

RESPONSE TO EU CONSULTATION ON MENTAL HEALTH

May 2006

RESPONSE TO EU CONSULTATION ON MENTAL HEALTH

- 1.1 Citizens Advice welcomes the opportunity to contribute to the EU consultation on mental health. The Citizens Advice service has 475 member bureaux in England, Wales and Northern Ireland which in 2004/5 dealt with 5,259,000 client problems of which 1,566,000 related to benefits. CAB information and advice was regularly delivered from nearly 3,400 locations, including 1,246 health locations, 483 schools and colleges, 218 prisons or courts, and 206 community venues such as libraries and shopping centres.
- 1.2 Based on its experience of working with clients with mental health problems, Citizens Advice produced a major report in 2004 on mental health and social exclusion called *Out of the Picture*. The following submission is an outline of issues that should be read in conjunction with the enclosed publication *Out of the Picture*, which details the evidence from which the arguments are drawn.
- 1.3 We support the four key elements of the EU strategy proposed by the Commission, and in particular “improving the quality of life of people with mental ill health or disability through social inclusion and the protection of their rights and dignity”.
- 1.4 We strongly endorse the view of the Council of Ministers (conclusions of 3 June 2005) that there is a need to accord greater importance to the social, economic and structural impact of mental health, and that member states should adopt measures to implement holistic, integrated and effective mental health systems covering promotion, prevention, treatment, rehabilitation, care and social reintegration.
- 1.5 We endorse the proposal to launch an EU platform on mental health to develop recommendations for action and examine ways of promoting the social inclusion of people with mental ill health and disability.

Context

- 1.6 The Sainsbury Centre estimated the economic and social costs of mental illness for England to be around £77 billion and suggested that about 70% of the cost fell on people with mental illness and about 30% on the rest of the population¹.
- 1.7 The government has developed a two pronged approach to issues surrounding mental health in Great Britain. The first of these was the

¹ *The economic and social costs of mental illness*, 2003, The Sainsbury Centre for Mental Health, Policy Paper 3

National Service Framework for Mental Health England (NSF, 1999) which set standards and service models to address the mental health needs of working age adults up to 65 years. A similar strategy has been adopted in Wales; Northern Ireland has a cross-department strategy to improve the incidence of mental distress and improve knowledge. The first standard addresses promoting mental health and tackling discrimination and exclusion associated with mental health problems. In general the NSF is concerned with the treatment and care which people will be entitled to expect and will be a guide to investment. The National Institute for Mental Health in England (NIMHE) was set up in 2001 to implement the NSF and to raise the profile of mental health and to see through the improvement in services.

- 1.8 The NSF was accompanied with a significant investment. Criticisms of the investment programme allege that money does not always reach those for whom it is intended and the twenty-four hour emergency support that should be available is not there for everyone who needs it². More recently, it is alleged that NHS cutbacks are disproportionately hitting mental health services³, in spite of government assurances that all areas of mental health are a high priority.
- 1.9 The government's second approach to mental health followed from the Social Exclusion Unit's (SEU) 2003 consultation for the Office of the Deputy Prime Minister (ODPM) on how people with mental health problems could be helped back into work and what could be done to increase their social participation and access to services. It devised a strategy⁴ with 27 action points to be overseen by NIMHE but was not supported with an investment programme. Raising awareness about mental health issues was referred to *Shift* and is overseen by NIMHE⁵.
- 1.10 NIMHE's first annual report⁶ claims key achievements on the road to tackling social exclusion with further action needed in in-patient care and services for people with dual diagnosis. It states that in the next five years, focus will be on social exclusion in people with mental health problems, services for ethnic minorities, the care of long-term mental disorders and the availability of psychological therapies. Underlying

² 'While mental health trusts are moving in the right direction, their ability to develop further the quality of their services is inhibited by serious capacity problems in management, staffing and the infrastructure and the scale of change needed' Commission for Health Improvement 2003; *Health Service Journal* (July 2004) poll of mental health trust Chief Executives about targets and service provision showed only 2/3 confident of establishing both early intervention and crisis resolution teams by Dec 2004, the remaining third were doubtful; over 1/2 not confident they had enough nurses to meet service needs.

³ *A Cut Too Far*, Rethink, May 2006

⁴ Social Exclusion Unit, Office of the Deputy Prime Minister, *Mental Health and Social Exclusion*, 2004, ODPM

⁵ Shift is a 5 year programme (2004-9) to reduce stigma and discrimination experienced by people with mental health problems by working with young people, public services, private, voluntary and professional organisations and the media.

⁶ *The National Service Framework for Mental Health – Five Years On*, 2004, National Institute Mental Health England

these developments will be better information, information systems and re-design of the workforce with new roles for key staff.

- 1.11 Mental health remains one of the government's three key clinical priorities and it is committed to tackling social exclusion and providing more support for people with mental health problems. This last has been taken forward through its Pathways to Work programme.
- 1.12 Citizen Advice Bureaux regularly give advice and help in 773 GP surgeries, 62 general hospitals, 80 psychiatric hospitals and 158 sessions in mental health settings⁷. We responded to the SEU 2003 consultation and published *Out of the Picture*⁸ based on work for this consultation. This drew on bureaux responses to the SEU questionnaire and evidence from over 350 Citizens Advice Bureaux and some of the 100 specialist CAB mental health projects around England, Wales and Northern Ireland, together with information from interviews and discussion with specialist workers.
- 1.13 Helping people back into work is one way towards tackling exclusion but Citizens Advice argues that broader issues have to be tackled as well. *Out of the Picture* catalogues the social exclusion that blights the daily lives of many of the seven million people in the UK with mental health problems and which prevents them from getting fair treatment. It highlights:
- discrimination and
 - lack of support
- for people in the workplace, with the benefit system (when people are out of work) and as consumers, particularly when accessing insurance and financial services.
- 1.14 Most people with mental health problems are dependent on benefit income and are some of the poorest people in the UK. Many are in debt. Poverty is linked to poor health and people with mental health problems are trapped in poverty for longer periods than most⁹. Persistent low incomes reduce people's ability to purchase entrance to activities and services that might help reduce their social isolation. We believe it is important to move quickly to support this group both in and out of work and to create positive building blocks of experience when out of work that may help people to recover and to prevent their financial and domestic situation deteriorating.
- 1.15 Better social inclusion for people with mental health problems can only be claimed when the **outcomes** of their interactions in the workplace, with the benefit system and as consumers can be described in more positive terms. *Out of the Picture* argues for tackling discriminatory behaviour and procedures in the public and private sectors with

⁷ 2004-5 Bureaux Information Service survey figures

⁸ *Out of the Picture*, 2004, Citizens Advice

⁹ Ann Davis & Phil Hill, *Poverty, Social Exclusion and Mental Health: a resource pack*, The Mental Health Foundation, 2001

appropriate training for those who interact with the public on a daily basis.

Discrimination

1.16 It can be difficult for people with mental health problems to use the law to assert their right to be treated fairly. When *Out of the Picture* was written, there were three obstacles to overcome if someone was to consider taking action under the Disability Discrimination Act¹⁰. Recent amendments to the Act¹¹ mean that for the purposes of bringing action, mental impairment no longer has to be clinically well recognised, a stipulation that never applied to physical disabilities. However, this change does not go far enough. If people are to bring cases of discrimination to court:

- a. 'normal day to day activities' in the Act need to be broadened to include the effects of mental disability on day to day living such as communication or social interaction
- b. the emphasis on long term should be changed because at present it does not encompass mental conditions that may be short term, fluctuating or recurrent in nature, such as trauma or reactive depression which can be mentally incapacitating

1.17 We are concerned that the Act will not help large numbers of people, particularly those with mental health problems, who may suffer short-lived, severe, reactive illness or others with longer term but less severe conditions.

1.18 We believe a priority is to address stigma and discrimination. Shift will be working with young people, public services, private voluntary and professional organisations and the media. It is of great importance to address as well, employers and employees and the social security system that should support people when they are out of work.

Inadequate support

1.19 CAB advisers identified lack of support as one of the most significant issues to be tackled if we are to make an impact on the social exclusion experienced by people with mental health problems. Without support for basic tasks such as claiming benefits and paying bills, people can enter a downward spiral to poverty and exclusion as well as having to deal with the stigma of mental health. Many people referred to the mental health system are without the family or friendship networks we might assume they have. If they are to be helped to recover, support needs to be substantially improved and increased.

¹⁰ the effect on 'normal day to day activities'; the impairment had to be clinically well recognised and finally, the illness had to be long-term, that is lasting at least 12 months.

¹¹ Disability Discrimination Act 2005

- 1.20 CAB advisers also report that people need advocacy in the community that is readily accessible to help them articulate their needs when they have difficulty doing so themselves. It is important that patients' rights to advocacy are translated into more resources on the ground to help people with mental health problems challenge discrimination and access their civil and consumer rights when these are being denied them.
- 1.21 The National Social Inclusion Programme (NSIP) at NIMHE co-ordinates delivery of the Social Exclusion Unit's (SEU) action points from its report *Mental Health and Social Exclusion*. NSIP itself says that many people with mental health problems have said 'they would like to access mainstream services but do not know how, do not have anyone to go with them and are unsure of how they will be perceived' and 'advice about claiming benefits is lacking, and they find the current system confusing'¹².
- 1.22 It is not clear how the NSIP intends to address this widespread need for practical support beyond guidance contained in SEU Factsheets. Clients should receive practical help from support workers in local Community Mental Health Teams. SEU guidance highlights the role of a client's care co-ordinator¹³ in having an overview of and the means of addressing a client's various needs for support. However, the kind of help and whether it is given can depend on the nature of people's illness and where they live. Referrals to mental health services and allocation of a care co-ordinator are for a minority of people whose conditions deteriorate or become critical. The majority of people, 90%, are dealt with in primary care, do not have a care co-ordinator and do not receive help beyond that which their GP can give them, unless they buy it privately. They are dependent on being in reach of such programmes as Supporting People¹⁴ or getting themselves to other agencies. Ways need to be found to ensure everyone with mental health problems can access appropriate services, activities and the practical help they need to manage their lives until they recover from illness.

Work

- 1.23 Only 21% of adults with long-term mental health problems are in work¹⁵. Work is not the solution for everyone but many people with mental health problems want to work. Direct discrimination in the workplace (case studies in Ch 2, *Out of the Picture*) from both employers and employees makes it difficult for people to hold onto their jobs when they get ill and very difficult to get back into work after a bout of illness. Tackling

¹² National Social Inclusion Programme, First Annual Report, 2005, pages 12 and 14

¹³ member of Community Mental Health Team

¹⁴ Supporting People programme funds services that provide housing-related support to vulnerable individuals who need assistance in order to enable them to maintain or improve their ability to live independently.

¹⁵ Office for National Statistics, *Labour Force Survey*, Spring 2005, estimated figures for adults aged 16-64 living in England.

discrimination in the workplace is not the only issue. Equally important, is people's need for support, prior to, during and following a return to work, in order to build their confidence, handle anxieties and give practical help with finance and changes to benefit entitlement.

1.24 Research¹⁶ for the anti-stigma campaign *mind out for mental health*, indicated that mental health problems in the workplace are widespread and that most line managers are ill-equipped to deal with them. The government launched the *Line Managers Resource* (a free guide for managers)¹⁷ to help employers identify signs of distress, take early action to prevent problems escalating and support employees towards a successful return to work but it is not clear how the document is being promoted. This is a difficult area to effect change and **such a document needs wide publicity and circulation in the context of a strong programme of education about mental illness to tackle prejudice and misunderstanding**. There seems to be little point in encouraging people with mental health problems back into work unless the prejudices and discrimination of the workplace are effectively addressed. While the government has moved quickly on trying to get people back into work (Pathways to Work), NIMHE noted in its first annual report¹⁸, that among the areas for further action were improved support for employers and job retention.

1.25 *A New Deal for Welfare*¹⁹ indicates the government's intention to reduce the number of people who leave the workplace due to illness by working with employers, employees and health professionals to help create healthy workplaces and better absence management for employees. Towards this end the government is piloting Workplace Health Connect, a new service launched in February 2006 and directed to small and medium-sized enterprises (5-250 employees) who need more help in the management of occupational health, safety, sickness absence and return to work. The service will consist of an advice line with an associated website and a workplace-focused regional problem-solving service with signposting to specialist help. This again will need wide publicity if it is to make an impact. We hope the government will also be developing ways of encouraging larger firms to review their approach to maintaining healthy workplaces and management of sickness absence.

1.26 Citizens Advice believes the government should also be working with employers to tackle discrimination by:

- **giving employees with mental health problems a right to flexible working**

¹⁶ *Managing Mental Health*, 2003, Ceri Diffley, The Work Foundation

¹⁷ *mind out for mental health, The Line Manager's Resource: a practical guide to managing and supporting mental health in the workplace*, Department of Health, September 2003.

¹⁸ NIMHE and Care Services Improvement Partnership, *National Social Inclusion Programme*, First Annual Report, November 2005

¹⁹ *A New Deal for Welfare: empowering people to work*, Department for Work and Pensions, Green Paper, January 2006

- **separating the interviewing process from an applicant's disclosure of information about any medical conditions**
- **publicising to job applicants an employer's arrangements to accommodate people with mental health problems**
- **making clear the help and support people can anticipate when ill**

Benefits and support for returning to work

1.27 The focus of the government's effort to help people back into work has been through a programme of pilots called Pathways to Work, now being rolled out across the country. These involve compulsory Work Focussed Interviews (WFI) with a Personal Adviser coupled with rehabilitative support that is delivered through the NHS to help people manage their condition and finally, financial incentives such as a Return to Work Credit payable for 52 weeks. Evidence to date suggests this provides a more positive and individual approach for people; interviews with specially trained staff, rehabilitation support from the NHS and the 'return to work' credit have been welcomed by clients and advisers. However, one group identified as less likely to progress on this scheme were those with moderate to severe mental health problems²⁰.

1.28 It is not always easy for people to return to work and financial incentives to do so are lacking. Allowance and tax credit systems (Ch 3, *Out of the Picture*) mean that many people who would return to low paid jobs are little better off in work than when on benefits. Small financial gains from work have not been sufficient to overcome people's concerns about security in employment and returning to benefit, should work fail. In practice, many people have difficulty getting their benefits reinstated and knowledge of this has acted as a deterrent. People need to be confident that:

- they will not face a gap in their finances, with out-of-work benefits stopping before wages or tax credits are paid
- should work fail, they will be able to return to benefit income

1.29 The government recognises that current financial incentives can be poor and that significant numbers of people gain only a small amount of money by working²¹. It is welcome that in 2005 the government changed the Linking Rules so that someone on Incapacity Benefit could return to the same benefit, for up to two years, if the job they went to did not work out. Also, benefit claimants would no longer have to wait six months after having left a job before they could try out work again. It is crucial that sufficient publicity is given to these changes to ensure that applicants, clients and staff administering benefits are aware of them

²⁰ *Incapacity Benefit Reforms – the Personal Adviser Role and Practices*, November 2004, National Centre for Social Research

²¹ For example, only 25% of people on incapacity benefit would be at least £40 a week better off if they moved into work of 30 hours or more a week.

because evidence indicates, that despite the linking rules, people in this position may not be treated sympathetically by the benefits system.

1.30 There is also people's fear that disability living allowance (DLA) will stop if they begin work. DLA is payable to people in paid employment but for some, particularly those with mental ill health or ME, a move into work can be taken by the Department for Work and Pensions as a signal that their condition has improved and trigger a review.

1.31 Permitted Work rules allow people who receive incapacity benefit (or income support on the basis of being incapable of work) to undertake a limited amount of work without losing entitlement to their benefit. The rules are complex and clients depend upon help and advice to understand and use them. Citizens Advice believes the rules are too rigid (case examples in Ch 3 *Out of the Picture*) and there is a need for:

- greater flexibility and simplicity
- a more gradual transition from benefits to work

The Government is reviewing the Permitted Work Rules and any changes will be announced in Spring 2006.

1.32 We believe the DWP should undertake a comprehensive review of rules and procedures for the transition from benefits to work to make it more financially worthwhile for people with mental health problems to do as much work as they can. This should be done in consultation with disabled people, service providers and other interested parties, to increase flexibility and simplicity, and permit a more gradual transition from benefits to work, to meet a variety of needs.

Benefits when out of work

1.33 The government is building "a system that recognises the responsibilities people have to get themselves off benefits, while ensuring that society fulfils its obligations to those unable to help themselves"²². This has been the main plank of reform over the past 4 years that has built on the experience of DWP Pathways to Work pilot projects.

1.34 GP's are a patient's first and often only contact with healthcare professionals and the government is also proposing a number of initiatives through GP surgeries to bring about a culture change in the way work is seen as a route to health, as well as trying out the placement of employment advisers in GP surgeries.

1.35 Incapacity Benefit (IB) is paid to help people when they cannot work. At present, there are 2.72m²³ IB claimants, approximately 35% of whom have mental health problems; the majority of these latter have

²² *A New Deal for Welfare: empowering people to work*, Green Paper, DWP, 2006, para. 10

²³ August 2005

depression, anxiety or other neuroses with only a small number having more severe conditions. From 2008, the government proposes replacing IB with a new Employment and Support Allowance, payment of which will depend on claimants participating in work-focused interviews with Personal Advisers, producing action plans and engaging in work related activity, as outlined in paragraph 3.22, *Out of the Picture*²⁴. Failure to do so will mean claimants see their benefit level reduced, ultimately to the level of Job Seekers Allowance. People with the most severe health conditions or disabilities will be paid the benefit unconditionally and they should get more money than they do now.

- 1.36 However, if exclusion is to be addressed, Citizen Advice believes it is necessary to look wider than work. An important building block is supporting people with mental health problems so that financial insecurity does not undermine their efforts to get well. Evidence from CAB (Ch 4, *Out of the Picture*) shows that the benefits system fails to take account of the challenges that face people with mental health problems when trying to manage their affairs. They are at particular risk from a system that demands their consistent engagement and expects them to be stable peak performers.
- 1.37 For example, no allowance is made for failures to comply with procedures and time limits because of illness. Complex forms, administrative issues and delays highlight the need for people with mental health problems to be supported so that they know about and are able to secure their entitlements. People with mental health problems are three times more likely to be in debt²⁵. CAB advisers helped people with over 1,566,000 benefit problems in 2004/5. They report that the most common difficulties for people with mental health problems are:
- a. forms do not recognise mental illness in the same way that physical illness is recognised and people lose IB when they fail to describe their illness properly. It is unlikely people will describe their condition with clarity on IB forms because mental health descriptors are not itemised in the same detail as physical descriptors and the space for recording the impact of mental health problems has recently been greatly reduced.
 - b. inefficiency and bias of medical examinations and poor decision making mean many people are denied benefit which they later win on appeal²⁶
 - c. frequent changes in benefit status, constant scrutiny to minimise fraud and delays in processing, lead to breaks in income that generate insecurity, possible anxiety and debt.

²⁴ and paras. 16-18, Executive Summary, *A New deal for welfare*, DWP, 2006

²⁵ H. Meltzer, N Singleton, A Lee, P Bebbington, T Brugha and R Jenkins, *The Social and Economic Circumstances of Adults with Mental Disorders*, Stationery Office, London, 2002

²⁶ Nearly half of appeals against incapacity benefit (Personal Capability Assessment) decisions are successful so questioning the quality of assessments.

- 1.38 Regular medical assessments too often result in the immediate withdrawal of benefits from people who are deemed capable of work, plunging individuals and their families into severe financial hardship and stress. Benefit decision making, whether based on information in a form or gathered from a medical examination, has been scrutinised and found wanting in several reports²⁷. Case examples and the difficulties faced by people living in rural areas are given in Chapter 4 (*Out of the Picture*).
- 1.39 *A New Deal for Welfare*²⁸ commits the government to a review of the above decision-making and appeals processes so that:
- claimants have a clear understanding of the grounds for the initial decision,
 - there is comprehensive reconsideration of a decision before it proceeds to appeal and
 - new evidence is taken into account at the reconsideration stage.
- We welcome this review, which is long overdue. The DWP has also committed itself to a review of the mental health components of the Personal Capability Assessment, that is, the mental health descriptors that form the basis for a decision²⁹.
- 1.40 Changes to the way applications are processed are adding to people's difficulties as the DWP moves to a system to speed up 80% of applications but which does not always cater for the difficulties of minorities, including people with mental health problems. One such was the change, in 2003, to direct payments of benefits into a bank or similar account; people with mental health problems sometimes have great difficulty using cards and remembering pin numbers (Ch 4 *Out of the Picture*).
- 1.41 The DWP administers the benefit system through Jobcentre Plus and has recently introduced a Customer Management System (CMS). This is an electronic information gathering process for new and repeat claims for Income Support (IS), Jobseeker's Allowance (JSA), Incapacity Benefit (IB) and any associated claims to Housing Benefit (HB) and Council Tax Benefit (CTB). The process is primarily carried out over the telephone. However, people with mental health problems can find this particularly difficult. If they are to be properly included, there should not be a reliance on phone, central call centre or electronic contact to the exclusion of face-to-face support; all of these options should be available to meet the needs of individual clients. In practice, people are finding it difficult to claim in alternative ways.

²⁷ What the doctor ordered: CAB evidence on medical assessments for incapacity and disability benefits, 2006, Citizens Advice; *Getting It Right, Putting It Right: Improving Decision Making and Appeals in Social Security Benefits*, 2004, The National Audit Office; *Report by the President of Appeals Tribunals on the standards of decision-making by the Secretary of State*, July 2005, the Appeals Service.

²⁸ Department for Work and Pensions (DWP), 2006

²⁹ *A New Deal for Welfare, Green Paper*, DWP, Ch2, para.72

- 1.42 With 30,000 jobs to be lost at the Department for Work and Pensions (DWP) Citizens Advice are concerned that it will not be possible to provide the high level of front-line advice, training and support that many people with disabilities and long-term illnesses need, particularly if they are to look for, get back to and remain in work.
- 1.43 A general lack of awareness of and training about mental health problems means people with mental health problems may also:
- fail to meet the exacting administrative requirements for making and maintaining a Housing Benefit claim and end up in rent arrears with threatened eviction
 - face significantly higher prescription charges because GPs decide on medical grounds to prescribe weekly rather than for a longer period. In some cases clients face charges of over £50 per month for drugs to control their illness.
- 1.44 It is welcome that a rent pre-action protocol is now being developed which will affect how both social landlords and to a lesser extent, private landlords, deal with rent arrears. This will place obligations on landlords to seek to ensure there are no outstanding housing benefit issues before starting legal action to recover arrears. This change has come about in part, from a Citizen Advice 'Last Resort' Campaign, along with the interest of the Office of the Deputy Prime Minister (ODPM) and the Department for Constitutional Affairs' to sustain tenancies wherever possible and to avoid cases going to court unnecessarily.³⁰
- 1.45 Citizens Advice welcomes the DWP's proposed reviews of the decision making and appeals processes and the components of the Personal Capability Assessment. Citizens Advice has not been invited to participate in this review but we hope the Incapacity Benefit form will be included in the scrutiny and that the review will be carried out in an open and transparent way. Given the difficulties outlined, Citizens Advice believes the government's commitment to addressing social exclusion and the provisions of the Disability Discrimination Act³¹ are added weight for the DWP to undertake a full review of the **outcomes** of all its services for this group of people. It is the outcomes of their interaction with the benefit system that will make a difference to people's lives and it is outcomes that should be measured.

³⁰ *Improving the effectiveness of rent arrears management – good practice guidance*, 2005, ODPM

³¹ New provisions under the Disability Discrimination Act 2005 (DDA) come into effect on 4 December 2006 and cover public bodies carrying out a government function, such as applying for a benefit. Public bodies:

- will not be able to treat disabled people less favourably and
- will have to make reasonable adjustments for disabled people.

This last provision is similar to the duty to make reasonable adjustments that already exists for service providers and employers. For example, a tax-return form may have to be provided in Braille or large-print so that it can be used by a visually impaired person.

- 1.46 If the Government is to address the social exclusion of people with mental health problems effectively, the DWP needs to undertake a major review of the benefit system to assess how performance at every level affects experiences and outcomes for people with mental health problems when they are unwell.**
- 1.47 We echo the Public Accounts Committee's proposals for improving the training for DWP decision makers³². Citizens Advice believe the DWP and its agencies must act to make mental health awareness and training about the problems it creates for people when unwell, a central requirement for all staff, especially those working directly with clients.**
- 1.48 Citizens Advice urges the EU to sponsor and support wide-ranging reviews of service outcomes for people with mental health problems as one step towards addressing social exclusion.**

Consumer Affairs

- 1.49 People with mental health problems face difficulties in being effective consumers and getting a good deal, particularly with financial services. A general lack of awareness about the effects of poor mental health can mean that communication is a problem and misunderstandings can occur. People need adequate protection if they are to avoid the consequences of serious debt and being excluded from mainstream society because of an intermittent inability to look after their own interests. Citizens Advice considers that the current level of consumer protection fails people with mental health problems.
- 1.50 Unmanageable debt is a common and pervasive issue for CAB clients with mental health problems (para. 6.44 – 6.45). They tend to withdraw when they are unable to cope. Research on the interrelationship between debt and health shows that debt can cause crises for people's health and that illness in turn reduces people's capacity to handle their finances and contributes to debt.
- 1.51 Citizens Advice evidence shows people with mental health problems:
- are particularly vulnerable to high pressure sales techniques such as those for the sale of utility supplies (para. 6.8)
 - are vulnerable to the ease of access to credit and poor lending practices which do not fully assess people's ability to repay (para. 6.19)
 - face unacceptable barriers to obtaining and claiming on insurance policies (para 6.290)

³² Summary and Conclusions in *Public Accounts Committee 16th Report* (HC120) April 2004, House of Commons

- 1.52 As a consequence, they frequently find themselves struggling with unmanageable debt and facing heavy handed and inappropriate debt recovery practices (*Out of the Picture*, Ch 6, para 6.48) that can only aggravate their mental health problems³³. Since we reported on this, the Consumer Credit Bill³⁴ has been introduced to Parliament and will:
- provide for the regulation of consumer credit and consumer hire agreements
 - make provision for the licensing of providers of consumer credit and consumer hire and ancillary credit services
 - enable debtors to challenge unfair relationships with creditors and
 - provide for an Ombudsman scheme to hear complaints
- 1.53 The Bill allows for action to be taken against systematic or intermittent high pressure selling by the regulator, the Office for Fair Trading but the regulator does not have power to offer redress or restitution to the consumer. For that, the consumer will have to take separate action either through the courts (for instance through the unfair credit relationships test) or through Alternative Dispute Resolution, which will be achieved through an extension of the jurisdiction of the Financial Ombudsman Service (FOS) to all regulated consumer credit agreements³⁵. At present we do not know what the FOS rules on unfairness under which consumers will have to bring cases, will be. This means people with mental health problems who can be particularly vulnerable will have to take individual court action, something they are unlikely to do because of their illness, unless a third party acts on their behalf.
- 1.54 In an attempt to improve consumer protection rights and remedies, Citizens Advice tried, unsuccessfully, to introduce an amendment to the Mental Capacity Act 2005. This argued for the right to challenge consumer contracts when they had been made during a period when a consumer with mental health problems was ill and could not reasonably have been expected to enter into a contractual relationship on the same basis as somebody with full mental capacity. Having had the problem drawn to their attention, the Department for Constitutional Affairs has promised to carry out research to assess the extent of the problem under current law. This will take into account people who lack capacity and the broader group of vulnerable consumers more generally³⁶ but it will not address people's current difficulties.
- 1.55 Part of the government's argument against amending the Mental Capacity Act was that remedy lies in the forthcoming Consumer Credit Bill under the right to challenge 'unfair relationships' with creditors. The Credit Bill will give the courts grounds and power to look at an 'unfair

³³ A CAB survey, *In too deep*, 2003, found that a quarter of CAB debt clients had sought treatment from their GP because of stress, anxiety and depression

³⁴ This Bill amends the Consumer Credit Act 1974 governing the licensing of, and other controls on, traders concerned with the provision of credit or the supply of goods on hire or hire-purchase.

³⁵ hopefully in the next two years

³⁶ House of Lords Debate, 17 March 2005: Column 1471

credit relationship' but it is not clear how this will work in practice. The courts might look at the 'terms of a contract' and decide that if all procedures have been followed, there is no unfairness. However, the court might look at the 'relationship', irrespective of whether the contract terms are correct, and make a judgement on the fairness of the relationship where one of the parties was unable to understand what they had signed to. The Bill will concentrate on the whole relationship where fair dealing includes reference to the circumstances of the borrower and not just the terms of the agreement and this we welcome. However, we feel there is a danger that the particular needs of people experiencing mental health problems will not get fully taken into account by the courts and there is also the weight of the credit industry's commercial interest. It would for example be helpful if attention were given by the credit industry to developing more appropriate credit products and practices.

1.56 This Act will allow people to challenge unfair relationships with creditors but it is not yet clear if and to what extent it will allow people to challenge contracts which are technically 'fair' but which people do not understand when making them because of their mental state.

1.57 Citizens Advice has long argued for responsible lending, *In too deep*³⁷, and *Out of the Picture*. It is very welcome that responsible lending is now being considered in several quarters. In the United Kingdom the Finance and Leasing Association (FLA) have revised their lending code for lending to consumers. For training purposes, they have produced a video on responsible lending to cover lending and collection procedures to people with mental health problems. The test will be whether these changes lead to better outcomes.

1.58 Not all consideration of responsible lending is being acted upon in a way that will make a difference to people with mental health problems. A European Credit Directive, in process, makes reference to a principle of responsible lending which puts the onus on accurate information being supplied by the consumer as well as the creditor consulting the relevant database. However, we believe this is unlikely to help people who, when not well, may not understand the contracts they enter into and their subsequent commitments. While the directive begins to look at the issue of responsible lending, it does not grapple with the issue of a consumer's ability to meet their commitments, particularly when they may not understand what they have agreed to.

1.59 The directive has provisions for extending the cancellation period of a contract; it allows for the cancellation of credit when making a purchase for goods or services but does not appear to cancel the purchase as well. This means the consumer who finds the credit too expensive has to find another way to pay for the purchase. The UK Consumer Credit Act allows for cancellation only when credit is sold both face-to-face and not

³⁷ *In too deep: CAB client's experience of debt*, Citizens Advice, 2003

on trade premises and significantly, cancellation of the credit automatically cancels the whole purchase, that is, of the goods/services. **Citizens Advice would like to see the proposed EU consumer Credit Directive amended to ensure that linked purchases are cancelled when the right to cancel credit is exercised.**

- 1.60 **Citizens Advice has stressed that all Banking and FLA codes should emphasise the importance of assessing a borrower's income and expenditure before lending and should encourage consumers to consider for themselves the affordability of loans.**
- 1.61 We do not anticipate that the Unfair Commercial Practices Directive of the EU, which will have to be incorporated into UK law by the end of 2007, will especially help people with mental health problems. This new law tests whether a business is being unfair in its dealings with consumers when the consumer makes a 'transactional decision' which affects his/her 'economic behaviour', for example, when an aggressive debt collector in the UK causes a consumer to make a payment he would not otherwise have made. The test of unfairness will be measured against the average consumer. Where consumers are vulnerable or particularly susceptible because of say mental infirmity, the test of unfairness will depend on the average consumer of such a vulnerable group and the economic behaviour of that group will have to have been distorted in a way that the trader could 'reasonably foresee'³⁸.
- 1.62 We welcome the Directive and hope that it will help with the recognition of unfair business practices where a consumer suffers from mental ill health. However, it is not clear at this stage how the Directive will help where people enter into contracts that their mental health renders them unable to understand. People with mental health problems can find themselves in dire circumstances and debt however professionally diligent businesses may be and without any malice of intent on the part of the business.
- 1.63 CAB experience shows that access to effective insurance is frequently more difficult for people with mental health problems because
- of clauses excluding claims on grounds of mental health
 - insurance is often sold to people with mental health problems who cannot benefit from its cover
 - when claiming people are often expected to provide medical evidence from a consultant psychiatrist, whereas the majority of people with mental health problems are treated by their GP.
- 1.64 **We suggest that the Financial Services Authority should specify how their regulation of general insurance will ensure that people with mental health problems are treated fairly. We also recommend that the Association of British Insurers review their guidance on**

³⁸ para. 19. *Directive 2005/29/EC of the European Parliament and of the Council of 11th May 2005*. Official Journal of the European Union, 11.6.2005

compliance with the Disability Discrimination Act to ensure that people with mental health problems are not unreasonably excluded from obtaining cover and making claims.

- 1.65 When in debt, people with mental health problems are often unable to make offers of payment as they are on low or volatile incomes. Debt compounds social exclusion because if people are on benefits they lose control of the very little money they have for debt repayments.
- 1.66 CAB evidence shows that heavy-handed debt collection practices exacerbate the problem. Creditors are not always realistic in their expectations about the ability of those with severe mental health problems to repay their debts. The Consumer Credit Bill will strengthen the licensing powers of the OFT so that it will be able to require credit licence holders to conform to certain actions and to impose a fine if such requirements are breached. These new 'intermediate' sanctions should make the OFT more effective at dealing with problems like debt collection. There is also a cross industry working group (Jan 31 2006) of trade associations and advice groups [Finance and Leasing Association, British Banking Association, Credit Services Association, Citizens Advice, Money Advice Association, Money Advice Scotland and MIND] – so no doorstep trade associations are involved – meeting to see if they can make recommendations on guidance regulations and codes of conduct re vulnerable people and those with mental health problems. If it can produce a guide, it is hoped this might be adopted by other trade associations.

The way forward

- 1.67 *Out of the picture* demonstrates how, as well as promoting work, social inclusion needs to take into account issues such as individuals' financial circumstances and housing status. Advice and information on welfare benefits, debt, employment and housing helps to maintain people's income levels and security and can be extremely useful for service users at most levels of mental health care. Conversely, low incomes and insecurity are likely to undermine health and frustrate recovery. For some people, help is of paramount importance to prevent loss of income, debt and loss of housing. Ensuring that people receive their benefit entitlements and that serious debt is managed and reduced, will contribute to combating social exclusion. Advice services can also play a key role in enabling people to challenge discrimination in areas such as welfare benefits, housing, employment and provision of goods and services.
- 1.68 This may be achieved in a number of ways. Many people with mild to moderate mental health problems are treated only by their GP and get little if any further help. We believe that definition of a good mental health service at primary care level should include provision of information and advice services that can provide a crucial gateway to a

wide range of other services. In England and Wales there are currently 773 Citizens Advice Bureau outreach services located in primary care settings. By making information available in a variety of ways and through referral to partner agencies, advice services can also provide a gateway to other health promotion and health education schemes.

- 1.69 For those with more severe mental health problems, CABx provide services in 158 community mental health settings and 80 psychiatric hospitals and wards in England and Wales. It is important to have advice services physically co-located with mental health services. For many service users this is the only way in which they are likely to be comfortable accessing such advice, at least until they have had the opportunity to develop a relationship of trust with the advice agency. These projects have developed a range of core features (*Out of the Picture* Ch 7, para. 7.7) that break down barriers of distrust and overcome people's lack of confidence. The role of such advice in primary healthcare and mental health settings is illustrated in *Prescribing advice: improving health through CAB advice services*³⁹.
- 1.70 The interlinking of problems of illness with for example, debt, substance misuse and homelessness, emphasises the importance of helping people with all their problems and early on, so as to minimise the risk of aggravating their illness. This is best done through a co-operative and inter-linked agency approach to provide services and help and CAB mental health projects demonstrate the effectiveness of advice and advocacy where people can easily access it. Agencies need to develop common objectives and to offer joined up services and holistic support with minimal referrals. **It is such generalist advice and help with daily living that Citizens Advice would like to see incorporated at an early stage in care plans and alongside medical assistance to people with mental health problems. The European Commission should encourage this sort of initiative at community and member state level.**
- 1.71 The Social Exclusion Unit's own report recognised that decent housing, financial stability and affordable transport are essential building blocks for social inclusion and that debt is a common problem with people struggling to access financial and legal advice services. 'Significant improvement in opportunities and outcomes for people with mental health problems can only be achieved through closer partnership between organisations at national, regional and local level'⁴⁰ and that doing this will require strong leadership at national and local level. Inter-agency working is important but does not always operate well. NIMHE has established eight development centres around the country⁴¹ but it is not yet clear how these may have affected delivery of services at local level.

³⁹ *Prescribing advice: improving health through CAB advice services*, Citizens Advice, 2005

⁴⁰ p108, *Mental Health and Social Exclusion*, Social Exclusion Unit, Office of the Deputy Prime Minister, 2004

⁴¹ Members of the development centre teams are the main point of contact for people and organisations for support and resources to improve and raise standards in care services.

1.72 In light of experience by Citizens Advice in the UK, the two major initiatives to support people with mental health problems and facilitate their inclusion would be:

- i. education, in particular training for front line workers
- ii. further initiatives at community level to allow for the development of 'best practice for promoting the social inclusion and protecting the rights of people with mental ill health and disability'. Such initiatives would include generalist advice on income, housing issues and finance as practised by CAB services in mental health settings and primary care settings.

This paper represents the views of its author on the subject. These views have not been adopted or in any way approved by the Commission and should not be relied upon as a statement of the Commission's or Health & Consumer Protection DG's views. The European Commission does not guarantee the accuracy of the data included in this paper, nor does it accept responsibility for any use made thereof.