Work and Pensions Committee – Fraud and error in the benefits system
Evidence from the Low Incomes Tax Reform Group ('LITRG')

1 Introduction

1.1 We welcome the Committee's enquiry into fraud and error in the benefits system. We would like to draw the Committee's attention to a number of points in relation to HM Revenue & Customs' (HMRC's) current error and fraud strategy.

1.2 It was noted by the Public Accounts Committee (PAC)[1] in their report on tax credits error and fraud that HMRC made little progress in reducing the amount of money lost to error and fraud despite a significant increase in compliance activity. We believe that HMRC have not yet identified fully the causes of error (as opposed to fraud) in the system and that their plans to increase compliance activity will once again likely lead to very disappointing results. In particular, the lack of acknowledgement of official error and errors to which HMRC have contributed is barely recognised, which is worrying.

1.3 We are extremely concerned about the impact of current compliance activity on claimants who make innocent mistakes due mainly to the complexity of the system and poor guidance from HMRC. We are further concerned about the processes for challenging decisions and to what extent these costs are taken into account in establishing whether an intervention is cost effective.

1.4 Historically, HMRC guidance and advice on the most problematic areas of the tax credits system, such as childcare, couples, working hours, self-employment and disability has been

[1] http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/135/135.pdf

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poor. Although in the last eighteen months some guidance has been produced, we remain concerned that HMRC are carrying out large numbers of interventions without taking steps to educate claimants so the same errors do not recur. The standard of advice given by the Tax Credit Helpline is also very concerning.

1.5 Finally, we would like to draw the Committee's attention to the conflation of the terms 'error' and 'fraud'. We believe that in order to properly address the issues in the system, it must be recognised that fraud and error are two separate issues that require quite different solutions to combat them.

2 About Us

2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.

2.2 LITRG works extensively with HM Revenue & Customs and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 The Committee's questions

Where errors occur in the benefits system and the adequacy of steps being taken to reduce them

3.1 ***Understanding error and fraud***

3.1.1 We do not believe that HMRC have adequately analysed the causes of error in the tax credits system. This may partially explain why they failed to meet their target to reduce error and fraud in the system to 5% of finalised entitlement by 2010-11.

3.1.2 The latest tax credits error and fraud statistics relate to 2011-12[1]. The report contains a statement reading:

> *'Estimates of official error were published for the first time in 2006-07. As part of the working of each case compliance officers were asked not only to classify whether or not a case that was found to be incorrect was due to either error or fraud, but also whether or not the error was due to HMRC. HMRC error figures were not included in the 2007-08, 2008-09, 2010-11 and 2011-12 publications due to the small number of cases in those samples found to be affected.'*

Yet the DWP report[2] for the same period showed that nearly 40% of error was official error rather than claimant error.

3.1.3 We believe that part of the problem relates to how HMRC gather the data for their error and fraud statistics. The notes that accompany the statistics confirm that the sample cases (just under 4,000) are worked by compliance officers in the same way as any other enquiry but, at the end, the officer is asked to indicate whether they believe any overpayment was the result of genuine error or fraud and if error, whether it was claimant error or official error.

3.1.4 Based on our experience over the years of dealing with disputes and appeals, in order to really understand what caused an error a detailed investigation is required, which includes a conversation with the claimant, a review of what materials the claimant was provided with, listening to phone calls that the claimant made to the helpline and carefully reviewing household notes and correspondence. Only once all of this is done can one say with any certainty whether the error was down to the claimant or HMRC.

3.1.5 We would go one step further and say that as well as official error and claimant error, there is another category which we call 'contributory error'. This is not official error as such, but claimant error to which HMRC have contributed; for example, where the claimant has not received any guidance on a specific issue or where the HMRC guidance is deficient.

3.1.6 It is unhelpful and counterproductive to treat the concepts of error and fraud together as the two are very different in nature and require significantly different approaches to dealing with them. It is imperative that HMRC fully understand the problems in relation to error and decide on approaches to tackle it, as distinct from fraud. Strategy needs to reflect this, as well as the differing types of error, and to be tailored accordingly. We believe that HMRC need to undertake far more work in order to develop this more targeted strategy as we see little to suggest that their interventions are developed with these differences in mind.

3.2 *Education of claimants*

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[2] http://www.hmrc.gov.uk/statistics/fin-error-stats/cwtcredits-error.pdf

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244844/fem_1112.pdf

3.2.1 One crucial area that is notably absent from HMRC's activity is that of educating claimants. This includes the provision of adequate guidance to ensure people understand their obligations and advice given to claimants via the helpline, particularly when changes in circumstances are reported. This was also noted as an area of concern in the PAC report.

3.2.2 The National Audit Office report[1] in 2013 identified six areas of tax credits that HMRC identified as their greatest risk – Undeclared partners, Children, Work and Hours, Childcare costs, Income and Disability. Unsurprisingly, these areas correspond with those parts of the system that have the most complex rules.

3.2.3 Historically, HMRC guidance on each of these areas has been poor. For example, there was no information on the HMRC site about what constitutes a couple for tax credits purposes beyond reference to married couples and civil partners or those living together as husband and wife or civil partners. Other areas such as disability, although having detailed guidance, were not explained clearly or in any way that was understandable for claimants. Some areas, such as the definition of remunerative work for the self-employed, remain problematic with little published guidance for claimants.

3.2.4 In addition, the available guidance is buried away on the HMRC website or in leaflets that claimants may not know about or have access to.

3.2.5 We have also observed that even after HMRC complete compliance activity by reducing or amending an award, they do very little to explain to claimants what has led them to make the decision. Thus claimants are likely to make the same mistake again.

3.2.6 Although HMRC have started to improve their web guidance in some of these areas, there remains much more work to do, not least because not everyone has access to web guidance. For example, on undeclared partners, HMRC have included some examples on their website of when a couple are deemed to be separated:

> ***'You have an on/off relationship with your partner - an example***
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> *Kelly and Dean live together but often argue and Dean sleeps on his Mum's sofa, before they make up and he returns. This wouldn't affect their joint claim as they are still living together. But then Dean decides to end the relationship, and go back to live at his Mum's. Kelly should make a single claim as soon as they decide not to continue living together.*
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> *Some time later Kelly and Dean decide to get back together, even though he intends to continue to spend odd nights at his Mum's. Kelly and Dean should make a new joint claim as soon as they start living together again.'*

[4] http://www.nao.org.uk/wp-content/uploads/2013/03/Tax-credits-errors-full-report.pdf

This is a very common scenario that we see in practice and one that causes many problems for claimants. Most claimants read an example like this and decide that it applies to them because their partner has acted in the same way as Dean. As a result they end their joint claim and make a single claim 'as soon as they decide not to continue living together'. However, what then happens is that the compliance team investigating the new single claim ask them to provide evidence that they are no longer living together and that is often difficult. Claimants do not realise the significance of severing ties in this situation, the need to redirect post, the need to separate credit and finances, that they should have a formal maintenance agreement (rather than informal payments or accepting clothes/nappies that cannot be traced). So even though they may have read the HMRC guidance and their situation mirrors the examples, they have not taken the steps HMRC deem necessary to evidence this. It is crucial that HMRC do more to explain the types of evidence that should be used in situations such as this.

3.2.7 One other notable finding of the NAO report is that HMRC recognise that 80% of error enters the system after the claim stage through a failure to report changes of circumstances. We believe HMRC can do more to establish why claimants fail to report changes of circumstances including a full analysis of the information they give to people about what changes need to be reported and when.

3.2.8 Instead, HMRC are currently looking at ways to reduce the length of the notes that are sent out with the claim form and renewal packs. In doing so they often leave out vital information in order to save space. The danger of this is that claimants are not fully aware of what changes need to be reported and that HMRC will ultimately have to write off overpayments where guidance is misleading or incomplete.

3.2.9 One area where HMRC currently do very little is at the point claimants try and report a change of circumstances. For example, when a person rings the helpline to tell them their partner has moved out, it would seem sensible for the helpline to explain to claimants what constitutes a single claim so claimants can make an informed decision. Similarly, where a claimant calls to say they are now self-employed, a conversation could be had to ensure the claimant was aware of what HMRC count as qualifying remunerative work. Claimants subject to compliance interventions frequently tell us that they feel the approach is unfair given that HMRC knew their circumstances (such as starting self-employment as an artist) at the time of the change but later decided that they did not meet the criteria.

3.2.10 Any such programme of this nature would of course require robust guidance and adequately trained staff to ensure that the information given out was correct and, crucially, that if there was disagreement between the claimant and operator an appealable decision was issued.

3.2.11 One final area that we suggest needs urgent attention is advice by the Tax Credit Helpline. The PAC noted in their report evidence from Citizens Advice regarding a mystery shopping exercise that they carried out on advice from the Tax Credit Helpline. The results were worrying in terms of quality of advice. Although HMRC quality check calls, they do not, as far as we are aware, carry out any large scale mystery shopping exercises on their own helpline.

DWP have done similar exercises on their helplines in the past which has allowed them to understand the scale of any problem. Given that the helpline is the main form of contact for many claimants, we see this as a sensible step in analysing whether it contributes to error in the system and if it does what steps can be taken to tackle it.

3.3 *Implications for fraud and error of the introduction of Universal Credit and the impacts on fraud and error of utilising real-time information (RTI) on earnings*

3.3.1 We believe that DWP can learn from the tax credits system when designing the Universal Credit (UC) system.

3.3.2 Even if the UC system is designed in such a way as to minimise error and fraud, for example by carrying out checks on claimant's identity, checking proof of disability status and work status and by utilising RTI data for earnings, the potential for error and fraud to enter in other ways still exists. Given that UC is likely to be more complex in terms of the number of benefits subsumed into it, communications will be key in ensuring claimants understand their obligations and the UC rules. This also includes ensuring that those who are unable to access online materials still have access to relevant information.

3.3.3 Similarly, DWP will need to ensure that any UC helplines are staffed by qualified and knowledgeable people and that mystery shopping is used to ensure that the standard of advice being given is acceptable and does not allow error to enter the system.

3.3.4 We have been closely involved in the introduction of RTI from a HMRC perspective. We have also had initial discussions with DWP on the use of RTI data for UC and we are also members of a HMRC sub-group discussing the use of RTI for tax credits.

3.3.5 It is clear that the use of RTI data will be beneficial both for HMRC and DWP as well as claimants themselves in many cases. For tax credits, it is likely that the use of RTI will reduce the number of income-related overpayments in the system.

3.3.6 However, error is not just about overpayments, it is about ensuring that the claimant's award is correct based on their circumstances and therefore also includes awards that are wrong in the Department's favour. We are concerned that HMRC and DWP are not doing enough to ensure that claimants are fully aware of the limitations of RTI data and that while the RTI data may be accurate, it may not be the right figure for tax credits because there may be a number of allowable deductions that HMRC will not know about from the RTI feed.

3.3.7 Unless HMRC and DWP clearly explain the RTI figures and their limitations to claimants, it is possible that claimants will miss out on valuable tax credits as a result. For both UC and tax credits, there is also a danger that if communications are not clear that claimants will believe they are absolved of their responsibilities for reporting income changes when in some cases it will still be necessary.

4 Other areas of concern

4.1 *The impact of current compliance activity on claimants*

4.1.1 The NAO report and PAC reports, while comprehensive, did not consider the impact of the current error and fraud strategy on claimants, particularly where awards are amended or terminated incorrectly. The NAO report acknowledged that interventions increased from 123,000 in 2008/09 to over two million in 2010/11. It also noted that HMRC have achieved this by shifting their focus away from full compliance enquiries towards checks targeted at specific risks on a large number of claims.

4.1.2 This shift in focus has also produced alarming consequences for claimants. We frequently see poor quality decisions which are a result of staff who are not adequately trained and who follow scripts rather than (as compliance officers did in the past) use their knowledge of the tax credits systems to make accurate decisions. We have seen large scale processes rolled out that are not tailored to individuals, meaning that the letters that claimants receive lack detail and give no explanation of individual decisions.

4.1.3 The consequence of poor quality decisions is that claims are often terminated incorrectly leaving claimants without money and in very vulnerable situations. In undisclosed partner cases, the whole claim is stopped, including money for children and childcare costs. Although HMRC have recently improved their turn-around times on appeals, the time taken to get to a Tribunal can still be lengthy and we are concerned about the introduction of mandatory reconsideration (a new statutory process that requires claimants to ask for a reconsideration before being able to appeal) on these time limits. Communication on HMRC's part is lacking so that claimants often have no contact details for a case-worker and no way to progress their appeal.

4.2 *Cost effectiveness and value for money*

4.2.1 The volume of appeals has far outstripped HMRC's predictions, largely because of poor initial decision making by poorly trained staff, and lack of transparency and openness in dealing with claimants.

4.2.2 At present, appeals at the first stage within HMRC are now being dealt with in 42 days although the time taken to progress to Tribunal can still be lengthy. The downside of this is that the time scale for determining disputes appears to have risen sharply, possibly due to a redeployment of staff.

4.2.3 The NAO report did not specifically mention whether the costs of appeals – the redeployment of staff to deal with the growing numbers and the costs of reworking cases and increased claimant contact – were considered when determining whether interventions are cost effective and offer value for money but it is something that we think should be considered.

LITRG
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