

# **Under-funded and Overwhelmed: the Voluntary Sector as Worker Representation in Britain's Individualised Industrial Relations System.**

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## **Abstract**

**The majority of British workers are non-unionised. They face grievances at work alone. For the low paid among them, the main source of advice and support is the voluntary sector, in particular the Citizens Advice Bureaux and Law Centres. This paper presents findings from a survey of front-line employment advisers in CABx and Law Centres that show how under-funding by government at a time of rising demand from workers has affected the service they are able to provide and the quality of their own working life.**

## **Introduction**

With the decollectivisation of industrial relations in Britain, collective employment disputes have declined, but individual grievances have increased and are widespread (Pollert and Smith, 2009: 122). Survey evidence suggests that 40 to 50 percent of Britain's workers experience individual problems at work (Casebourne et al 2006: 98, Pollert and Charlwood, 2009: 346). For the non-unionised, and especially the low-paid among them, the voluntary sector, especially the Citizens Advice Bureaux (CABx) and Law Centres, has become the main recourse for support in the pursuit of grievance resolution (Citizens Advice 2004a: 8, 2004b: 3, Pollert et al. 2008: 107, Dunstan and Anderson,

2008: 1).<sup>1</sup> This paper presents survey evidence on the provision of such support by these organisations. It examines how precarious and declining funding to the voluntary sector in a climate of rising, and often unmet demand for advice, impact on service provision, and more widely on the industrial relations role of the ‘third sector’.

It begins by outlining the context for this study: the individualisation of employment relations in Britain and the government’s preference for voluntary workplace dispute resolution to statutory rights enforcement through the Employment Tribunal (ET) system. It proceeds to show that this process fails to deliver satisfactory results for non-unionised, low-paid workers (Pollert and Charlwood, 2008, 2009). This is followed by a critique of government policy to help ‘vulnerable’ workers, its limited approach to assisting them, and failure to address re-collectivisation as the most effective antidote to worker vulnerability or the resource shortfall in the voluntary advice sector. The latter is set within an account of state strategies spanning Conservative and New Labour governments, which have increasingly shifted public service provision to the voluntary sector. The emergence of the two organisations on which we focus, the CABx and Law Centres, is next outlined, followed by an analysis of a key funding stream for their employment advice provision, the Legal Aid system. Finally, the paper turns to the experience of employment advisers and how the outlined policy issues impact on their provision of employment advice.

## **Individualised employment relations, grievance resolution and government policy.**

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<sup>1</sup> There are many other voluntary sector advice organisations. The Low Pay Unit, based in London, provides advice leaflets and research. There are advice charities in major conurbations, such as the West Midlands Employment and Low Pay Unit and the Greater Manchester Pay and Employment Rights Advice Service. However, the voluntary advice sector is characterised by its fragmentation, with a large number of small, specialist and regional projects and partnerships (see e.g. list at <http://www.equal-works.com/DPHome.aspx>). The CABx and Law Centres, while individual charities, are part of larger organisations, Citizens Advice and the Law Centres Federation.

In 2008 72 percent of UK employees were non-unionised, 53 percent were in workplaces lacking a workplace union presence and 66 percent had no collective bargaining coverage (Barratt, 2009: 38, 39). Within both Conservative and New Labour commitment to de-collectivised employment relations (Smith and Morton, 1993, 2001), the latter enacted new individual employment rights but also introduced statutory workplace dispute resolution regulations in 2004 to curb their enforcement through the Employment Tribunal system (Hepple and Morris, 2002, Pollert, 2005, 2007). Although the government later repealed these in 2009, it remains committed 'to resolve more disputes in the workplace' and assumes that 'the UK's industrial relations framework is working better than ever' (DTI, 2006: 39, 5). What is the evidence regarding workplace dispute resolution for the non-unionised?

In a 2004 survey of 501 lower paid, non-unionised workers with problems at work, the Unrepresented Worker Survey (URWS), 86 percent of respondents reported having attempted to resolve their grievances, primarily with immediate and senior managers. Forty-seven percent of them failed to obtain any conclusion and only 18 percent achieved a satisfactory resolution (Pollert and Charlwood, 2009: 353). Workplace formal grievances procedures were used by only 10 percent. Less than a tenth sought external support, primarily from the CABx, and just 2 percent made an ET application (Pollert and Charlwood, 2009: 351). The evidence suggests that the voluntary system of individual grievance resolution within the workplace fails the majority of low-paid, unorganised workers.

The URWS suggests that most low-paid, non-unionised workers are 'vulnerable'. When they experience grievances, these are rarely resolved. The government has acknowledged the existence of 'vulnerable' workers (DTI, 2006), but construes them as at the margins of employment, not as the majority of low paid, non-unionised workers (Pollert, 2009: 2, Pollert and Charlwood, 2009). Its Vulnerable Worker Enforcement Forum set out four policies to: raise awareness of employment rights and enhance publicity about existing enforcement bodies; 'streamline' access routes to enforcement bodies, with a 'single telephone

gateway'; encourage co-operation between enforcement bodies and establish a Fair Employment Enforcement Board; and improve guidance on compliance with employment law to business (BERR 2008: 6). Government strategy to raise workers' awareness of rights emphasises the internet in 'an enhanced basic rights section on [www.direct.gov](http://www.direct.gov)', despite its data demonstrating that household internet access is closely income-related and therefore restricted for precisely those supposedly targeted as 'vulnerable' (Pollert, 2005: 226)<sup>2</sup>. The telephone helpline would be run from a call-centre, where operators could direct callers to statutory enforcement agencies. However, these are confined to the areas of the national minimum wage, health and safety, the Gangmasters' Licensing Authority, and the Employment Agency Standards inspectorate (BERR 2008: 20). Workers with the most common problems identified in the URWS of unfair and incorrect pay, bullying, unfair dismissal, working hours, sickness- and holiday-pay grievances, would have no referral or advice. Moreover, these enforcement agencies are under-resourced and have suffered staff cuts (Pollert and Smith, 2009: 123).

The Forum's strategy for 'vulnerable' workers omitted unionisation as the major strategy to tackle worker vulnerability. Nor was statutory enforcement of individual employment rights strengthened. The legislation to reduce recourse to ETs, the 2004 statutory Dismissal and Disciplinary, and Grievances regulations<sup>3</sup>, was repealed in April 2009 following the Gibbons' review (DTI, 2007, Employment Act, 2008). The revised Advisory, Conciliation and Arbitration Service Code of Practice (ACAS, 2008) for voluntary disputes resolution, however, largely replicate the procedural weaknesses of the revoked 2004 regulations and omit important procedures in the previous ACAS Codes (Sanders, 2009: 42).

Of further concern for the effectiveness of employment rights is the government policy to shift from legal enforcement to mediation. This became a

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<sup>2</sup> The 2003 Survey of Employment Tribunal Applications provides further evidence on the low usage of the internet by workers seeking redress to workplace grievances: while 43 percent of applicants consulted ACAS publications/leaflets, and 37 percent Employment Tribunal Service (ETS) literature, only 10 percent consulted the DTI website, 14 percent the ETS website and 13 percent other websites (DTI, 2004: 109).

<sup>3</sup> Employment Act 2002 [Dispute Regulation], Regulations 2004 SI No. 752.

major state strategy from 1997 (Colling, 2004: 567). Between 2007 and 2008 'judicial mediation' as an Alternative Dispute Resolution technique was piloted in several areas by the Employment Tribunal Service (Tribunal Service 2008: 16), while ACAS's role in mediation, rather than in statutory enforcement, was emphasised. Further, recommendations by the Gibbons review (DTI, 2007) of a 'fast-track' for 'employment judges to sit alone in determining cases involving issues of a purely legal nature and in straightforward monetary cases', rather than the tripartite, lay composition of Employment Tribunals (House of Commons, 2008), were contained in the Employment Act 2008 (Sanders, 2009: 44). In 2009 this fast track was to be extended to the common problems of unpaid holiday pay under the 1998 Working Time Regulations (Daniel Barnett, 2009). This suggests an incremental shift from the original tripartite nature of ET 'industrial juries', with subsequent downgrading of employees' access to justice.

Thus, the government eschews the fundamental problem of Britain's individualised employment relations and the weakness of the statutory rights enforcement system. It is also silent regarding the resources of the voluntary sector, the chief recourse outside the workplace for low-paid, non-unionised workers, and the continuing rationing of Legal Aid, which is a key facilitator for access to justice for the low-paid. It is to these two areas that the paper now turns.

### **Government policy and the voluntary sector.**

The 'voluntary' sector gained prominence for service delivery under the Conservative government, and was heralded as a crucial social resource by the Blair Labour administration. Its parameters are fluid. The government classifies to the voluntary and community sector charities (registered and non-registered) and other organisations that 'exist and operate for altruistic purpose rather than private benefit; were set up, and could be wound up, without permission of the state; and ... rely to a greater or lesser extent on volunteers' (HM Treasury and

Cabinet Office 2007:6). Social enterprise, defined as 'new ways of delivering social and environmental outcomes through business approaches' (Ibid: 11), is included as a further sub-component of what the Labour government terms the third sector.<sup>4</sup>

There had been significant change in the voluntary sector's role in relation to the state sector. In the 'heyday' of the welfare state in Britain (c.1945 to the late 1970s), governments allocated income from taxation to their departments to plan and administer social security, social welfare and other public services that in principle were universally available to citizens and were delivered by staff directly employed by central or local government or other state agencies. The voluntary sector's role was seen as supplementary and complementary to the main vehicles of social welfare provision – the state and the family (Kendall 2000). Conservative governments in the 1980s and 1990s sought to reduce the size and influence of the public sector and to 'marketize' those parts of it that were not easily privatized. Among the main policy measures were compulsory competitive tendering and devolution of responsibilities within public services to purchaser and provider units, operating in quasi-markets. Local government authorities were encouraged to place 'core' social care and other welfare services for tender, and voluntary and private sector organisations were placed in direct competition with each other and with local authority service provider departments (Bennett, 2008: 270-271, Cunningham 2001).

For Conservative government ministers, the attraction of voluntary organisations was principally their potential to substitute for public service providers at lower cost, their premises being modest and workforce largely volunteers (Lewis 1999). Their increasing importance to state service provision is reflected in changes in income-stream: formerly, they typically relied on voluntary income (grants, donations, gifts and legacies), but by the end of the 1990s public funding increased to around a third of the (registered) charities sector's total revenue (Bennett 2008: 272). Fees earned through the sale of services to central

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<sup>4</sup> However, the National Council for Voluntary Organisations (NCVO) is critical of this approach (NCVO 2009). Other attempts to summarise types of voluntary organisation activity distinguish mutual support, campaigning and service delivery (Morrison 2000: 108).

or (more likely) local government rose as a proportion of the public funding total (Cairns et al. 2005: 870). And accompanying this shift was increased regulation by public bodies (Cunningham 2001). Hence the issue of voluntary organisations' autonomy in respect to policy formulation became a prominent theme of debate (Pople and Redmond 2000; Lewis 1999; Cairns et al. 2005). At the end of eighteen years of Conservative government, the report of the Deakin Commission in 1996 discussed voluntary organisations as embedded in civil society and having legitimate claims to formulate their own goals, independent of government's (Lewis 1999; Osborne and McLaughlin 2003).

The New Labour government from 1997 espoused a 'third way' politics – neither 'big government' nor free market capitalism – and proceeded to 'mainstream' the voluntary (or now 'third') sector within its public policy agenda (Kendall 2000). Following the Deakin Commission, it launched a Compact (Osborne and McLaughlin 2003: 387), which pledged government respect for voluntary organisations' independence (their right to campaign and criticize or challenge government policy without jeopardizing their capacity to secure public funding); a 'partnership culture' in place of the 'contracts culture' characterising voluntary sector relations with the state sector; and strategic funding to assist voluntary sector capacity building. However, funding and 'partnership' strategies have much in common with the previous government's commitment to competition, as this paper shows regarding the role of CABx and Law Centres, albeit under a rubric of public service 'transformation' to a more socially inclusive society and local community regeneration (Osborne and McLaughlin 2003: 389).

In subsequent policy documents the Labour government has highlighted variously what it sees as voluntary organisations' distinct attributes (being passionate and value-driven) and those shared with the public sector – a commitment to the ethos of public service (Lewis 2005). Promoting a 'mixed welfare economy', it has urged that, by virtue of their close contact with 'users', voluntary organisations are particularly well placed to further the project of 'joined up government' – to tailor services to suit individuals' and groups' needs (HM Treasury and Cabinet Office 2007). That project has been driven by the regime

of Best Value that has altered performance management for local authorities in scope (the range of services subject to periodic quality and cost efficiency testing) more than substance (Cunningham and Lewis 2007; Bennett 2008). Likewise, voluntary organisations providing public services for fees continue to be directed by government priorities (Brindle 2008) with critics suggesting voluntary organisations were in danger of becoming tools in the management of social (dis)harmony as well as public sector erosion and fragmentation (Pople and Redmond 2000). Public-voluntary sector 'partnerships', as our research on impact on the CAB of Community Legal Action services partnerships shows, is a means of introducing private-sector competition to service provision. Besides introducing privatisation and competition in the clothing of 'partnership', the government is ironically enthusiastic for democratic participation through voluntary work in the community, but reluctant to reform legislation in ways that might promote those voluntary organisations that champion workers' rights and voice in the workplace, that is, trade unions.

The voluntary sector showed substantial growth in the decade to 2006/2007. The number of general (i.e. registered) charities rose by 40 per cent, to 171,000; the number of large charities within this total (those with an income above £1m) doubled.<sup>5</sup> The voluntary sector has come to look more like the private sector in some respects, including its greater entrepreneurialism and concentration; 2 per cent of charities accounted for around two-thirds of aggregate income in 2003/4 (NCVO 2006).

The sector's paid workforce increased to 634,000 in 2006/2007, although as we show, some organisations rely heavily on volunteers (the CABx) while others do not (Law Centres). Women are 69 per cent of the total, with the rate of part time working (at 39 per cent) higher than in either the public or private sectors (this is typical in both organisations studied here). Around 70 per cent of the charities sector's paid employees are in small workplaces and the prevalence

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<sup>5</sup> Reflecting continuing government emphasis on using the third sector for service provision, by 2006/2007 earned income from the sale of goods and services was a larger proportion of total revenue than voluntary (NCVO 2009). But while the sector's income increased, the rate slowed at the end of the period, a forewarning perhaps of future 'credit crunch' difficulties.



of the latter may be one factor in the sector's lower incidence of union recognition in comparison with the public sector (Clark 2007). Employment insecurity and low pay are pervasive (Cunningham 2001, Cunningham and James, 2007). Thus, despite the Labour government's enthusiasm for the third sector's role in 'citizenship' and stated commitment to strategic funding for its 'capacity building', cost 'efficiency' criteria exert constant downward pressure on costs. Aspects of these resource constraints are a recurrent theme in the 'third' sector's role in assisting the unorganised in enforcing their employment rights.

### **Changes in Legal Aid**

A further process impacting upon vulnerable workers' access to employment rights enforcement and on their advice organisations has been the increasingly restrictive remit of the publicly funded Legal Aid system. Legal Aid was first established by the Legal Aid and Advice Act of 1949 after the eponymous report by the Rushcliffe Committee of 1945. Responsibility for it lay with the Law Society until the Legal Aid Act 1988, which brought it under government control in the Legal Aid Board. In 1999, the Access to Justice Act replaced the Legal Aid Board with the Legal Services Commission (LSC), under the aegis of the Department for Constitutional Affairs, with ultimate control under the Lord Chancellor and financed by the Treasury. A key aim of the Access to Justice Act was to cap, for the first time, its civil funding, a strategy delegated to the system's policy arm, the Community Legal Service (CLS), which embarked on an 'efficiency' cost cutting programme. At the same time, however, following the broad policy of extending the service remit of the third sector, the 1999 Act expanded contracting for Legal Aid beyond lawyers to new sections of the voluntary sector, such as the CABx, providing they fulfilled quality 'kite-mark' criteria for LSC contracts – an opportunity which, for much of the voluntary sector, proved a poisoned chalice. This was because the broadening to a new constituency of providers was linked to the wider 'efficiency' programme.

The new criteria for those eligible for Legal Aid were narrowed, reducing the eligible client numbers (Citizens Advice, 2004a). Means testing became more restrictive, so that an increasing section of society was neither sufficiently impoverished to qualify for Legal Aid, nor able to afford a lawyer, falling into a 'Legal Aid vacuum' (LAG, 2009a). In addition, the 'sufficient benefit test' (to the client and the 'community') was added, which meant that if Legal Aid expenditure was regarded as incommensurate with likely client compensation, it could be retrospectively disallowed, thus further reducing the number eligible. The shrinking population of those qualifying for Legal Aid thus rationed the availability of publicly funded work for solicitors and advisers.

A further innovation which deterred lawyers from the Legal Aid system was the hourly pay system in the LSC contract, which excluded many aspects of case-work, including correspondence, and added increasingly complex form-filling (Pollert, 2005: 226). The combination of changes reduced the number of Legal Aid solicitors, who found the LSC contracts unprofitable, and forced parts of the voluntary sector, particularly CABx, to withdraw from LSC contracts, adding extra strains on remaining advice providers. The shrinking network of specialists for case referral meant many CABx now found themselves in an 'advice desert' (Citizens Advice, 2004a: 6). Both the Law Society and the Legal Services Commission found the largest decline in LSC work was in *employment law* (Law Society, 2002: 4, Legal Services Commission, 2002: 8, Pollert, 2005: 225).

A further pressure on the already resource-poor voluntary sector was a change in LSC contracts on October 1<sup>st</sup> 2007, from hourly rates, to fixed fees. These were based on numbers of new cases opened, which meant that more complex cases, which took longer, were uneconomical to run, while initial client assessment interviews accrued no funding. Stockport, Gateshead and Liverpool 8 Law Centres all closed in early 2008 due to financial shortfalls caused largely by this issue (The Solicitor, 2008). Others, as we show, survive by rationing more complex, time-consuming cases (LAG, 2009b).

## **The Citizens Advice Bureaux and Law Centres.**

Non-unionised workers on low incomes seeking advice to resolve employment problems rely primarily on their managers, but when resorting to external bodies, turn primarily to the voluntary sector. The URWS found that of those who sought advice (61 percent), the greatest external resort was the CABx (13 percent). This compares to approaches by 5 percent to trade unions, 3 percent to ACAS, 3 percent to a solicitor, 2 percent to a Job Centre, 2 percent to a doctor, 1 percent to Law Centres (a much smaller, and more London-based voluntary sector network than CABx) and none to the internet (Pollert and Charlwood, 2008: 37 and Pollert and IFF 2006: 633). Higher figures for recourse to CABx emerge from other studies of employees with employment problems: in a 1997 survey, for 23 percent the first advice contact was the CABx and 4 percent a Law Centre (Genn, 1999: 111)<sup>6</sup> and in a 2002 study, 32 percent approached the CABx (Meager et al, 2002: 185).

The URWS found that workers who approached a CAB for advice were more likely to suffer problems in areas such as dismissal, pay, discrimination and working hours (Pollert and Charlwood, 2008: 39), which our interviews with voluntary sector advisers confirmed (Pollert et al., 2008). By the time many workers sought outside help they had been dismissed from, or forced to leave, their jobs (Pollert, 2009, Pollert et al. 2008).

### *Citizens Advice Bureaux.*

The CABx were first set up by volunteers to deal with citizens' problems during wartime in 1939 and have since spread throughout England, Wales and Northern Ireland, with 433 bureaux in 2006 (Citizens Advice, 2007). CABx provide general advice on a range of issues, including employment, with some bureaux offering

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<sup>6</sup> Genn (1999:111) notes that resort to Law Centres for employment problems was higher than for other legal areas, arguably because of their expertise in employment law.

more specialised employment advice. However in 2006, only a third of bureaux had an employment specialist trained by the CAB (paid or voluntary), so most employment advice is by generalists. Specialist immigration advice is even rarer: among the 124 CABx with employment advisers in our survey, only 19 had a specialist immigration adviser.

Each bureau is a charitable organisation, responsible for its own funding and affiliated to Citizens Advice, the London headquarters, which develops overall policy, research, training and publications and is primarily government funded. In addition, three Specialist Support units provide to advisers telephone and email legal information and updates on welfare benefit, employment, money and consumer problems, as well as guidance on the LSC (Citizens Advice, 2006b).

Funding for the CAB has always been precarious (Richard, 1989, Citron, 1989). CABx depend on a variety of sources – local councils, the LSC and other sources, such as the EU and the National Lottery. In 2006, the government cut headquarters funding and forced a 20 percent reduction in annual expenditure by 2008, which would ‘inevitably have an impact on the levels of service’ (Citizens Advice 2006a: 4). However, with recession, £10 million was provided to increase bureaux opening hours in 2009, in response to a 125 percent rise in redundancy enquiries in just seven months and significant increases in bankruptcy, Council Tax debts, fuel debts and rent arrears enquiries. This was only sufficient until March 2010 (Citizens Advice, 2009).

CABx are heavily reliant on volunteers for both general and specific employment advice. In 2006, 20,614 of 27,200 CAB workers (76 percent) were volunteers (Citizens Advice, 2007). Typically for the voluntary sector, most work part-time. In the 124 CABx with employment advisers contacted for this research, around two-thirds of bureaux relied entirely on volunteers for employment specialism and 84 percent of general advisers were part-time volunteers. Only a quarter of CABx had a paid specialist employment adviser.

*Law Centres.*

The first Law Centre was pioneered in North Kensington in 1970 in response to failures in the free Legal Aid system, which had initially financed private solicitors focusing on matrimonial law, with inadequate provision in legislation affecting the poor and disadvantaged, such as employment and welfare rights, and poor access in terms of location, language and opening times. Inspiration came from 'neighbourhood law offices', developed by the United States Civil Rights movement of the 1960s, as a national system of salaried lawyers providing free legal services for people with low incomes. A principle was that they were to become rooted in communities, and so reduce inhibitions among the poor from asserting their legal rights. Law Centres were to be informal, accessible and attempt to provide services during evenings and weekends, as well as in normal office hours.

Community-based Law Centres are part of a national network affiliated to the Law Centres Federation, which was established in 1978 as a registered charity and limited company. Numbers grew over the next 30 years to 64 in 2007, 45 percent of which are in London. It is thus a far smaller and more metropolitan organisation than the CAB. Funding here too has always been unreliable. The first public funds were provided in 1973 by an Urban Aid grant from the Department of the Environment and in 1974 the first grants were made available by local authorities. However, during the 1980s these sources were eroded, which led to reliance on Legal Aid funding, although, as our research shows, there has been a return to local councils, as well as pursuit of regeneration programmes and charities, such as The National Lottery.

Unlike CABx, Law Centres use few volunteers and employ paid legal professionals. Of the 32 surveyed, only one in five had any volunteer advisers. Our survey found that almost half of Law Centres had one paid employment adviser and a further third had two (approximately two-thirds of whom were paid). The employment of legal professionals means that advice work is more likely to progress to casework (ET preparation) than among CABx. However, most professionals work part-time and no Law Centre reported employing more

than two full-time paid employment specialists. While more than half Law Centres had no immigration specialists, over a third had between one and two.

### **The Survey of CABx and Law Centre Employment Advisers.**

The evidence on advisers' experience is based on a questionnaire survey and in-depth interviews conducted in 2007-8. A postal survey was sent to 124 CABx<sup>7</sup> and 53 Law Centres with employment specialists, with completed questionnaires returned from 88 respondents – 56 CABx and 32 Law Centre advisers<sup>8</sup>. The survey contextualises 44 qualitative interviews: 34 with CABx advisers and managers and 10 with Law Centre employment caseworkers and solicitors. The full results are reported in Pollert et al. (2008).

### *Resources and Shortages.*

Following their differing funding histories, 94 percent of CABx were primarily funded by local councils, but only 41 percent by the LSC. Ninety-four percent of Law Centres depended mostly on the LSC, although this was changing, with 78 percent also reporting local council core funding. A third of CABx and two-fifths of Law Centres also cited other core funding sources.<sup>9</sup> Over 75 percent of Law Centres and 67 percent of CABx had experienced cuts in real terms from the LSC in the three years prior to interview, similar to cuts from local councils

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<sup>7</sup> There were 144 CABx with employment specialist at the time (2006/07 Citizens Advice Bureau Information Survey), but 20 were not approached by our survey, having participated in another research project (Dunstan and Anderson, 2008).

<sup>8</sup> While the experience of advice provision was obtained from advisers, contextual infrastructural matters, such as staffing and funding, were often answered by managers and policy workers.

<sup>9</sup> These include banks and building societies, National Lottery grants, the former Commission for Racial Equality and Disability Rights Commission (now part of the Equality and Human Rights Commission), the Financial Inclusion Fund (HM Treasury), local businesses, local charities, local trust funds; local Primary Health Care Trusts and small donations.

among 75 percent of Law Centres and 55 percent of CABx.<sup>10</sup> Some had experienced council cuts which breached a contractual agreement:

..they actually breached their contract, but we don't really want to pursue the case through a tribunal because we don't have the money for it, through a county court or the high court.

Law Centre Employment Caseworker, London.

One former CAB adviser recalled staff cuts and bureau closures in the north:

'X' CAB, instead of having about four employment workers now have one and a volunteer – no half and a volunteer. 'Y' CAB has gone, 'Z' CAB has gone, and 'X' CAB still remains [CAB names have been anonymised].

Law Centre Adviser, Inner London.

Having sufficient funding for advance planning appeared unusual and 81 percent of CABx and 84 percent of Law Centres reported that time spent in fund seeking had increased or greatly increased. In some cases this necessitated making new appointments:

... previously we all tried to do a bit of fund raising when we could... What this is doing is reflecting how much harder it is now to find money.

CAB Development and Social Policy Manager, North.

Managers are permanently straining to keep up with inflation:

The LSC contract that I have, we've had no inflationary rise since day one on it...I constantly have to strive. ...I would say my main job is chasing money, keeping to renewing contracts and trying to provide enough resources for these guys to do the best they can.

CAB District Manager, North West.

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<sup>10</sup> Qualitative interviews indicated that no change in monetary terms meant a cut in real terms. Figures given here are the sum of those who replied 'no change' and a 'decrease'.

Seventy percent of CAB and 80 percent of Law Centre advisers felt they had too few or far too few specialist employment advisers. Less than a third of CAB and 19 percent of Law Centre advisers felt they had enough:

The thing that gives us the most headaches I suppose is sometimes lack of resources. I can have ten clients waiting outside and then another 15 coming through the door and I haven't got the volunteers to be able to look after them, and that is the most frustrating thing: that we don't have enough people to be able to cover for the volumes.

CAB Advice Service Manager, Midlands.

Some Law Centres, having smaller catchment areas, were forced to turn people away:

We open our doors at 10.00am but at 9.15am there is a queue around the corner and we can only take about six people per session, you know, six people in the morning and six in the afternoon. Yes we do turn away and yes, we try not to turn away, we try to refer, but that area of referral is shrinking.

Law Centre Employment Solicitor, London.

Rationing was part of everyday adviser experience:

The basic pressure is that there are more people who need our help than we are capable of helping. The phone call I've just put down before you rang was me saying to a guy: 'I think you've got a really good case, technically this is what you need to be looking at, but I can't take it on at the moment because I've got too much work to do.' That happens regularly, day in, day out. We have to make decisions on the basis upon which we refuse these cases. [So where did you refer him?] There's nowhere to refer him to.



Law Centre Employment Solicitor, North West.

The frustrating thing is the number of people who are waiting for advice, we have classically a very full reception waiting room and so the frustration is trying to manage the fact of there being a lot of people waiting to be advised alongside trying to give quality effective advice ... there is this sort of lots and lots of pressure of more people waiting to come through, so that's the frustration

CAB Development and Social Policy Manger, North.

Previous studies of those seeking CAB advice have highlighted bureaux access problems because of limited opening hours, long appointment waiting-times and difficulty in making telephone contact (Genn, 1999: 76, 89, Pleasence et al, 2004: chap. 3). In line with the government's pledge in its Compact with the third sector to maintain its independence, both Citizens Advice and the Law Centre Federation undertake policy work to influence government policy, and encourage their bureaux and centres to assist them in research and policy activity. Advisers are critical of inadequate and fragmented funding:

I have noticed that there are lots of government initiatives aimed at specific hotspots, for example, immigrant workers, vulnerable workers, disabled workers. But instead of saying 'we're going to supply these people with information and assistance, we will place it in the hands of a central body, such as the Citizens Advice Bureau', they set up the Vulnerable Worker Project, they set up the Immigrant Advisory Service, they set up all sorts of additional services so that they all get a tiny piece of the cake and it's very fragmented.

CAB Adviser, East Midlands.

But work intensity prevents these criticisms from being heard more widely. CAB headquarters publishes policy interventions, for instance on the non-enforcement of ET awards (Citizens Advice, 2005, 2008), but there is little time for advisers on the ground to make an input:

If we had more staff we'd be doing more work, for example there's a problem with enforcement, it would be nice to have someone to spend a bit of time looking at that and trying to influence government policy in relation to, or to find out a bit more about what the DTI should be doing about Directors of Companies who leave debts lying around.

Law Centre Adviser, North.

Shortage of time, too, impacted on increasingly important training and development.

#### *Resources and Employment Law Expertise.*

The voluntary sector is diverse. Differences between the CAB, a nationally widespread but generalist, volunteer-based organisation, and Law Centres, a smaller network, but staffed by legal professionals, have been highlighted. Our survey found that three quarters of CABx had no solicitor or barrister among their employment advisers, but this applied to only 23 percent of Law Centres. Just over half the Law Centres surveyed had one solicitor or barrister, compared to just over a fifth of CABx. The problem of legal expertise thus applies far more strongly to the larger organisation, the CAB, and the 'advice desert', highlighted earlier, covers wide areas:

I would like at least one full time employment specialist adviser who could represent at tribunal, at least one, because I think there's a need. ..if I put in a search on CLS (Community Legal Service), our legally aid-able specialist employment advice, in a forty mile radius, I might get three hits and one or two of those will be Law Centres who only deal with their own area. There's nobody locally that does specialist employment advice. We

have a steady stream of employment problems. A big culture in this area of warehouse workers, part-time workers, agency workers and very little support for them.

CAB Manager, East Midlands.

Where CABx had employment specialists, fear of losing them threatened:

I am developing in-house a couple and I'm obviously aware they can be dragged off to go somewhere else. It is something that's always in flux and what you say you have now, you can't guarantee you'll have tomorrow.

CAB Solicitor, East.

Because of their scarcity, specialists work longer than their allotted hours if they are volunteers, or their paid hours if they are employed. The 'passionate and value-driven' ethos which makes the third sector so attractive to government feeds on self-exploitation:

I put in a great deal more time than those two mornings a week, but there are occasions when I feel there's a bit of an overload here and I'm being a bit pushed for time.

CAB Employment Specialist, Midlands.

I am the only Employment Adviser...who can run cases to Tribunals. I suppose I'm probably working about four days a week really by the time you've taken into account reading up the case law and everything.

CAB Employment Adviser, East.

Work has intensified not only because of staff shortage and rising demand, but in response to proliferating employment legislation:

I think the work has got harder, in that since I was here Harveys, the loose leaf journal, has gone from four volumes to seven if you include the index...That's because the law has just multiplied and multiplied and it's now just so damned complicated. Even something that a few years ago

you would have regarded as a straightforward enquiry now has so many ramifications and twists and turns.

CAB Employment Specialist, North West.

A sense of inadequacy is exacerbated by the depletion of training and up-to-date literature, just when these are most needed:

There's always a problem; you can't go on the courses that you want to go on because there's no money there, you can't have the books that you would like to have because the money needs to be spent elsewhere.

CAB Employment Adviser, East.

The CAB Specialist Support Unit exists to assist advisers, but access is difficult, with likely damage to standards of advice provision:

We do have access to the Specialist Support unit, but it is woefully inadequate for the needs. They have introduced email advice, which has helped, but if I say to you it's a bit like the doctors, you start phoning five minutes before the lines open in the hope you will be the first in the queue, because if you're not, the chances of you getting any advice on that day is minimal.

CAB Manager, East Midlands

For those advisers who take on case work, ETs are increasingly complex and adversarial (Pollert, 2005: 229) and the voluntary sector can be left with no-win, no-fee solicitors' rejects<sup>11</sup>:

Discrimination cases are something in themselves. You've got to prepare the questionnaire and then you've got to do pleadings and it's a very big

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<sup>11</sup> With the decline in Legal Aid solicitors, CABx increasingly refer clients to 'no-win, no fee' lawyers, the system extended from personal injury to other areas of law since 1998, allegedly to extend 'access to justice' for those confident of winning their case. But while no fees are charged if a case is lost, a higher fee than 'normal' is charged if it is won (Lord Chancellor's Department, 1998: 24). However, these lawyers have little interest in low paid clients, since compensation at an Employment Tribunal, if won, is usually income-related and for low paid workers, is low, so that lawyers' share is commensurately relatively small. Growing concerns about the quality of the 'no-win, no-fee' arrangements prompted the government Ministry of Justice to commission a major research review into its operation (Ministry of Justice, 2008).

job to run a case like that, and nobody in private practice is prepared to take them on because the level of damages very often doesn't pay,... you are just limited to your compensations. I tend to work with claimants on the minimum wage.

CAB Employment Specialist, North West.

### *Assisting Migrant Workers*

The lack of immigration legal specialism spanned both voluntary sector bodies and again was most marked in the larger one, the CABx. None had immigration law professionals while a third of Law Centres reported one immigration solicitor or barrister, 17 percent two, and a tenth between three and five. Two-thirds of CABx and 61 percent of Law Centres felt that they had 'too little' or 'far too little' legal experience to help migrant workers with employment problems. However three quarters of both organisations dealt with problems with illegal deductions from wages, lack of contracts, the EU Worker Registration Card system and problems with Job Seekers' Allowance among migrant workers. Some advisers reported general discrimination and unfair practices. There were also cultural difficulties in advice work:

A Citizens Advice Bureau is an entirely alien concept to even people from Portugal, certainly from Eastern Europe – people who need to get advice, they either go to the Government or they go to a Lawyer.

CAB Development and Social Policy Manager, North.

The major problem is language translation. Almost three-quarters of CABx and 61 percent of Law Centres felt that they had 'too few' or 'far too few' resources to support workers without English as their first language. Local council and LSC funding did not provide extra resources for translation, so the most commonly used form of language help was clients' friends and family, but only 58 percent of Law Centre advisers and 39 percent of CABx found this easy:

If I have a Russian come in to see me and he can't speak any English, I have to say – you must go away, you must find a friend who can speak

English and Russian, or English and German or English and Spanish, and then come back and I can talk to him and then he can interpret for you, because I can speak German, Spanish and English, but I don't speak Russian or Polish.

CAB Adviser, East Midlands.

However, using family and friends is an unreliable form of interpretation:

I mean we have seen an exponential increase in A8 workers in all manner of organisations but they are very time consuming cases, we have got very limited access to interpreters and it's amazing how we just cannot run a case relying on a friend or spouse to translate for you. It doesn't work, you need professional translators because it's amazing what you find out when you thought you knew what was going on. You get 'Language Line' [telephone translation service] and, in the space of about ten minutes, the picture completely changes and you're dealing with a different case entirely, and you thought you'd understood it fine because the person who was trying to help seemed to speak good English.

CAB Employment Adviser, North West.

However, 'Language Line' is expensive:

We are getting fairly regular contact from, particularly Polish and Hungarians as well...We have no Polish interpretation available and we have to use 'Language Line', which is not cheap (£1.20 per minute).  
...(It's) three-way telephone: I say to the interpreter what I want them to say, then I pass the phone to the client, they ask the question, the client answers, they pass the phone back to me and the interpreter tells me what they've said. I think one we had to deal with not long ago cost £380.

CAB Manager, East Midlands.

Advisers also have to cope with the fact that many clients dislike and distrust the telephone:

If they need a specialist, we used to have a specialist migrant adviser coming here until last year. They lost their funding for that. They've now set up a telephone project ....but these people don't want telephone advice, they want face to face advice. I think it's a little bit of the fear of who might be on the other end of the telephone, because there's a lot of intimidation that goes on by certain gangmasters. The other thing is...they like to be able to use non-verbal communication as well. They like to show things to people and use expressions.

CAB Adviser, East Midlands.

These difficulties were not confined to European and A8 workers, but also applied to many Asian workers, and although some CABx and Law Centres had Indian and Pakistani advisers, in general, few are from minority ethnic communities.

*Further Advice Rationing since 2007 changes in Legal Aid.*

Since the 1999 Access to Justice Act, testing for Legal Aid eligibility is increasingly time-consuming and often cuts against an ethic of wishing to help:

We get people come to the bureau and the normal [generalist] advisers check to see if they are eligible for Legal Aid and then they are referred to us. But there's a lot of cases that I would love to deal with but obviously because the Legal Services won't fund that then it is not eligible. So sometimes it's a bit frustrating and it's also all the paperwork, once you've got your cases that are eligible it's recording the time.

CAB Employment Specialist, Midlands.

Because we're under Legal Services Commission, you are prevented from helping those who need it most. You might have someone come in with a complex issue who needs help and has had the dirty done, there is a

claim there, they do need help but because maybe the partner is earning, or whatever, or they have equity in the home, they are not eligible for Legal Aid, so we are having to turn them away.

CAB Employment Specialist, North.

However, since the introduction in 2007 of fixed fees based on numbers of cases opened in LSC contracts, time for advice work has been further reduced.

There are hoops that we have to jump through in order to keep that money coming in. Those have become much harder to satisfy since the 1<sup>st</sup> October [2007].

Law Centre Employment Solicitor, North West.

Advice time had decreased as a result of the time spent on the LSC contract for two thirds of Law Centres, which are the most dependent on LSC funding, but also for 15 percent of CABx, primarily because of time spent demonstrating targets and form-filling, as in the public sector.

They [the contracts] are increasingly bureaucratic... the time that [our employment specialist] and I have to spend in doing reporting and the whole reporting system has just crashed recently, it's on meltdown, we repeatedly are threatened that our standard monthly payments are going to be cut... The bureaucracy takes the time away from somebody who really should be employed full time to deal with the clients and respondents... and over the last two years they have brought in this new fixed fee system and it has taken an awful lot of time and frustration, it puts greater risks on me as the head of the charity, in managing resources.

CAB District Manager, North West.

Furthermore, after many CABx abandoned LSC contracts, those remaining cover a much larger geographical area and resort to telephone advice, which is not



funded by the LSC, leading to a permanent conflict between commitment to clients and the financial survival of the bureau:

I do a lot of telephone advice, it's a bit of a problem, I'd probably receive on average 4 or 5 calls a day, but the problem we have in the bureau is that it isn't funded by the Legal Aid contract, so all telephone advice I give isn't funded by anything, so we are in a bit of a dilemma in that we are a CAB and we've got someone here who knows the answer and so your natural inclination is to give them the answer and provide them with the advice they want. It's cutting into the time I should be spending on fundable work.

CAB Employment Specialist, North.

The new contract also excluded funding for an initial client assessment interview. This undermined what experts knew was good practice in early grievance diagnosis:

Prior to that [the new contract] we had been able to give everyone half an hour free advice. That was hugely helpful for vulnerable workers. Half an hour doesn't sound like much, but one of the biggest issues we have with vulnerable workers is they're hard to reach and language barriers are even more (of a problem). It's much easier for someone to pop in or phone for half an hour advice and not have to fill in forms..than it is to go through a lot of form filling procedures and that was a very good way of at least giving people very basic ideas about what they were entitled to, which enabled them to go away and do some more good. That's now been taken away from us and we are seeking alternative funding, but there does seem to be a move in the Government away from preventative work...I think it needs to be from specialists... It's a bit like being a triage doctor or nurse, you actually need to be the most skilled person because you have to spot the person, who's about to die from internal injuries and the person who has just got a stomach ache, and that's what we have to do, we have to spot whether someone's got a major problem which they need to do

something about immediately, or whether this is a long term thing where perhaps there are different ways of doing it. So I think specialist advice is very useful at an early stage because it tends to diagnose the problem.

Law Centre Adviser, Inner London.

The third, widespread frustration was the downgrading of advice work created by the quantitative 'efficiency' criterion of fixed fees being based on numbers of cases opened, which forced selection of simpler cases to increase throughput, at the expense of complex cases which needed most support:

With fixed fees, because of the need to do "churn", Law Centres are having to keep the smaller cases that normally they would have done for free or passed on to a Citizens Advice Bureau.

Director of Law Centres Federation (cited in Legal Action, 2008: 7)

The imperative jarred every instinct of a caring profession committed to justice:

Now, there's a real, even more pronounced problem this year with the changes in the way Legal Aid is paid... we are helping people who are eligible for Legal Aid rather than those who actually need help with their employment problem, because the people who might need more help because of the complexity of an issue might be the ones who are not eligible for Legal Aid. [Are you able to refer these people anywhere else?] No, because no one else is doing free legal advice, there is a massive swathe of people who are not eligible for Legal Aid but also can't afford professional representation, and those tend to be the vast majority that we see.

CAB Adviser, North.

The financial logic of turning away deserving cases meant adoption of simple ones that could be dealt with by generalists. Complying with this topsy-turvy world caused major distress among advisers:

It's a massive problem, I am signing up people on Legal Aid now on the basis that they are eligible, because I need to get my numbers to claim funding. I'm signing them up on that basis rather than on the basis that they need my help. So I might sign someone up with a relatively straightforward issue, which really they could do themselves, but I am turning away people who aren't eligible for Legal Aid because they need my help.

CAB Employment Specialist, North.

While the need to crunch numbers caused distortion in service provision, the longer term effects were in de-skilling:

I'll tell you something else, one of our great promises, we used to be known for running the difficult discrimination cases, we can't do that any more because of the whole changes in the LSC funding, we have to be careful about how many serious interesting and important cases we take on, we have to churn the cases to hit the target....But I think the discrimination and those sorts of complex cases – we are not going to be able to deal with in the next couple of years until the situation collapses. But in the meantime we will have deskilled our workers.

Law Centre Adviser, Inner London.

Moreover, advice professionals were keenly aware of the wider implications of the type of advice the new government policy would unleash in terms of reduced quality of legal support:

...they are expecting us to do much more for the money...we used to be paid by the hour, so you do the work; you get paid for the work you've done... Now what they do is they say well we'll give you £225 for each case you open. So you have to be opening a significant number of cases less than £225 to balance out most of them which are above £225...I am afraid that quality is going to suffer because of what the Legal Services Commission is doing and not only that, it will allow organisations into the

sector, or encourage organisations into the sector, that are good at doing volume, but not complexity. But because you are expected to produce buttons, you end up producing buttons...We're trying, I suppose, to some extent, to wean ourselves off Legal Services Commission funding in order that we can take on things that don't meet their criteria, but meet broader criteria.

Law Centre Adviser, North West.

Some advisers anticipated further pressures to squeeze the voluntary sector by the introduction of price competition with the private sector:

... the future they are telling us is going to be competitive tendering. It's just frightening, it really is frightening. I just can't opt out of the system because there is no other funder. So we are just in the system, stuck in it and can't do anything about it, really just a victim of every whim they come up with, but it's becoming increasingly frustrating.

CAB District Manager, North West.

### **'CLACS', 'CLANS' and Competitive Tendering.**

Despite government enthusiasm to transfer more services from the public to the third sector, recent changes are likely to squeeze or eliminate existing voluntary sector providers. In 2005, the CLS introduced the strategy of inviting private companies to compete for LSC contracts as new Community and Legal Advice Centres (CLACs) and Community Legal and Advice Networks (CLANS) (CLS, 2005). The LSC argued that these enlarged services would lead to a more seamless service for clients, by bringing together social welfare and family law, rather than existing provision by specialist providers. Critics of the strategy argued that while clients faced multiple problems, a better strategy would be to improve specialist referrals, not private sector competition (Legal Action 2008).

Private sector competition is now to contribute to the 'efficiencies' of the LSC funding system. In 2008, despite strong opposition from the voluntary sector, the LSC began tendering for Community Legal Advice services contracts (an updated name for CLACS), sometimes jointly with local councils, in at least 15-20 locations, with existing providers chosen for tenders facing cutbacks or closure if their bids were unsuccessful (Solicitor Journal, 2008). Leicester Law Centre (which participated in our study) failed to win the joint local council/LSC contract, and was forced to close in 2008 when local council, as well as LSC, funding, both disappeared. The contract went to a commercial company, A4e. Hull CAB faced closure in autumn 2008 (our survey approached it, but it did not participate – arguably because it was facing crisis during our fieldwork in spring 2008) after it lost the tender to a private sector consortium of A4e and solicitors firm, Howells. Its workers, together with their union, UNITE, mounted a major campaign to keep it open, and it continues in much reduced form on very little income other than a Financial Inclusion Fund grant which funds 6 money advisers, and expires at the end of 2011. It therefore survives by running down its (meagre) reserves<sup>12</sup>.

The director of the Legal Action Group argued that the likely impact of CLACS on clients would be a diminishing choice of solicitors and other providers based in local communities. Legal Aid providers would concentrate on undertaking work strictly within the scope and eligibility limits they are contracted to, excluding many clients that desperately need help:

As the economy slows down these will often be people just above the means test limits for Legal Aid facing problems related to debts, housing, employment and benefits paid to people in work. The community legal service therefore is in real danger of shrinking from more than 3,000 solicitors and other providers to a few hundred large, profit-driven firms at a time of greatest need for access to civil justice

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<sup>12</sup> Most of those working in the CAB are the original volunteers - most paid staff (other than those funded by the FIF) moved to the CLAC, which is run by A4e, under TUPE. In terms of its future, the CAB is expecting to merge with East Riding CAB later this year, and the new combined CAB will at some stage bid for the proposed CLAN in the East Yorkshire region (personal communication, Citizens Advice Policy Officer, March 2009).

If competitive tendering develops from a few regional experiments to the overarching government funding policy for free legal advice, it will incrementally replace the voluntary sector with profit-driven firms which can mass-produce cheap, standardised advice. The commitment, service ethos and campaigning role of the voluntary sector will disappear and be replaced by a biddable private sector. As in the case of Hull CAB, this would lead to a rump of a voluntary sector and a renege on the Compact with the third sector. From 2013, the LSC plans to introduce further 'best value tendering' (BVT) for civil Legal Aid (Networking, 2007).

### **Conclusion.**

The majority of workers, being non-unionised, face workplace grievances alone. Despite government rhetoric expressing concern for 'vulnerable' workers, it fails to acknowledge the need to reverse the root cause of vulnerability, the individualisation of the employment relationship. Nor does it address the under-resourcing of the voluntary sector, the prime recourse for non-unionised, low-paid workers. This suggests that wider government commitment to the third sector rests on its provision of cheap service.

Our focus on employment advice has been on the CAB, which has a wide national network, and Law Centres, which can offer more specialised, professional service, but to a smaller, largely London-based population. They depend on government (LSC), local council and a heterogeneous agglomeration of National Lottery, European Union and private sector funding. Our survey evidence demonstrates that these resources are wholly inadequate to meet the rising tide of demand. While there has been a short-term cash injection to the CABx, Legal Aid has been systematically curtailed and subordinated to narrow, quantitative measures which downgrade service provision, with further 'reform' demonstrating the mantra of the free-market through competitive tendering and privatisation.

Our research has demonstrated how voluntary sector workers are driven by a public service, altruistic, moral ethic. Within the CABx, most advisers are volunteers, and paid workers and professionals in the Law Centres work because of their commitment to help the vulnerable. We have given voice to the strains and frustrations of operating in a threadbare resource environment. Advisers cope, but at the cost of enforced compromises they are forced to make because of inadequate funding, as well as funding rule changes among those working within the Legal Aid contracting system. The evidence on workload and working hours shows work intensification and extra hours for unpaid volunteers, unpaid overtime for earners. Much of the experience resonates with that of public sector workers, also forced to operate under reduced budgets and to deliver a caring, social service. We have demonstrated how the voluntary sector attempts to deliver a professional, quality service – and how it does so at very little expense to either the public, or private sector. Most advisers felt they did not do enough, and all referred to the rising demand of clients, and growing complexity of employment law.

The government posits a ‘joined-up’ approach to ‘help’ vulnerable workers (DTI, 2006). Its Forum on vulnerable workers (BERR, 2008) concludes with greater internet and telephone guidance to Britain’s four employment law enforcement agencies and improved communication between them. However, these remain under-resourced and their remit is limited to specific areas which omit the most common problems experienced by the non-unionised, such as unfair dismissal. The evidence on which this article is based (Pollert et. al., 2008), on the plight of voluntary sector advisers, and the implications for vulnerable workers, was available to the government’s Forum through the TUC’s Commission on Vulnerable Employment, but was not addressed by it. Government policy on the voluntary sector appears divorced from policy and research on vulnerable workers. Long-term policy is that free (legal-aid funded) advice is to be mass produced advice – or what one adviser termed as ‘buttons’ – and handed to private organisations. Meanwhile, employment law becomes more complex as do ETs. In the context of Britain’s non-unionism, the evidence

on the poverty of individual resolution to workplace grievances, and the better record for the unionised workplace in dispute resolution, a rational policy response to alleviate worker vulnerability would be to emphasise and ease collective organisation. In the short-term, adequate resourcing of the voluntary sector should be a priority. However, neither policy is in evidence.

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