, we should be rewarding steps towards work instead of the length of time on benefits.

Our radical reform should mean that sickness benefit represents a pause in people’s working life, not a full stop.’

NB – These radical reforms are to be introduced on the back of the expansion of the Pathways to Work incapacity benefit pilots which are to be rolled out to more areas to include a third of all claimants in the next two years, and extended to those who have been on incapacity benefit for up to three years.

More than one million pensioner households still missing out on pension credit

Almost a third of pensioner households who could be eligible for pension credit are still not in receipt of the benefit almost 16 months after its launch, according to new DWP figures.

The figures show that the total number of households benefiting from pension credit is now 2.65 million, against the government’s estimate that 3.75 million pensioner households could be eligible.

If current take up rates of 30,000 households/quarter are maintained, then the DWP’s Public Service Agreement target – that by March 2006 pension credit will be being paid to 3 million pensioner households – will have been missed by 200,000 households. In addition, the number in receipt of pension credit will have fallen short of the government’s own estimates of the number that could be entitled by a million households.
Incapacity benefit to be abolished
(continued from page 1)

The key elements of the reforms for new claimants are –

- claimants will initially be put on a holding benefit paid at JSA rates pending a ‘proper’ medical assessment – i.e. the Personal Capability Assessment (PCA) – that will take place within 12 weeks, and be accompanied by a fuller assessment of potential future work capacity – a new Employment and Support Assessment.

  The PCA process will then become the gateway to two new benefits.

- those with potentially more manageable conditions will receive Rehabilitation Support Allowance, paid at a basic rate equivalent to JSA, and with a strong focus on return to work.

  Rehabilitation Support Allowance claimants will be required to engage in Work Focused Interviews and in activity that helps them prepare for a return to work (this could include work preparation, training or basic skills support). They will then receive more than the current long-term IB rate, but those who completely refuse to engage will return to the basic rate of benefit. Rules relating to sanctions will be decided in due course.

- those with the most severe conditions will be automatically entitled to a new Disability and Sickness Allowance.

  Disability and Sickness Allowance claimants will be required to engage in some Work Focused Interviews, and also be encouraged to engage in return-to-work activity wherever possible (and be able to access all programmes and incentives as now) but there will be no requirement on them to do so.

The new proposals will be piloted and consulted on before ‘key elements’ are introduced for new claimants by 2008.

NB – Existing claimants will be able to choose to access the help and support on offer to help them return to work, and the DWP is to explore how best to incentivise them to do so. It will also review the operation of the existing linking rules to ensure that existing claimants’ positions are protected if they take a job and then need to return to benefit.

Delaying overpayment recovery action pending a possible appeal

Local authorities have been encouraged by the DWP to delay overpayment recovery action until the expiry of the one month period during which a claimant can exercise their right of appeal.

In the January 2005 issue of its Housing Benefit Direct newsletter, the DWP says that, given that a decision on the recoverability of an overpayment is appealable, it feels that best practice is to postpone the actual recovery of the overpayment until the prescribed time for appealing has expired, and reminds local authorities that this advice is already given in the DWP HB/CTB Overpayments Guide.

The DWP also makes reference to a recent Local Government Ombudsman’s report that found a local authority to be guilty of maladministration because it started recovery immediately before the claimant had an opportunity to appeal.

NB – The Overpayments Guide, while acknowledging that there is no legislative requirement to halt overpayment recovery after an appeal is lodged, advises that it is considered good practice to do so.

Housing Benefit Direct is available @ www.dwp.gov.uk. The DWP HB/CTB Overpayments Guide is available via the ‘toolkit’ @ www.rightsnet.org.uk

New regulatory net for the not-for-profit advice sector?

A government-commissioned review of legal services in England and Wales has recommended that advisers in the not-for-profit legal advice sector should come under a new regulatory net.

The Report of the Review of the Regulatory Framework for Legal Services in England and Wales concludes that the current regulatory framework – in which, for example, the Law Society is overseen by the Master of the Rolls; the Bar Council and the Institute of Legal Executives by the Department for Constitutional Affairs; the Office of the Immigration Services Commissioner by the Home Office; and the Faculty Office, the front-line Regulator for notaries, by the Archbishop of Canterbury – is outdated, inflexible, over-complex and should be more accountable and transparent.

Whilst the report therefore recommends the establishment of a new regulatory framework with a regulator called The Legal Services Board to provide consistent oversight, it recommends that those who are employed as advisers in the not-for-profit advice sector, as well as those who provide advice or assistance on a voluntary basis, will also come under the regulatory net.

Whilst acknowledging the existing regulatory burden placed upon voluntary sector agencies, the report states that –

‘… to suggest that the not-for-profit area should not be covered by regulation would leave vulnerable those most likely to be disadvantaged by lack of knowledge of the law and legal services.’

NB – The report does however highlight the flexibility of providing a range of legal skills under one roof, as is often seen within the not-for-profit advice sector, and recognises the division of expertise often seen within law centres and citizens advice bureaux, for example, as the most efficient way of meeting client needs for legal advice.

The Report of the Review of the Regulatory Framework for Legal Services in England and Wales is available @ www-legal-services-review.org.uk

www.rights the welfare rights website
Freedom of Information Act requests reap early dividends for advisers

Following the coming into full effect of the Freedom of Information Act 2000 on January 1 2005, advisers have already had significant success in securing information which the DWP had previously sought not to openly disclose.

NB – The Act provides a right of access to recorded information held by public authorities, subject to certain exemptions, and establishes the arrangements for enforcement and appeal.

Following a request under the Act, www.benefitsandwork.co.uk report that briefings, provided by the Disability Living Allowance Advisory Board to decision makers and tribunal members about the effects of different health conditions on entitlement to DLA, have been withheld from members of the public and representatives to the potential detriment of claimants and appellants.

The Advisory Board – a government quango set up in 1991 to advise the Secretary of State on matters relating to DLA and AA and give advice to medical services doctors on cases referred for ‘expert’ advice – produces an educational Update, containing articles on different health conditions, which it distributes to DWP decision makers and to disability members on DLA and AA appeal tribunals. Each of the Updates contains the following –

‘HEALTH WARNING. Please note – the articles in this news sheet are written for the benefit of Decision Makers, to help them with their job. The articles are not to be quoted in any decision or communication with members of the public or their representatives.’

‘benefitsandwork’ point out that –

‘This lack of openness has serious implications for the legality of tribunal decisions. It is a basic rule of natural justice that claimants should have the right to see all the information used to make a decision. It is also a basic rule that tribunals should be impartial. Yet the information in the Updates is secretly shared between one of the parties to the appeal, the DWP, and one of the members of the tribunal whilst its existence is deliberately kept secret from the claimant.’

As a result of the ‘benefitsandwork’ request, all the Updates are now available on the Advisory Board’s website @ www.dlaab.org.uk, and the Board has said that ‘future issues will be placed on the website as soon as they are published.’

‘benefitsandwork’ have also obtained minutes of recent meetings of the Modern Service Working Group, which consists of the DWP and a range of disability organisations, which acknowledge that the Disability Handbook – that provides guidance to decision makers on care and mobility needs – requires updating and expanding in order to reduce inconsistencies in award levels, award duration, evidence gathering, and requests for medical evidence. However, rather than undertake such an exercise, the minutes suggest that the Handbook will be replaced by a computerised ‘awards management system’ that will provide ‘structured, IT based guidance to decision makers at the point of need.’

The new computerised system will –

- contain specially written information on specific impairments, which the decision maker will be able to read on screen;
- prompt the decision maker to ask impairment specific questions, and then offer ‘structured, IT based guidance’ to them as they deal with a case; and
- contain guidance to address – component and award; award duration; post award intervention; and whether to invite a renewal.

The DWP expect such computer led decision making to result in a ‘reduced level of appeals’ and ‘fewer changes following an appeal’.

If you would like more information about ‘benefitsandwork’ see their website @ www.benefitsandwork.co.uk

DWP publishes five year plan

The DWP has published a five year plan designed to increase the overall employment rate from 75% to 80% by ‘tackling inactivity while still supporting those who are unable to work.’

In addition to replacing incapacity benefit with two new benefits – detailed on page I – other highlights of the DWP plan include –

- lone parents – a new initiative – Pathways to Work for Lone Parents – that will bring the New Deal for Lone Parents, the In-Work Credit and Work Search Premium, and Extended School Childcare together in pilot areas from April 2005.
- pensions – increased opportunity to work longer and save more by increasing welfare to work help; and giving people the chance to save more for their retirement by deferring the state pension and getting a lump sum, which could be between £20,000 and £30,000 when someone works for an extra five years.
- child support – steps to help the Child Support Agency achieve a ‘satisfactory level of service’, including careful consideration of the January 2005 report by the Commons Work and Pensions Committee report – which said that the Agency needed to improve its service within weeks or face being scrapped – and the protection of front-line CSA staffing levels until its computer system is working effectively.
- local housing allowance – extending the local housing allowance pilots to include tenants in housing association and council properties. Launched in November 2003 in the private sector, the allowance replaces housing benefit with a standard payment based on area and family size.
- skills – the publication of a Skills White Paper shortly that will propose the introduction of a one-stop skills service in job centres, with access, for the employed as well as unemployed, to personal skills advisers and training.

You can download a copy of the DWP’s five year plan, Opportunity and security throughout life, from www.dwp.gov.uk
HB maladministration and possession proceedings for rent arrears

The Court of Appeal has held that maladministration on the part of a housing benefit authority is not an exceptional circumstance that could result, in possession proceedings, in a court exercising its power to adjourn a hearing date for the purpose of enabling a tenant to reduce their rent arrears below the level founding the claim for possession.

Dismissing the appeals of four tenants – in North British Housing Association Ltd v Matthews; North British Housing Association Ltd v Smith; North British Housing Association Ltd v Massoud; and London and Quadrant Housing Trust v Morgan [2004] – the Court of Appeal said –

‘... the fact that the arrears are attributable to maladministration on the part of the housing benefit authority is not an exceptional circumstance. It is a sad feature of contemporary life that housing benefit problems are widespread. To a substantial extent, these are no doubt the product of lack of resources. But we do not consider that the non-receipt of housing benefit can, of itself, amount to exceptional circumstances which would justify the exercise of the power to adjourn so as to enable the tenant to defeat the claim.’

However, in concluding comments, the Court highlights Regulatory Circular 07/04 in which the Housing Corporation – that funds and regulates housing associations in England – advises that eviction should be retained as a last resort, and that –

‘Possession proceedings for rent arrears should not be started against a tenant who can demonstrate that they have (1) a reasonable expectation of eligibility for housing benefit; (2) provided the local authority with all the evidence required to process a housing benefit claim; (3) paid required personal contributions towards the charges.’

The Housing Corporation circular is available @ www.housingcorplibrary.org.uk.

Benefits and shared care of children


The appeal related to the question of whether it is discriminatory, where the care of a child is shared, to link entitlement to child additions in income-based JSA to receipt of child benefit. Whilst the appellant, Mr Hockenjos, shared the care of his children with his ex-partner for different but roughly equal parts of the week, he was refused additional amounts of JSA in respect of his children because their mother was in receipt of child benefit for them.

The Court of Appeal allowed the appeal, agreeing that the operation of the rule of entitlement to child additions for income-based JSA does discriminate in favour of women, and that the Secretary of State had been unable to show objective justification for the discrimination.

In giving the judgment Lord Justice Ward called for urgent consideration to be given to the need to cater for shared care arrangements in the fair allocation of limited resources.

NB – Whilst the case was not directly applicable to the tax credit regime or other means tested benefits, similar arguments could perhaps be run relying on the Human Rights Act – arguments not available to Mr Hockenjos as his appeal commenced before the introduction of the Act in October 2000.