

# UK Council on Deafness | Access to Work Group

## Meeting 22 June 2015 | Minutes

### In attendance

- Lidia Best, NADP
- Vikki Bridson Vice, VLP
- Sue Brown, Sense
- Sally Chalk, Clarion
- David Buxton, BDA (chair)
- Susan Daniels, NDCS
- Nicky Evans, NUBSLI
- Jayne Oakes, BID
- Michael Price, BID
- Phil Rees, ALS
- Mary Sorene, AVSTTR
- Dan Sumners, Signature (minutes)
- Roger Wicks, Action on Hearing Loss
- David Wolfenden, ASLI

### Apologies

- Laura Arrowsmith, Action on Hearing Loss
- Sally Paull

### Minutes of 3 March meeting (for information)

1. The minutes of the 3 March meeting were circulated on 6 March. No comments were received.

### Equality analysis for the future of Access to Work

1. On 8 May DWP published its [equality analysis for the future of Access to Work](#). Following the publication, NDCS' lawyers sent DWP a pre-action letter. It

challenged the way the decision to introduce a cap on awards had been made. The basis of the challenge was a lack of consultation. It also wasn't clear if the analysis had been made before the Minister took the decision to cap awards,

2. The action had failed as it was unlikely that a judicial review would lead to the decision being changed. It did not mean we had no basis on which to challenge the cap, just that this approach would not work.
3. The commitment to establish the return on investment delivered by Access to Work was welcome. As well as making the case for an increased budget, it could help reverse the decision to introduce a cap on awards.
4. The cap on awards was fundamentally the wrong solution. Rather than capping large awards, Access to Work should have been making sure small awards were not paying for reasonable adjustments employers should have been making. By definition, small awards were more likely to be for reasonable adjustments.
5. The risks posed by the cap were serious. The Department admitted in the analysis that the cap put the aims of the scheme at risk. It could
  - a. discourage employers from employing disabled people;
  - b. increase the likelihood of unlawful discrimination;
  - c. reduce equality of opportunity;
  - d. damage relations between people who share a protected characteristic and those who do not; and
  - e. reduce independent living, inclusion in the wider community and the ability to work on an equal basis.
6. More work should therefore have been done before decisions were taken, particularly regarding the cap on awards. Before the cap came into effect in October, the Department should quantify the risks to the employment of people who were receiving an award greater than the cap. As the number of people was relatively low, employers could simply be asked
  - a. if they could make reasonable adjustments; and
  - b. what would happen if the award couldn't be sufficiently reduced.

7. The three year adjustment period for people in receipt of an award that exceeded the cap was welcome. But if at the end of those three years the cost of support had not reduced - because it was necessary and/or the level of market prices - the arbitrary cap on funding would actually be a cap on potential. The same went for new applicants to Access to Work. The cap meant someone could do everything possible to reduce the cost of the support they needed and still lose their employment.
8. In the same way, with regard to reasonable adjustments, employers could have been asked about what they did and intended to do. Many people reported their employer being unwilling to make reasonable adjustments.
9. The Department said in the analysis that taking a fresh look at support may find some of it is a reasonable adjustment for the employer, which would mean “any adverse impact upon disabled people is reduced”. Whilst it was important to make that assessment, in the end only the Courts could decide if an adjustment was reasonable or not.
10. Whilst it was true that “any disabled employee who feels that their employer has not made reasonable adjustments can legally challenge that decision under the Equality Act 2010”, it was a daunting and costly alternative. In effect, the government was leaving it up to the disabled person to fight for an equal right to fulfil their potential.
11. Disabled people did not expect the government to do everything for them. But we all believed the government wanted everyone to have the same chances to succeed in work and benefit society as a whole.
12. We would therefore
  - a. reiterate our request, made in our 24 March letter to the Minister, for the Department to explore what else needed to be done to make sure employers understood it was in their financial and social interests to meet the equality duty;
  - b. make sure the return on investment of the scheme was established; and

- c. circulate a questionnaire, designed by the BDA, for employees and employers that would ask about the impact of the cap, with the aim of identifying people who could lose their jobs or have to change their job description.

13. The impact of the cap would be different depending on the employer and how much over the cap an award was. Sue Brown said Sense was trying to identify who would be affected by the cap and how much over the cap their current awards were.

14. It would also be useful to have case studies of people whose mental or physical health had been negatively affected by changes to Access to Work. They should be sent to Dan Sumners.

15. It was also important to make sure DWP coproduced guidance for employers and employees.

16. Dan Sumners would remind the DWP that the equality analysis still hadn't been made available in BSL.

### **Meeting between Action on Hearing Loss, BDA, NDCS, Signature and DWP 27 May 2015**

17. On 27 May, BDA, NDCS, Signature and Action on Hearing Loss met with Access to Work policy and operations officials. The meeting was an opportunity to discuss the scheme changes outlined in the Government statement issued in March, the equality analysis for the future of Access to Work, and to report back on the current experiences of scheme users.

18. Officials had had introductory discussions with the new Minister for Disabled People. He was committed to the Government's pledge to halve the disability employment gap.

## Cap on awards

19. The March statement included the intention to introduce a cap on the value of Access to Work awards. It would be applied to new scheme users from October 2015 and to existing scheme users whose package currently exceeded the limit from April 2018.
20. Officials confirmed that, where existing users had a package of support that did not exceed the cap but who made a request for additional support after October 2015 that took them over it, the cap would apply as if they were a new claimant. For example, if someone receiving an award worth £35,000 had it reviewed in October 2015, they would be awarded a maximum of £40,800.
21. Having raised concerns with this approach at earlier meetings, the group put forward a number of questions on how the implementation of the award limit would be taken forward. These questions were
  - a. Will AtW do any work between now and October to assess the potential negative impact of the cap on the employment prospects of deaf people before it happens?
  - b. How will AtW monitor the impact of the cap on the employment prospects of deaf people and when will that monitoring begin?
  - c. What information will go out to scheme users who will be affected by the cap?
  - d. How will employers be informed of the introduction of the cap and what support and advice, if any, will they be offered?
  - e. What information will go out to AtW advisers on the implementation of the cap?
  - f. How will AtW communicate to individuals that their calculated need is above the cap?
  - g. What will happen to scheme users when the cap is reached and the employer is
    - i. willing but unable to further contribute to the additional costs of employment; or

- ii. unwilling to further contribute to the additional costs of employment;  
and
  - iii. in both these cases, what support and advice will AtW offer employer and employee?
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- h. Will AtW set out what the full challenge process is?
  - i. How will AtW measure success in relation to implementation of the cap?
  - j. What about those current users who wish to bring forward a review prior to October so that their level of award at the implementation point in October will be protected?
  - k. What is the timeline for the entire process?
  - l. Has the fundamental basis of Access to Work - to provide support and adaptations beyond the reasonable adjustments an employer is legally obliged to provide under the Equality Act, to help disabled people get and stay in work - changed?
  - m. What will AtW be doing to make sure employers are making reasonable adjustments?'

22. When the answers had been received Dan Sumners would share them with the group.

### **Additionality**

23. Misinterpretation by Access to Work advisers of the principle of 'additionality' had resulted in a number of deaf people having their support withdrawn or reduced. Access to Work had suggested it would cost an employer the same amount of money (or more) to employ a hearing person.

24. The group stressed that the application of this principle had had a significant, negative impact on a number of deaf people. Officials confirmed this was not the intention of the guidance, that advisers had received clarification on this issue and that steps would be taken to rectify the situation.

25. Any person who had already asked for a reconsideration of their case due to additionality would be able to apply for a further reconsideration. Access to Work

would be contacting people who had previously applied for a reconsideration under the principle of additionality.

26. People who had been affected by this principle but had not requested a reconsideration were encouraged to contact Access to Work. Officials also stated that the written guidance on additionality would be revised and clarified. DWP would also be issuing information to update people about this development.

## **Research**

27. The group discussed the value of undertaking work to establish the return on investment delivered by the scheme. Officials stated there were a number of challenges in establishing a figure, but expressed the desirability of doing work in this area. They would be discussing the options with analysts and the Minister.

28. Nicky Evans said she had evidence, obtained through Freedom of Information requests, that DWP had already established the return on investment of Access to Work. She would share it with the group.

29. Roger Wicks said the RNIB was planning to establish the return on investment. Roger would ask the RNIB if they had asked DWP if they would accept any figure they arrived at, as they would not accept the figure included in the Sayce review.

30. The Government statement also committed to undertaking a market review of BSL interpretation provision. Officials had identified a contact from their Commercial team to lead the review.

31. An initial scoping meeting had taken place with Laura Arrowsmith and Dan Sumners. The review would

- a. cover all types of communication and language support;
- b. include all communication and language professionals, whether registered with NRCPD or not;
- c. consult all relevant groups and organisations; and
- d. consider regional variations in supply and demand.

32. When the scope for the review had been drafted it would be shared with the group.

### **Other proposed changes**

33. Officials also updated on a number of other proposed changes including

- a. the operations team was trialling a new process for communication support at interview requests - they would be passed directly to an adviser and Access to Work aimed to achieve a 24-hour turnaround on these requests;
- b. there was now a fast-track procedure for scheme users who changed jobs;
- c. a proto-type for a digital service, to enable online access to the scheme, was under development and we agreed to support further user research for the service;
- d. workshops were taking place to scope the personal budget pilot and had asked us to send a representative;
- e. DWP was thinking about how the scheme could better support self-employed customers and had asked us to send a representative to meetings; and
- f. the operations team had agreed to look at their policy on the provision of second interpreters.

34. Examples of people still experiencing problems should be sent to Dan Sumners.

35. Bob Marsh of Clarion would be asked to represent the group in DWP discussions about personal budgets.

36. Lidia Best, Sally Paul and Jane Cordell would be asked to discuss support for self employment and one of them would represent the group in DWP discussions.

### **Complaint procedure**

37. The Access to Work complaint procedure was unclear and not well publicised.

The best account of it could be found at <http://www.deafatw.com/how-to-complain.html>.

- a. If someone was unhappy with an Access to Work decision about an award, they could ask them to reconsider it.
- b. If they were unhappy with the decision of the Reconsideration Team, they could ask for it to be reviewed by the Reconsideration Manager.
- c. If they were unhappy with the decision of the Reconsideration Manager they could ask to complain.
  - i. A complaint could be made during a reconsideration if the process was taking too long, advisers had acted poorly or similar.
  - ii. Sometimes people were told they couldn't complain. They should then contact the Parliamentary and Health Standards Ombudsman (PHSO).
- d. The first stage was to submit a complaint to Access to Work via any member of staff.
- e. If it wasn't sorted out, it should be forwarded to a Complaint Resolution Manager. They would aim to sort it out within 15 days.
- f. If they were not happy with the Complaints Resolution Manager's response they could complain to Noel Shanahan, Director General of Operations for the DWP.
  - i. At this time they should also send details of the complaint to their MP. If they needed to complain to the PHSO later they must have told their MP within 12 months of them knowing about the problem.
- g. If they were not happy with the response from Noel Shanahan they could complain to the Independent Case Examiner.
- h. If they were not happy with the response from the Independent Case Examiner they should then complain to the PHSO, via their MP.

38. This information was gathered via Freedom of Information requests and the experiences of people who use Access to Work. There was no information about how to complain on gov.uk.

39. The group agreed two things were needed:

- a. an appeals process to challenge decisions about wards; and
- b. a complaints process about the length of the process, poor customer service or similar.

40. NDCS would provide information about the process for challenging personal independence payment decisions.

41. The Department of Health was considering developing a complaints and appeals process for social care. Neither currently existed.

42. The appeals process must

- a. be publicly available;
- b. be accessible;
- c. include reasonable timescales; and
- d. independent.

43. Dan Sumners would draft a proposal and share it with the group.

## **Any other business**

44. Nicky Evans asked about the process for agreeing UK Council on Deafness statements about Access to Work.

- a. The Board of the Council had appointed the chair to lead its work on Access to Work. The purpose of the group was to discuss the issues and offer opinions, advice and guidance.
- b. The chair needed to make statements between meetings and it was not practical to consult the whole group on everything.

- c. The chair would always seek to make statement in line with what the group said. When the group did not agree on an issue the chair would make a strategic decision about what to say.

45. Nicky Evans asked if the group of four organisations attending meetings with DWP were representing the UK Council on Deafness.

- a. The four organisations did not represent the Council. They had been asked by DWP to help it design and make changes to the scheme that would be of benefit to deaf people.
- b. The presence of Jim Edwards as chair of the Council and David Buxton as chair of the group meant what was said at the meetings would be in line with what the group as a whole thought. The meetings were held under the Chatham House rule at DWP's request, but the four organisations sought to tell the group as much as possible about what was discussed.

## **Action points**

46. BDA to design a questionnaire for employees and employers that would ask about the impact of the cap.

47. All to distribute the BDA questionnaire for employees and employers asking about the impact of the cap

48. All to send case studies of people whose mental or physical health had been negatively affected by changes to Access to Work to Dan Sumners.

49. Dan Sumners to remind the DWP that the equality analysis still hadn't been made available in BSL.

50. Dan Sumners to share DWP's answers to questions about the implementation of the cap when they are available.

51. Nicky Evans to share evidence that DWP has already established the return on investment of Access to Work.

52. Dan Sumners to share the scope of the market review once drafted.

53. All to send Dan Sumners examples of people still experiencing problems with Access to Work.
54. Sally Chalk to ask Bob Marsh to represent the group in DWP discussions about personal budgets.
55. David Buxton to ask Lidia Best, Sally Paul and Jane Cordell to discuss support for self employment and one of them to represent the group in DWP discussions.
56. Dan Sumners to draft a proposal for an appeals process and share it with the group.