

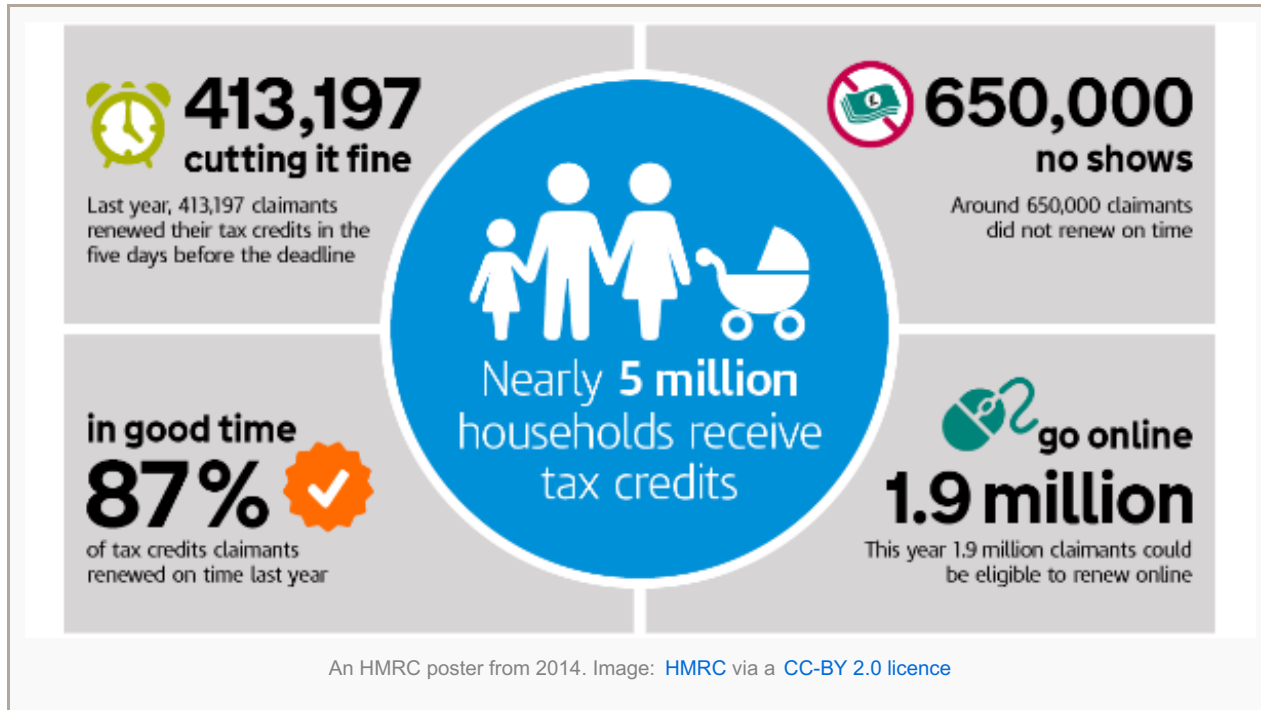
Justice outsourced: why Concentrix's tax credit mistakes matter

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*Administrative justice issues rarely attract the attention they deserve. However, the recent revelations about the tax credit checks undertaken by Concentrix on behalf of HMRC – and the poor service inflicted upon people – highlights a fundamental challenge to administrative justice posed by outsourcing and privatisation. **Robert Thomas** and **Joe Tomlinson** argue that the episode highlights the need for government to take administrative justice more seriously when it contracts out important tasks to private companies.*



Tax credits are administered by HMRC. For people on low incomes, they are critically important and can mean the difference between surviving and not-surviving. In 2014, HM Revenue & Customs contracted out tax credit compliance checks to US company Concentrix. The policy goal is to reduce the amount of error and fraud. HMRC's contract with Concentrix is worth between £55m-£75m. Concentrix has been sending letters to people in receipt of tax credits, requiring evidence, and then reducing individuals' tax credits.

The following concerns are drawn from [publicly available sources](#) (see also [here](#), [here](#), and [here](#)).

- **Tax credits being stopped for incorrect reasons.** The concern is that people are being incorrectly punished because Concentrix has made wrong allegations and incorrect decisions. For instance, Concentrix reduced one woman's tax credits because it claimed that she was in a relationship with someone she had never met, a former tenant of her property. In another case, a young mother had her tax credits stopped after being wrongfully accused of being married to a 74 year old deceased man.
- **Communication difficulties.** Individuals have experienced acute difficulties in contacting Concentrix to query and challenge the reduction of tax credits. For instance, people have been calling Concentrix repeatedly and being put on hold. There have been complaints of individuals spending hours trying to contact Concentrix on the phone.

- **Relevant evidence not being properly taken into account.** Individuals have supplied relevant documents to Concentrix which are have then been ignored. For instance, a single parent working part-time was asked to provide evidence of childcare, which she did three occasions. Nonetheless, her tax credits were then reduced from £140 per week to £46 per week.
- **Inadequate linking of data between HMRC and Concentrix.** For instance, an individual supplies relevant information to Concentrix, which then updates its database. However, this does not automatically lead to HMRC's database being updated, with the consequence that an individual will not necessarily receive their payments or receives a demand to repay the ostensible over-payment of tax credits from HMRC to the tune of £2,500. Being caught between two systems seems inexplicable given the advantages of modern IT.
- **Unlawful reversal of the burden of proof.** Letters sent by Concentrix have stated that individuals must prove that they are still entitled to tax credits. However, according to the Upper Tribunal, this is legally incorrect. In such circumstances, the burden of proof is not on the claimant. In an Upper Tribunal case, *NI v HMRC* [2015] UKUT 0490 (AAC), Judge Wikeley noted that both HMRC and the First-tier Tribunal had failed to apply the correct burden of proof – a basic legal error.
- **Inadequate training of Concentrix staff.** In 2015, [The Independent](#) reported that Concentrix staff were under pressure to open between 40 and 50 new tax credits investigations a day, and that decision makers, complaining of inadequate training, were encouraged to make three decisions an hour on whether to confirm, amend or stop tax credit claims. Clearly such pressures may lead to errors given the complexity of calculating tax credits correctly.
- **Concerns raised by MPs.** [One MP](#) has stated that Concentrix have cut people's benefits in order to chase profits. [Another MP, Craig Mackinlay](#), has noted that Concentrix's decisions have contained an enormous volume of errors that have been catastrophic to people's lives and that its performance has fallen far short of expectations.

The performance of Concentrix is clearly of intense concern in terms of the hardship for people affected. There are examples of fraudulent use of tax credits. A woman recently pleaded guilty to fraudulently claimed £47,500 in tax credits after failing to tell the [authorities she was living with her police officer partner](#). The policy goal is then valid, but many people have been wrongfully accused of defrauding the system. This had led to unnecessary stress and anxiety.

Under its contract with HMRC, Concentrix is paid on a payment by results model on the basis of accrued savings from "correcting" tax credit claims. In other words, the more public money Concentrix saves by reducing tax credit payments, the more it gets paid. Conversely, Concentrix gets paid less if its decisions are wrong.

This payment model is directly relevant to the operation of the administrative justice mechanism, administrative review or "Mandatory Reconsideration" as it is known in the benefits context. People who want to dispute must ask Concentrix to review its own decision before they can go to the independent and judicial tribunal process. Administrative review is a key administrative justice function. In 2015, Concentrix made 370,000 decisions and received nearly 6,000 administrative reviews. No data is yet available on outcomes.

The payment by results model provides for adjustments for these reviews. In other words, reversing initial decisions has financial consequences for Concentrix because it means less reduction to tax credit payments. HMRC states that Concentrix is subject to stringent assurance checks. More data is required to investigate this issue further, but anyone could be forgiven for being sceptical.

On 13 September, HMRC [announced](#) that it would not be renewing the contract with Concentrix. Instead, tax credit compliance checks will be moved back in-house and undertaken by HMRC. This seems like a knee-jerk response to recent adverse media coverage of Concentrix. The episode highlights some fundamental issues concerning

administrative justice.

First, **privatising administrative justice poses a challenge because the profit motive may undermine justice for individuals**. [Established models of administrative justice](#) – impartial administration; legal process; and professional judgment – are all underpinned by a public service ethos predicated upon the basis of impartial decision-making. This is so taken for granted that it is rarely articulated.

However, privatised schemes of administrative justice – such as Concentrix – challenge this principle. The profit motive and a payment by results approach may well undermine the principle of impartial and disinterested administration. In turn, this can undermine the acceptability of decisions. Privatised schemes of administrative justice are not necessarily illegitimate. Such schemes could operate to high standards of both justice and efficiency. But, that has clearly not happened here.

Second, **there is a need for effective oversight of administrative justice**, a task that is often fragmented amongst a range of oversight bodies. There needs to be more transparency about how privatised administrative justice works in practice. For instance, how many administrative reviews does Concentrix allow and how does this compare with ordinary government-administered benefits? Parliament and the National Audit Office should undertake closer scrutiny.

Third, there is **the issue of administrative justice expertise**. Many people both inside and outside government are therefore well-placed to advise on administrative justice issues. Yet government works in departmental silos. HMRC seems to have given little thought to administrative justice considerations when it outsourced to Concentrix. In light of this, it would only be appropriate for the Ministry of Justice to reconsider its [decision to end the Administrative Justice Forum in 2017](#). If similar episodes are to be avoided in the future, then government needs to pay more attention to administrative justice issues and draw upon existing expertise.

This post represents the views of the authors and not those of Democratic Audit.

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