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Tax Justice and Older People: An Examination Through the Lens of Critical Tax Theory

Jane Frecknall-Hughes, Nashid Monir, Barbara Summers and Simon James*

ABSTRACT

‘Tax justice’ is a term commonly used in the context of ensuring that companies and individuals pay the ‘right’ amount of tax, although it is acknowledged that it also relates to promoting societal well-being through the use of the tax system, this last connotation linking to the wider, more general definition of (Western) justice as fairness in the way people are dealt with, doing what is morally right and giving everyone his/her due. In the latter sense, individuals and their tax affairs should always be dealt with equitably and without bias. However, the UK tax system contains inherent biases which impact adversely on older people, which are exacerbated by the advent of digitalisation, a key finding revealed by the study reported in this chapter.

The study was funded by the Chartered Institute of Taxation (CIOT), to examine the records of *Tax Help for Older People (Tax Help)*, a charity which assists those (typically) aged over 55 with income of £20,000 or less who experience problems with taxation, chiefly income tax. It was an archive-based study which explored and analysed data in *Tax Help*’s case files to identify the types of problems that *Tax Help*’s clients experience and why such problems arise. The study followed up on an earlier scoping study into those same records, also funded by the CIOT. Details of 708 case files were recorded over a series of seven site visits during 2016–17, with the separate scoping study examining 169 cases. The data are viewed through the lens of critical tax theory, with the findings making a contribution to studies in this area, which have not hitherto examined the experiences of older people through this lens.

I. INTRODUCTION

*The authors gratefully acknowledge funding from the CIOT, which enabled this research to be carried out, and the very generous assistance provided by the staff at *Tax Help*.

Civil rights law considers as unlawful discrimination any unfair or unequal treatment of an individual, or group of individuals, based on certain characteristics, which are thus protected by law. The UK Equality Act 2010 lists nine protected characteristics, one of which is age. The others are: disability, gender reassignment, marriage or civil partnership (in employment only), pregnancy and maternity, race, religion or belief, sex and sexual orientation. Age differs from many other characteristics as it affects everyone, sooner or later (assuming they live long enough): it is not a condition into which anyone is born, or over which they have any choice. Individuals who may or may not share other protected characteristics will also be affected by age, which can bring with it yet other characteristics, for example disability, so older individuals may thus be affected by multiple layers of discrimination. This is further compounded in the context of a tax system, which older people find especially difficult to engage with for a number of reasons, such as being ‘cast adrift’ from Pay as You Earn (PAYE) systems previously implemented by their employer and not knowing whether they need to be in the self assessment regime. Added to this in recent years has been the further requirement to deal with these difficulties by digital means, which, we argue, superimposes another layer of discrimination. As we show in this chapter, older individuals, possibly already excluded from engaging with the tax system because of issues associated with old age, are then further excluded by the need to engage with a digitalised system. The UK tax system as it stands is designed for those of able body and mind, who are tax-educated/literate, and it inherently and increasingly discriminates against those who are not, or who cannot afford to pay for professional tax advice, all of which undermine the concept of ‘tax justice’.

The past few years have seen a determined effort by HM Revenue & Customs (HMRC) in the UK to encourage individual taxpayers to engage with the tax system online, through either self assessment, or, more recently, the use of a Personal Tax Account (PTA). The reasons for this are in many ways understandable: we live in an age where use of computers and information technology is predominant, and these carry out routine work much more quickly, efficiently and cost-effectively. However, not everyone has a computer or access to one, or even knows how to use one. This is especially true for the older individuals who comprise a significant proportion of our society. Moreover, having to engage with the tax system online adds an additional layer of complexity to dealing with taxation, which many find difficult enough without this added complication. As the literature reviewed in Section II shows, older people’s needs as regards digitalisation may be specific, owing to the particular vulnerabilities generated simply by being older.

The research objective of this chapter is to examine the experiences of older people in dealing with a digitalised tax system. Evidence is gathered from the records of the tax charity, *Tax Volunteers*, which runs *Tax Help for Older People* services (*Tax Help* hereafter). *Tax Help* was established in response to an initiative of the Low Incomes Tax Reform Group (LITRG), a committee of the Chartered Institute of Taxation (CIOT). In December 1998, LITRG published a report – *Older People on Low Incomes: The Case for a Friendlier Tax System*¹ – and in the absence of any real action on the part of HMRC to address the problems highlighted therein, LITRG initiated *Tax Help for Older People* in April 2001 as a one-year pilot project in Wolverhampton and in rural areas of the South West of England, chosen as representing very different areas but having in common a substantial population of older people on low incomes. The objective was to provide accessible tax help and advice for older, more vulnerable and unrepresented people on low or modest incomes. Funding for the pilot initially came from the CIOT and the Nuffield Foundation and it was established with the help of just a small number of volunteers. The success and take up of the service led to the eventual establishment of *Tax Volunteers* as a charity in 2004, specifically to run *Tax Help* services.² The charity is currently based at Salway Ash, near Bridport, in Dorset. To qualify for assistance, individuals will usually have income of less than £20,000 per annum and be aged over 55.

The evidence, viewed through the lens of critical tax theory (see later), finds a wide range of difficulties presented to older people by the digitalisation of the tax system. We might go so far as to suggest that, despite being a significant part of the UK population, they are overlooked and stigmatised, their needs are unaddressed, and they are left to fend for themselves at a time of life when they are increasingly vulnerable to a variety of other problems. This study makes a significant contribution to the literature on older people and computer/information technology use, as well as filling in a gap in the studies using critical tax theory, which have not specifically examined older people.

The chapter is structured as follows. Section II reviews previous literature on older people in terms of their tax problems, and of computers and information technology

¹ LITRG, *Older People on Low Incomes: The Case for a Friendlier Tax System* (London, Chartered Institute of Taxation, 1998).

² This information was taken from *Tax Help*'s website (www.taxvol.org.uk, accessed 23 April 2017). *Tax Volunteers* is an independent company limited by guarantee and is a registered charity in England and Wales (No1102276) and in Scotland (No SC045819).

generally, then narrows the focus to the digitalisation of tax and digital exclusion. This is followed by a discussion of critical tax theory as the appropriate theoretical framework for this study in Section III, with Section IV then detailing the research methods adopted. The discussion of the findings follows in Section V, with Section VI offering our conclusions.

II. REVIEW OF PRIOR LITERATURE

The UK today has a greater number of older people in its population than ever before. The increase has been steady over recent years. The population growth and demographic statistics provided by the Office of National Statistics (ONS) estimates the total UK population in mid-2017, for example, as being in excess of 66 million, with 11.9 million (18.0%) being aged 65 or over and 1.6million (2.4%) being 85 or over.³ In mid-2015, the figures were 65.11 million, with 11.6 million (17.8%) being aged 65 or over and 1.5million (2.3%) being 85 or over.⁴ The ONS reported in its *National Life Tables, United Kingdom: 2012–14*⁵ that this so-called ‘Golden Cohort’, born between 1926 and 1935, has ‘experienced improvements in mortality throughout most of their lifetimes that no cohorts previously or since have experienced’. The *National Life Tables, United Kingdom: 2015–20* reveal that, although there have been slight decreases in recent years in life expectancy for women aged 65 (some two weeks), it remains unchanged for men, while the number of those aged 90 or over ‘is still increasing due to previous improvements in mortality going back many decades’.⁶

It must also be borne in mind that the age range of those deemed ‘older’ is very wide – typically 55 and over. This is a non-homogeneous group, comprising the retired, the active and the inactive, and persons in both good and poor mental and physical health. Moreover,

³ ONS, *Overview of the UK Population July 2017* (ONS, 2017), available at www.ons.gov.uk/releases/overviewoftheukpopulationjuly2017 (accessed 3 December 2018). This was the latest date for which figures were available at the time of writing.

⁴ ONS, *Population Estimates for UK, England and Wales, Scotland and Northern Ireland: Mid-2015* (ONS, 2016), available at www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/annualmidyearpopulationestimates/latest (accessed 24 April 2017).

⁵ ONS, *National Life Tables, United Kingdom: 2012–14* (ONS, 2015) 8, available at www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/lifeexpectancies/bulletins/nationallifetablesunitedkingdom/2015-09-23 (accessed 24 April 2017).

⁶ ONS, *National Life Tables, United Kingdom: 2015–18* (ONS, 2018) 7, available at www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/lifeexpectancies/bulletins/nationallifetablesunitedkingdom/2015to2017 (accessed 29 March 2019).

not all see themselves as ‘old’ or ‘older’. Many people who receive pension income also actually still work to make ends meet, hence this older group is likely to have very limited financial resources. *The Telegraph*, for instance, reported in July 2016 that the ‘number of pensioners with jobs has trebled since the 1980s and one in 10 of those over the age of 65 is now in work’.⁷ Some of these individuals are members of this ‘Golden Cohort’, although many are younger. An Office of Tax Simplification (OTS) report on pensioners’ taxation, published in 2014, opens with the remark that ‘[t]here is no such thing as a typical pensioner. They may be single or married; above or below sixty five; in work or taking their leisure; with or without a pension; with or without savings or investments’.⁸

The tax issues generally experienced by older individuals have been well documented by a series of reports by LITRG,⁹ the National Audit Office (NAO)¹⁰ and the OTS.¹¹ An earlier LITRG report in 1998,¹² states that older people on low incomes: (i) have less access to support, such as a payroll department or a professional tax adviser; (ii) are more likely than younger people to suffer from physical disabilities, thus impeding their ability to deal with their tax affairs; (iii) often have to cope with tax issues, for the first time, following bereavement; (iv) face a tax system that is particularly complex for those aged 65 or over; and (v) must deal with PAYE and tax withholding systems which are not geared to their needs. The fact of digitalisation being superimposed compounds these existing issues. This, in a wider sense, encompasses within it the idea of ‘tax literacy’, not just in terms of coping with a tax system that is complex per se, but in using digital tools to deal with it. Research in this field, as a sub-set or dimension of financial literacy, is a recent development. Cvrlje suggests that ‘discussions on tax literacy are not widespread and the concept is also not

⁷*The Telegraph*, ‘Number of Pensioners with Jobs Trebles Since 1980s, With 1 in 10 People Aged Over 65 in Work’, available at www.telegraph.co.uk/news/2016/07/28/number-of-pensioners-with-jobs-trebles-since-1980s-with-1-in-10 (accessed 24 June 2017).

⁸ OTS, *Review of Pensioners’ Taxation: Final Report* (London, Office of Tax Simplification, 2013) 4.

⁹ LITRG, *Tax Help For Older People (TOP) Pilot Projects in the South West And West Midlands, April 2001 to March 2002*, Final Report (London, Chartered Institute of Taxation, 2002).

¹⁰ NAO, *Report by the Comptroller and Auditor General, HC 961 Session 2008–09, HM Revenue & Customs: Dealing with the Tax Obligations of Older People* (London, The Stationery Office, 2009).

¹¹ OTS, *Review of Pensioners’ Taxation: Interim Report* (London, Office of Tax Simplification, 2012). For the 2013 Report, see n 8.

¹² See n 1 above.

discussed widely nor is it generally defined or accepted’,¹³ although tax literacy generally is linked to ‘tax complexities including tax revenues and tax compliance’ and enables people to ‘control their personal financial resources’.¹⁴

The ONS has also recently estimated that over 11 million adults in the UK lack basic digital skills, in that they cannot fill in online forms or find websites – and of this 11 million, 4.5 million have never used the internet. Of the 4.5 million, 2.6 million were older than 75.¹⁵ The over-75s also comprise the group with the highest level of lapsed internet use, although internet use by those aged 65 and over has overall increased since 2011. Since the ONS began its survey in 2011, adults aged 75 years and over have consistently been the lowest users of the internet.¹⁶

While some older people will be very comfortable with computer and internet use, others may not. Younger people tend to grasp new ideas more quickly and thoroughly than older people, possibly because, for older people, new ideas involve ‘unlearning’ older, entrenched facts, which can be more difficult than learning something for the first time.¹⁷ General levels of education are also relevant.¹⁸ There are also other barriers/limitations to computer use for older people – financial reasons (cost of computers and internet access); complexity in locating information; navigation; using programmes; concerns about security and privacy; and lack of technical assistance.¹⁹ Additional difficulties are caused by physical impairments like arthritis, visual impairments and ergonomic obstacles, such as small font

¹³D Cvrlje, ‘Tax Literacy as an Instrument of Combating and Overcoming Tax System Complexity, Low Tax Morale and Tax Non-Compliance’ (2015) 4(3) *Macrotheme Review* 156, 158.

¹⁴ *ibid.* See also T Chardon, B Freudenberg and M Brimble, ‘Are Australians Under or Over Confident When it Comes to Tax Literacy, and Why Does it Matter?’ (2016) 14(3) *eJournal of Tax Research* 650. The authors report on research carried out in Australia of 604 individuals (188 male, 416 female, including 65 people overall over 55 years in age), indicating that 19% of Australians had ‘tax literacy scores classified as either “poor” or “low”’ (at 652).

¹⁵ ONS, *Internet Users in the UK: 2018* (ONS, 2018) 6, available at www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2018 (accessed 29 March 2019).

¹⁶ *ibid.*

¹⁷ See HC Lehman, *Age and Achievement* (NJ, Princeton, 1953).

¹⁸ See C Gagliardi, GMazzarini, R Papa, C Giuli and F Marcellini, ‘Designing a Learning Program to Link Old and Disabled People to Computers’ (2007) 34(1) *Educational Gerontology* 15.

¹⁹ See BD Carpenter and S Buday, ‘Computer Use Among Older Adults in a Naturally Occurring Retirement Community’ (2007) 23(6) *Computers in Human Behaviour* 3012.

size.²⁰ Individuals have also reported problems caused variously by lack of computer knowledge; having insufficient room in their living space; feeling too old to learn; lack of patience with the computers; a degree of laziness; lack of typing skills; no transportation to computer classes; fears about ‘radiation’; and lack of interest²¹ (some of which might apply to younger users as well). However, it must be remembered that, while some older people may have used computers in their working lives before retiring and gained the necessary basic skills to use them (eg typing), most people aged 65 or over will not have experienced them as part of everyday school or leisure activities in the same way as younger people currently do, so computer use may not be ‘second nature’. This all needs to be considered in terms of the speed of technological change in recent years. For instance, the first smartphone went on sale fewer than 25 years ago, ‘preceded only by a couple of years by the invention of the world wide web’.²²

A considerable amount of academic research has been undertaken to date on older people’s use of computers and information technology, with special reference to how older people respond, their attitudes and learning abilities.²³ The various studies often reveal conflicting results in their findings, although the same general themes emerge relating to whether older adults are technologically inadequate; whether they have difficulties in learning new technologies; whether they are more selective of the technology they use than younger people or have a more negative attitude towards it; and whether they are subject to the same or different influences as younger individuals. There are many ‘common myths’²⁴ about older people in relation to computers and technology: both young and old may be affected similarly. However, in reference to older people:

²⁰ See A Tatnall and J Lepa, ‘The Internet, E-Commerce and Older People: An Actor Network Approach to Researching Reasons for Adoption and Use’ (2003) 16(1) *Logistics Information Management* 56; and I Darroch, J Goodman, S Brewster and P Gray, ‘The Effect of Age and Font Size on Reading Text on Handheld Computers’ in MF Costabile and F Paternò (eds), *Human-Computer Interaction – INTERACT 2005, IFIP TCIB International Conference Proceedings*, Rome, Italy, September (Berlin, Springer, 2005).

²¹ As noted by Carpenter and Buday (n 19).

²² OTS, *Technology Review: A Vision for Simplicity* (OTS, 2019) 8, available at www.gov.uk/government/publications/will-tax-simplification-still-be-needed-as-technology-advances (accessed 9 February 2019).

²³ This body of work is summarised by T Broady, A Chan and P Caputi, ‘Comparison of Older and Younger Adults’ Attitudes Towards and Abilities with Computers: Implications for Training and Learning’ (2010) 41(3) *British Journal of Educational Technology* 473.

²⁴ *ibid* 477.

[f]irst, consideration must be given to allow ample time for older people to master new skills. Second, care must be taken to treat any person learning to use technology in a positive manner that makes them feel like they are valued and that success is the expected outcome.²⁵

Factors which assist older people in learning to use technology have been found to be, in order of importance: simple and clear written instructions; clarity of meaning of operating instructions; clarity of demonstrator; easy pace of demonstration; short sequence of instructions; one step operation; audio/visual prompts to indicate next steps; large print size of written instructions; colour coded instructions; and an accompanying sound, such as beeping.²⁶ However, it is a significant problem that older people's requirements 'are not often considered in the design of computer systems and software',²⁷ so it is not surprising to find them among the 'digitally excluded'.

'Digital exclusion' is defined in a report published in 2019 by the OTS as 'having no use of the internet – predominantly because of a lack of access at home (or in ... place of work for businesses), or for a small minority because of no use despite having access'.²⁸ The report acknowledges that certain elements in society are excluded from using digital technology. Research undertaken by HMRC in 2017 on the use of the Personal Tax Account (PTA) stated that 'around 10 to 15% of the overall HMRC customer population is digitally excluded'.²⁹ The 2019 OTS report summarises the reasons for digital exclusion as follows:

- *Lack of access.* There is limited or no broadband availability and/or the costs of hardware, software and internet access prohibit access.
- *Lack of skills.* Possible access exists to physical tools to enable internet connection, but there is a lack of knowledge or ability in using them.

²⁵ *ibid.*

²⁶ See C Irizarry and A Downing, 'Computers Enhancing the Lives of Older People' (1997) 16(4) *Australian Journal on Ageing* 161, 164.

²⁷ J Goodman, A Syme and R Eisma, 'Older Adults' Use of Computers: A Survey' (2003) in *Proceedings of BCS HCI 2003*, Bath, UK, 8–12 September, available at www.researchgate.net/profile/Audrey_Syme/publication/246993432_OLDER_ADULTS%27_USE_OF_COMPUTERS_A_SURVEY/links/0a85e533b24bfb50bb000000/OLDER-ADULTS-USE-OF-COMPUTERS-A-SURVEY.pdf (accessed 11 February 2019). This work, although available in pdf format, does not have page numbers. The quote is on the first page.

²⁸ OTS, *Technology Review* (n 22) 20.

²⁹ HMRC, *Personal Tax Account Research* (HMRC, 2017) 6, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/726978/Personal_Tax_Account_Research.pdf (accessed 11 February 2019).

- *Lack of motivation.* Individuals are not interested in bettering their digital skills and make no effort to improve them.³⁰

The overall result may be a lack of confidence and increased dependency on assistance, for example individuals may need to borrow equipment and/or be helped to use it, often with someone sitting alongside to help complete online forms. This latter group HMRC recognises as ‘Assisted Digital’, finding that such individuals suffered from both reduced confidence and increased anxiety, because of the burden perceived as associated with digital issues, and ‘a general lack of knowledge and experience of online interactions’.³¹ This presents a barrier for this group of people in terms of HMRC’s ambition to become one of the ‘most digitally advanced tax administrations in the world’, providing services that should be ‘easy-to-use, convenient, and personalised for individuals, businesses and agents’; promoting ‘digital take-up and voluntary compliance by designing for customer needs’; using ‘data to help customers avoid errors through pre-population’; and providing ‘assistance in using or accessing ... services for those who need it’.³² However, the OTS concludes that considerable work is needed before this vision can be achieved and comments that ‘understanding the experience of the user, the taxpayer, is critical in identifying ways to simplify how people manage their tax affairs and improve understanding of their obligations on tax’.³³ The OTS has already reported earlier that more needed to be done to assist people technologically and to help them understand tax, potentially by developing the use of the PTA.³⁴

A very important underlying aspect of all this is how well the digitalisation of tax progresses. In 2018, James and Sawyer, for instance, compared the New Zealand (NZ) and UK approaches and identified a number of risks, not least the low success rate of information technology (and related) projects, attributed mainly to poor project management.³⁵ In the present context, in both NZ and the UK, by the time the new systems are fully operational,

³⁰ OTS, *Technology Review* (n 22) 21.

³¹ *ibid.*

³² *ibid* 6.

³³ *ibid* 5.

³⁴ OTS, *Guidance for Taxpayers: A Vision for the Future*. (OTS, 2018) 16, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746076/OTS_Guidance_for_taxpayers_041018.pdf (accessed 13 February 2019).

³⁵ S James and AJ Sawyer, ‘Digitalization of Tax: Comparing New Zealand and United Kingdom Approaches’ (2018), UNSW, Sydney, Australia, 13th International Tax Administration Conference, 5–6 April.

the revenue authorities will have lost a substantial number of experienced staff, including those involved in face-to-face dealings with taxpayers. It may be that the consequences arising from a lack of personal engagement with taxpayers have been underestimated and that these fall relatively heavily on older taxpayers for the reasons mentioned above.

III. THEORETICAL FRAMEWORK

The literature reviewed above is explicit that older people's needs are not addressed by the tax system, nor are their requirements 'often considered in the design of computer systems and software'.³⁶ This, together with the other problems identified that relate to their 'older' status, may mean that a significant proportion of the population is excluded from engaging with a tax system which, in theory, should have the capability to deal with all individuals' tax affairs, regardless of who they are or in whatever situation they find themselves – tax being 'the one area of law that affects everyone in our society'.³⁷ If individuals are prevented from engaging with the tax system, this indicates the presence of some form of bias or prejudice, which brings us into the area of critical tax theory as a lens through which to view the research reported in this chapter. One of the goals of critical tax theory is 'to uncover bias in the tax laws'.³⁸ In their edited work on *Critical Tax Theory: An Introduction*, Infanti and Crawford include chapters by various authors which address discrimination in the US tax system against race, ethnicity, socio-economic class, gender, sexual orientation, immigration and disability.³⁹ Old age differs in that it is not a characteristic that one is 'born into'. Many other aspects of the human condition identified by Infanti and Crawford are innate (even immigrant status may, perhaps controversially, transcend generations) and may be seen by an individual as core to their identity. Old age, however, affects everyone if they live long enough, so, on top of these other biases, individuals may find themselves subject to another form of discrimination as they grow older, and have to adapt to ageing and whatever accompanies it at a time when their resources are unlikely to improve. While older people

³⁶ Goodman, Syme and Eisma (n 27).

³⁷ AC Infanti and BJ Crawford, 'Critical Tax Theory: An Introduction' (2009) 1, University of Pittsburgh Legal Studies Research Paper No 2009-04, available at <https://ssrn.com/abstract=1333799> (accessed 7 September 2018).

³⁸ *ibid* 12.

³⁹ AC Infanti and BJ Crawford (eds), *Critical Tax Theory: An Introduction* (New York, CUP, 2009).

may inherently be included in one or more of the groups identified by Infanti and Crawford, bias against them in the tax system is not addressed as a separate issue, hence this chapter makes a contribution to the body of work in the area of critical tax theory by examining this group. Infanti, in a later work, makes the point that US tax laws reflect the divisions in society, validating existing power and privilege, leading to an institutionalised exclusion of certain groups, saying that '[t]he truly “fundamental” tax questions concern not who gets which tax cut but how our system reflects on us as a society and what it says about how justly and fairly we treat each other'.⁴⁰ He goes on to specify the differential impacts relating to race, gender, marriage, and the LGBT, immigrant and disabled communities of various aspects of the tax code. He follows up with case studies on the ideas implicit in critical tax theory that tax laws should both reflect and construct social meaning, and reinforces how they make certain individuals stigmatised. This is true also of the group considered in this chapter: older people.

IV. RESEARCH METHODS

This was an inductive, archival study, which examined individual cases that *Tax Help* had dealt with. Over a series of seven site visits during 2016–17, 708 case details were recorded (351 men; 357 women; 35 persons in total being aged under 60). The details were extracted for each case selected on to an Excel spreadsheet for demographic-type details and on to a Word file for the narrative details of the issues involved. The 708 cases comprised in essence a convenience sample, aimed at being generally reflective of the issues which come to *Tax Help*. It would be difficult to obtain any other sort of sample in the context of individuals needing help.

Tax Help records all cases on its client database using a Client Advice Record (CAR), and every time anything is done for any client, an entry is made. Help is provided by a variety of means – post, phone, e-mail, ‘surgeries’ at venues close to clients’ homes, and home visits – by the permanent staff at the charity and by a team of professionally qualified volunteers throughout the UK. The method of help depends on the nature of the problem identified.

⁴⁰ AC Infanti, *Our Selfish Tax Laws: Towards Tax Reform that Mirrors Our Better Selves* (Cambridge, Mass, The MIT Press, 2018) 151.

The CAR is a key document, as it logs the name of any client, the address, telephone number and a variety of other personal information relevant for tax purposes, such as age, marital/partnership status, tax reference number, etc (though sometimes not all details are present). It usually records the source of the initial query to *Tax Help* (eg *Age UK*, *Citizens Advice*, previous client, etc), who dealt with it, and to whom, among the volunteer tax advisers, the case was referred, if this was necessary. If a volunteer tax adviser was involved, the CAR records the adviser's name, date, location for giving advice, and the amount of any tax payment/repayment due and whether the case was immediately resolved or required further input. All cases dealt with receive a unique reference number, which is the identifier used in this research, to ensure anonymity and confidentiality. Many individuals were 'returning' clients, and some had entries dating from the establishment of the electronic database in about 2008 (and before). Until a client record was accessed, it was not possible to tell whether a case was a single, anonymous phone call, dealt with almost at once, or whether it involved a returning client with multiple entries, going back many years. Some cases had 50 or so entries; a very long one might have 70; a short one, might only have one entry. One-off (sometimes anonymous) queries by phone requiring no more than a few minutes' discussion/advice were not uncommon.

The CAR also logs the type of technical issue on which the client needed help, under broad categories, for example, self assessment, PAYE, advocacy, help with forms, general guidance and tax credits, etc, and listings of the kinds of problems arising are maintained. A basic analysis of the type of tax problems manifesting themselves was thus available a priori, but this did not indicate why such problems might have occurred, so a detailed thematic analysis of the recorded case details was carried out to determine reasons. Overwhelmingly, the issue of engaging with the tax system digitally emerged as a key reason for the problems experienced, as discussed in the next section.

V. DISCUSSION OF THE FINDINGS

It must be acknowledged first of all that a considerable amount of the work done by *Tax Help* is non-contentious in tax terms, for example the routine completion of tax returns, either by paper or online. Some older clients are very content to deal with their affairs online, but need help to do so, and just regard digitalisation as requiring a different way of doing things. Of

the issues discussed below, many may equally apply to the population more widely, not just those over 55: we currently do not know.

A. Lack of Resources – Financial and Other

The effect of tax problems, especially digital ones, on this older group of people, is exemplified by the following case. A retired lady of 68, who had paid no tax since she retired at 60, contacted *Tax Help* when her pension provider deducted £67.40 in tax as a result of using incorrect codes supplied by HMRC. Her e-mail to *Tax Help* is worth quoting in full:

I have written and telephoned the Tax Office and they agree there is no way I should be charged tax as my income is so small. However, they also say that they cannot issue a refund and I will have to wait till next September when the annual pension is paid for me to get that money back. They have supplied correct tax codes now to my pension provider and advised me to request that [the pension provider] just run me on the payroll again, using these codes and the refund would be automatic. [The pension provider] ha[s] refused to do this unless the Tax people write and ask them to do this. So far this has not happened.

The amount may seem incredibly small to some people but I have to say that being nearly £70 short of the money I was expecting at that time of year was a problem for me. Also, I do not feel that as a ‘small person’ in society that I have been treated fairly by these organisations. I did nothing and yet have been penalised financially and now, with no sympathetic responses from either of these organisations feel hard done by and let down.

Is there anything you can advise me to do which would not involve me in any further outlay. I have already made telephone calls and sent letters as I feel there is a principle to uphold here and do not see why unempowered people in our society should not be treated fairly, no matter how small the matter may seem to others.

Thank you for offering this free service to pensioners, it is much appreciated. We are not all the ‘rich pensioners’ that our media would have us believe.

The above example is revealing in other ways, in that it shows how difficult it is to engage with the tax system, as there are so few mechanisms/resources whereby individuals can do so. This lady had at least obtained a response from HMRC: there are numerous instances of people not being able to do so, reporting being ‘on hold’ so long in trying to make contact by telephone that they abandoned the attempt. One lady reported that attempting to telephone from overseas proved not only impossible but prohibitively expensive, and as the above quote shows, the cost of telephone calls can still be a consideration in the UK (an issue frequently

raised). Telephoning an HMRC help line or writing are the commonest ways to contact HMRC if there are problems (if one cannot afford professional advice), and if one does not have online access. While telephone response rates have improved since the problems widely reported on the introduction of a telephone helpline, the level of response still remains an issue — especially when, if there is a need to call back, after establishing contact, it is not possible to talk to the same person. Since HMRC closed its Enquiry Offices, individuals cannot go and talk to anyone face-to-face to try to deal with problems – problems that they cannot often articulate clearly. Digitalisation has removed interaction between human beings. The above example also shows that a relatively small sum of money can be critical to the financial well-being and security of individuals on very low incomes. This lady’s income was well under £10,500 – and that is more than many *Tax Help* clients receive. It also shows how many of the problems people experience may be inter-related or overlap, which makes it difficult to classify problems definitively. We go on to report our findings, therefore, in broad general categories, some of which are inherent in the above quote.

B. ‘Abandonment’ and Tax Code Issues

It was very clear that individuals who had been formerly employed often felt ‘cast adrift’ from the PAYE system previously implemented by their employer, and might be unaware that they needed to be in the self assessment regime. Removed from the employer’s PAYE system, they then had to engage directly with a digitalised tax system on their own, deprived of any support. There was great misunderstanding as to why tax was deducted from one source of income when it appeared to relate to different income, for example the state pension (which is not taxed at source). The issue of the correction of incorrect tax codes is a constant theme throughout the *Tax Help* records. Innumerable cases involved the incorrect calculation/application of ‘K’ codes by HMRC or a pension provider, often where individuals on retirement had small pensions from different sources.

A K code means that a person has income that is not taxed elsewhere (eg at source) and that is in excess of the tax-free allowance. An employer or pension provider will take the tax due on the untaxed income from wages or pension, even if a different organisation is the one paying the untaxed income. Employers and pension providers cannot take more than half of pre-tax wages or pension in tax when using a K tax code. However, problems can arise if a K code is not issued against the largest source of income. For example, if a K code is issued against the smallest source of income, rather than the largest, it will cause the tax due not to

be collected. If this happens for several years, it may give rise to multiple years of under-payments, pushing individuals into self assessment and/or debt. Often uncollected debts will mean that the debt collection agency becomes involved, and things may rapidly spiral out of control, especially as individuals have a tendency to leave tax matters to ‘take care of themselves’ – a tendency possibly resulting from having an employer’s PAYE department deal with tax at source on employment income, and/or because they do not understand the standardised, computer-generated documents they receive. Leaving tax matters to ‘take care of themselves’ can also result from illness or the forgetfulness associated with failing memory, and may follow years of non-problematic tax filing. This was a problem that had given rise to almost too many cases to count. Some individuals had also clearly tried to deal with their tax affairs online but had ended up in a terrible muddle (eg a wife including her income as that of her husband), covering several years of returns, which *Tax Help* have then sorted out. Others have made more successful attempts, and they have continued to file online on their own after *Tax Help* has shown them what to do, albeit with occasional requests for additional help for any items which fall outside their experience.

C. Access Issues and Errors

Issues regarding access to computers, and/or knowing how to use them, were major problems. Some individuals reported having to complete their self assessment returns via computers in public libraries, and thus not being able to print out their returns so they could retain a copy. Other clients without computer access commonly asked *Tax Help* if the charity could print out a form they needed so that they could complete it and post it to HMRC.

One lady needed a paper copy of her P60, the annual summary of gross pay and deductions provided by an employer. However, the employer only provided these online and as she did not have a computer, or access to one, it caused her considerable worry about how she might check that her income tax position was correct. It is not uncommon for employers/pension providers to apply a wrong code (see above). This might be caused, for example, by a delay in receiving information from HMRC, an error made by the employer/pension provider, or computer systems breaking down (including, in two reported cases, when HMRC experienced computer problems, one of which resulted in a duplicated request notifying an under-payment). The move to the Real Time Information (RTI) system had caused many difficulties and errors, often with individuals’ records being duplicated. Some kinds of errors are difficult to explain. One lady received a letter from HMRC stating

that she was the personal representative for a person recently deceased: she had never heard of the person in question. Another was very surprised to receive correspondence addressed to the personal representative of herself deceased, even though her National Insurance number was on the letter. Another elderly gentleman was extremely distressed to receive, inexplicably, a request for details of his wife's income, some 12 years after her death.

Access problems can be of several different kinds. There were several reports of *Tax Help* clients trying to deal with making disclosures under an HMRC 'Let Property Campaign', that needed an online form which clients could not access. The form could only be completed online: it could not be printed off and completed manually and then posted to HMRC. The case notes in one instance specifically refer to a particular client being 'digitally excluded', with the tax volunteer being prepared to 'go out of his way to help this client', who was aged 70, had no family support and suffered from depression.

Different kinds of access problems were commonly experienced by individuals in terms of filing an online return under self assessment, even where they had done so successfully on prior occasions, as there appeared to be problems over different access routes and problems with passwords not being recognised. Access via the 'Government Gateway' sometimes proved impossible, as did various verification procedures. Similarly, trying to access help through a telephone system using voice recognition proved impossible even for some people who were articulate and knew what they wanted, as well as for those who were confused by it.

Self assessment and whether individuals' tax should be dealt with via self assessment were on-going difficulties. One client, aged 90, was asked for the first time to file a self assessment return online, but the family member authorised to help her was unable to activate the authorisation code, despite a lengthy call with HMRC to take her through what needed to be done. The family member reported that the HMRC adviser 'told her that her computer was rubbish', so she hung up and asked *Tax Help* for assistance. It turned out that there was no reason for the client to be in self assessment, and as she also had not received the married couple's allowance to which she had been entitled, refunds of tax were actually due. (It was common to find that individuals had not claimed, or did not know about, the allowances to which they might be entitled – very commonly and incidentally discovered where individuals had contacted *Tax Help* for assistance on an unrelated matter.) In other cases, individuals had been removed from self assessment, when they should not have been, in numerous instances because a state pension exceeded the personal allowance. Notice to file online where an

individual had not even filed a paper return before and did not have computer access could present problems which seemed insuperable at a personal level. Individuals who did not ignore the notices often struggled to find help – even though they wanted to be tax compliant.

D. Self Assessment: Paper Versus Online Filing

Individuals who normally receive paper returns expect that they will continue to file regularly using paper returns, but on a number of occasions HMRC issued ‘notice to file’ and did not send the paper return. Individuals who had become used to filing paper self assessment returns often found problems with the differences between the paper form and the online requirements. One lady had submitted paper returns for years without any difficulties, but found her attempt to file online for the first time was met by problems. She had always paid tax in previous years and was surprised that her online filing resulted in no tax being due. It turned out that she had a German state pension which was actually non-taxable, but which she had recorded as taxable income on the paper forms. She contacted *Tax Help* when HMRC advised her that this still needed to be recorded online as taxable when she queried no tax being due. She received a refund for four years of over-paid tax. Foreign income, especially pensions, often caused problems, requiring expert technical input from HMRC, as documents providing the necessary details might be in a language other than English. One client with a Danish pension had particular problems as his case had been dealt with by the Needs Enhanced Support (NES) unit of HMRC, which, after helping him file returns, refused to re-open his case in response to a query which was raised (via *Tax Help*) regarding their calculation showing tax was due: it was not. Another individual, who had regularly reported overseas income on the foreign income pages sent with his paper return, received that paper return without the foreign income pages being included. He could not download the necessary pages as he had no computer access.

E. Rectifying Online Problems

It is not always easy or possible to rectify simple errors made in online filing, and it gives rise to possibilities for errors that may not arise with paper returns. A client who received a late filing penalty immediately contacted HMRC, as he thought he had completed his self assessment online and had paid his tax liability on time. It was discovered that, although he had paid his liability, he had not fully submitted his return online (this was not uncommon),

so he went back into his online record, submitted the return and appealed the fine. His appeal was refused, on the grounds that, although he had paid on time, he had filed online previously and so did not have a reasonable excuse for filing late. His appeal was then sent to [X city] where it was refused again, owing to the same reasons and outlining the deadlines for appealing to the Tribunal. He missed this deadline because he was away when the letter arrived advising the course of action he should then take. He had advised HMRC in an earlier phone call regarding his appeal that he would be away for two months and asked them to note this on his record and not to send a reply until his return. This was not done and he missed the chance to go to the Tribunal. The penalty here seems extremely harsh. The individual had never filed late before, was advancing in age – and when people use a system only once a year, it is easy to forget exactly all the procedures involved.

Failure to complete the online process is an easy error to make. One self employed person had previously used an accountant to file his self assessment return, but then decided to use online filing himself. In his first year of doing so, he reached the final calculation screen and thought that his filing was completed, not noticing the ‘95% complete’ warning at the top of screen. This was the only indicator that filing was not formally completed. He then paid his bill (on time) and thought that everything had been completed satisfactorily. Late filing penalties followed, leading to the client protesting that he had actually filed and there must be some error at HMRC. Despite numerous contacts, HMRC were unable to explain adequately to the client that his filing was not fully complete, and daily penalties were then added. Eventually filing was completed at an Enquiry Centre, which was then still open for business (only after he had first visited a Centre shown on HMRC website which turned out to have closed), but penalties had reached £1,200 by that time. The client was unaware that his past protestations had been treated as penalty appeals (despite the self assessment return not being formally ‘filed’ at the time of some of those contacts). Having been told that he had exhausted his appeal chances and that a Tribunal appeal was now his only option, he approached *Tax Help*. After numerous unsuccessful approaches to HMRC by *Tax Help*, the case eventually reached a level of seniority within HMRC such that the penalties were cancelled, but not until the client had endured an extremely stressful 12-month period, caused by the difficulty of using HMRC’s self assessment system and inappropriate management/consideration within the penalty appeal/complaint procedure. The case notes include a comment from the tax adviser: ‘where else on the Internet can you reach the stage of “payment” without having completing [sic] all the required data input?’.

F. Forms

Individuals have frequently reported difficulties in trying to find the correct form they needed, even though they might know what they were looking for, such as the P53 form to reclaim tax deducted on taking a small pension lump sum, or the R40 form for reclaiming tax over-paid on savings income. The form to transfer the marriage allowance from one spouse to another has generated enormous difficulties, largely because in the first instance it simply was not available and ultimately could only be completed online. One client called HMRC to request marriage allowance transfer and, owing to the automated recorded message, decided to try to register online. However, he was unable to complete online so tried to call HMRC again and was put on hold for a long time; and when he spoke to an adviser, he was told by HMRC they were unable to action the transfer over the phone and he would have to register online. There was also much confusion between the marriage allowance and the married couple's allowance.

G. 'Scams'

Using computerised systems also gives rise to the opportunity for 'scams' in a way that paper returns do not. One *Tax Help* client moved house and consequently did not receive the normal paper return in time to complete and return it by post. In the following January the individual contacted the local *Citizens Advice* office for assistance to complete the form online. Unfortunately, instead of accessing the HMRC website, the *Citizens Advice* adviser completed the tax return on a bogus site. Both the client and *Citizens Advice* were unaware of this error until the end of January. *Tax Help* assisted the client in contacting HRMC for agreement to file late.

In another case, a client had been coming to *Tax Help* for years for help with untaxed interest. *Tax Help* contacted the client to check the interest figures and to confirm that a refund was due. However, the client told them that her son had gone online to claim the refund – in her words 'my son has made a claim on his computer thing as you have to wait 45 days otherwise'. She had no idea how he did it and *Tax Help* could only assume that her son had opened a PTA for her. While in this case *Tax Help* felt sure that the son was acting in his mother's best interest, it does highlight the vulnerability of an elderly person. An unscrupulous son could easily have entered his own bank details to collect the refund or could have reported fictitious figures to create a larger refund. The refund in this case was

wrong because HMRC held incorrect data on the interest the client received, but fortunately, she was owed more not less. However, her son could easily have claimed a refund that was not due.

Another case concerned a lady of 89, suffering from dementia, whose daughter was empowered to act on her behalf as she held power of attorney (POA). The daughter had recently cashed in two pensions for her mother under the trivial commutation rules, one in 2015–16 and one in 2016–17. As she believed that a refund might be due, the daughter contacted HMRC in December 2015, although she was at that time unable to talk to anyone because she had not yet registered the POA with HMRC. HMRC insisted on talking to the mother, who was extremely impolite that day. However, the outcome of the call was that the daughter was advised that the refund would be issued immediately. The second pension was commuted in July 2016. Since the daughter had not heard from HMRC regarding the 2016 commutation, she decided to search online and found ‘claim a refund’ on Gov.UK. She created a PTA for her mother and made a claim. She did not need to enter any income details, which seemed unusual, and shortly afterwards received an e-mail saying she was due a refund of £1,200. The e-mail gave reference numbers and advised her to visit HMRC to claim the refund, via a link embedded in the e-mail. She did not access the link but returned to her mother’s PTA account. It would seem that she claimed again and this time was asked for bank details, which she entered but repeatedly received a message saying ‘invalid details’. Finding this all very confusing, she called *Tax Help*, who advised her that this was suspicious and likely to be a scam. As it was difficult for her to explain what had happened, *Tax Help* spoke to HMRC on her behalf to ensure that the correct refunds for both years were issued. In the same week another family member (granddaughter) received an e-mail unexpectedly, advising she was due a refund. Unfortunately, she did access the link embedded into the e-mail and entered all her bank details. It seems that she had been caught by a scam and *Tax Help* advised her to contact her bank.

H. Double Discrimination

As mentioned earlier, and emergent from other findings discussed in this section, it is clear that many older people suffer from severe illnesses and disabilities (physical and mental) which often accompany old age. One of the ‘scam’ victims mentioned in the previous subsection was a lady suffering from dementia. The *Tax Help* case records frequently note the effect of a severe physical or mental impairment on their clients, some of which themselves

prevent engagement (eg the memory loss associated with dementia, or problems with movement). While younger individuals may also suffer disabilities, they appeared without doubt to be more common in older people, especially in those over 80, and had various impacts in terms of engaging with a digitalised system. A person with sight impairment (typically a problem affecting older people, but which can affect younger people too) might need screen-reading software to be able to complete a self assessment return or PTA online (if, indeed, screen-reading software could cope with such documents in the first instance). Moreover, even screen-reading software would not be able to locate particular forms if an individual needed to download them. Persons suffering from arthritis may not be able to type; and those with, say, Alzheimer's Disease, or being looked after in a care/nursing home, would not be able to engage at any level. Hence digitalisation adds an extra layer of difficulty – an impossibility in many cases – to engaging with a digitalised tax system. Similarly, it was clear that individuals whose first language was not English struggled not only with tax per se, but dealing with it online added an additional level of complexity, owing to more specialised language skills being needed.

VI. CONCLUSIONS

It is evident from our findings that many older people struggle in dealing with a digitalised tax system. Many do not have internet access and/or access to a computer, which is a problem added to the existing problems in dealing with tax in the first place. Difficulties are also compounded by the fact that older people may suffer the physical and mental impairments that often accompany the ageing process – and which may be superimposed on other barriers to engagement institutionalised into the system because of other biases against them, creating double discrimination. While some older people are willing to engage with a digitalised system, engaging with it successfully on their own or with only a little help, many need more assistance to do so (some become extremely muddled in trying to deal with their tax affairs online), and clearly fall into the category HMRC have deemed 'Assisted Digital'. They are often caused extreme distress by having to deal not only with 'the taxman', but with 'the taxman' online. Some case notes record individuals suffering severe depression in such circumstances. One client's *Tax Help* case notes carry a report of the client being told by HMRC, in relation to a demand for under-paid tax: 'if you pay it HMRC won't hound you anymore and we won't charge you interest'. She then paid the demand as she was too

frightened not to do so. Further demands followed, but another individual at HMRC then referred her to *Tax Help*, who resolved the issue (at root, the problem was one of incorrect codes being issued).

As Infanti⁴¹ has pointed out, the way the tax system is configured, in this context in relation to digitalisation, means that a significant proportion of the population is unfairly excluded from engaging with a tax system which should have the capability to deal with all individuals' tax affairs, given that tax is the one area of law which affects everyone. This is not a group of people who are trying to avoid or evade tax, but who will endeavour to meet their obligations if they know how to do so or can find out. They may, however, end up in a situation where they miss out on refunds or allowances due to lack of ability to engage. Those who do not have access to suitable computer equipment can be exposed to lack of privacy in their tax affairs, by having to use public computers, and this may cause concern to individuals (as well as meaning that they are unable to obtain paper records to take home). Given that many of these people are among the most vulnerable in society, this evidence supports the need for exclusion from the tax system to be addressed.

⁴¹ *ibid.*