

R63: Submission to the Joint Committee on Human Rights

Welfare Reform Act 2007 follow-up

Employment and support allowance

Disability Alliance notes the Committee's request for further information related to the implementation of employment and support allowance (ESA). We have heard some local instances whereby ESA claimants are being required to submit written requests for payment of benefit when lodging an appeal and after a successful appeal, which is an administrative barrier that is not actually required by the provisions of the Act.

This has clear implications for more vulnerable claimants and we would ask for Ministerial assurance that such unnecessary barriers to benefit receipt are removed. Other than this, we have not come across any specific issues at this stage beyond the usual administrative mishaps such as difficulties using phone services and so on.

Local housing allowance

We also wish to raise another issue, related to the Local Housing Allowance (LHA), which was also introduced by the 2007 Act. It has been brought to our attention that DWP has never carried out a Disability Equality Impact Assessment prior to the national roll-out of LHA.

One consequence of this is that disabled people who require an extra bedroom for a non-resident carer to sleep in during overnight stays are finding that the amount of LHA to which they are entitled does not reflect the need for an extra bedroom. There is no flexibility at all to recognise and pay for an extra bedroom, unlike under the previous housing benefit provisions.

We have raised this in writing with Ministers and were informed in a written response from the DWP that, under the LHA scheme:

"It is realised that disabled customers can be limited in the type of property that they can rent"

With no apparent intention to address the issue in a positive and proactive manner as required under the Disability Equality Duty, we would ask the Committee to address this issue with Ministers. We have heard of a case where a disabled student in the third year of his degree is in danger of being unable to complete his course because the introduction of LHA has seen his benefit entitlement restricted to a one-bedroom property, whereas he has previously been paid housing benefit equivalent to the rent for a two-bedroom property.

Welfare Reform Bill

Work for your benefit (Clause 1)

Disability Alliance is very concerned that these proposals will disproportionately affect disabled people with low level physical and mental health problems. DWP has predicted that the introduction of the Work Capability Assessment for ESA will see at least a 10% increase in disallowances, thus meaning that more people with lower levels of health problems will be required to claim jobseeker's allowance instead.

Further, there is research¹ that demonstrates that work for your benefit schemes are least effective in getting people into jobs in weak labour markets where unemployment is high, as is currently the emerging situation in this country and that such schemes are is least effective for individuals with multiple barriers to work. Also, welfare recipients with multiple barriers often find it difficult to meet obligations to take part in unpaid work. This can lead to sanctions and, in the most extreme cases, the complete withdrawal of benefits that leaves some individuals with no work and no income.

Abolition of income support (Clause 7)

Disability Alliance is concerned that the proposal to abolish income support will have a detrimental impact on those people claiming benefits for whom work-related activity is not a feasible or viable option, whether in the short or long term. The most obvious and largest group of claimants will be those with caring responsibilities but this also could include pregnant women, estranged children in education and lone parents with young children.

The Government has said that no changes will be made until the circumstances of these groups have been properly addressed, yet the Bill clearly contains other measures (e.g. Clause 3) which are intended to relax the conditionality rules of jobseeker's allowance in anticipation of moving such groups onto this benefit. Requiring such a disparate group of benefit claimants to make a claim for jobseeker's allowance, with varying levels of conditionality to be applied depending on how Jobcentre Plus staff decide to categorise someone, runs a very clear and serious risk of discriminatory and/or arbitrary manner.

Claimant directions (Clause 8)

Disability Alliance is concerned that reforms are being implemented to the ESA system without any credible evidence being presented of either the way that the

¹ A comparative review of workfare programmes in the United States, Canada and Australia, Richard Crisp and Del Roy Fletcher, DWP 2008

newly introduced benefit is operating in practice, nor whether further increases in conditionality are actually required.

Further, the explanatory notes to this Clause state that:

“Failure to undertake the specified activity without showing good cause for this within the allowed time would be sanctionable”.

This is in direct contradiction of previous assurances given by the then Minister for Employment and Welfare Reform, Jim Murphy, in the Committee debates about the relevant Clause 15 of the Welfare Reform Act 2007. Mr Murphy stated²:

“The decision to apply a direction will not lead to sanctions.”

We feel this is an example whereby Ministerial commitments given when the original legislation was being debated are being ignored or overridden. Similar assurances were made with regards to disabled students and ESA, whereby Ministerial commitments about bringing forward certain rules were subsequently ignored due to a change of mind. This is an unacceptable way for Parliamentary scrutiny to be undertaken in our opinion.

It is also worth highlighting the large and almost unprecedented use of regulation making powers within this Bill. There are 387 references to regulations which means that the actual process for implementation of many of the powers is deferred to secondary legislation, which as the Committee has noted means that scrutiny of the detail of the scheme is difficult. With so many potentially wide-ranging powers being introduced, with much greater conditionality and potentially more sanctions and loss of benefit provisions, we are concerned that this is a worrying precedent being set.

Claimants dependent on drugs (Clause 9)

Disability Alliance shares the concerns laid out by the Committee in their letter to James Purnell dated 27 February regards these proposals. We feel that an approach that has, at the very least, an implication of compulsory medical treatment with risk of financial sanction for non-compliance, as well as mandatory assessment for a drug problem in the first place, as being against the right to a private life and is also, by its intrinsic nature, discriminatory in approach.

We share concerns raised by other mental health charities that if deemed successful, the Government could utilise similar legislation requiring compulsory treatment for people with mental health problems also.

² House of Commons Standing Committee A, 31 October 2006

External provider social loans (Clauses 13-15) and Community Care Grants (Clauses 16-17)

Disability Alliance is concerned that there appears to be no independent statutory review in respect of social loans by external providers, nor in respect of some community care grant decisions. The Independent Review Service (IRS), that currently exists to carry out these functions for the social fund scheme, highlight the fact that although the explanatory notes to the Bill do say that there will be a complaints procedure and likely access to the Financial Services Ombudsman, there is no provision in the Bill in relation to this and so any such redress would not be put on a statutory footing by the Bill.

Further, the Bill gives the Secretary of State to exclude from the right of review decisions to make an award for specified goods or services via arrangements made with a specified supplier. The IRS state that their experience shows that decisions are often overturned on review and that there is potential for incorrect decisions being made under the proposed scheme but without the protection of the right of review.

Contracting out functions under Jobseekers Act 1995 (Clause 23)

Disability Alliance is concerned that the greater powers being transferred to external providers of welfare to work services could undermine the ability of disabled people to properly hold to account such providers in terms of the service standards they receive. This has particular implications, for example, whereby individuals may be parked and not receive the level of support that is required to help move them towards employment, or where they are directed to undertake activity that is inappropriate or unhelpful or potentially harmful.

To this end, we have worked with Child Poverty Action Group, Gingerbread and Citizens Advice in drafting a Claimant's Charter which sets out some key principles that we feel should underpin delivery, including the creation of an Employment Services Ombudsman to mediate where extra-regulatory disputes arise between claimants and contractors. A copy of the draft Charter is attached as an appendix to this submission.

We hope that you find the contents of this submission useful to the Committee's enquiry and look forward to monitoring the outcomes.

Paul Treloar
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Disability Alliance

12 March 2009

Appendix – Claimant’s Charter

**Disability
alliance**

Gingerbread
Single parents, equal families



**CHILD
POVERTY
ACTION
GROUP**

Draft Claimants’ Charter – key principles

This draft Claimants’ Charter is intended to represent the first step in the development of a scheme to protect benefit claimants in their dealings with public, private and third sector welfare to work employment services. Additionally, it intends to provide clear criteria against which the performance of such services can be measured beyond simple employment outcomes. It is a discussion document and we welcome comments on the content. It is not intended to replace or remove any statutory powers of review or appeal from benefit claimants.

Key to the effectiveness of the Claimants’ Charter is the existence of an independent Employment Services Ombudsman, responsible for ensuring that the Charter is upheld across Jobcentre Plus and contracted out services. The Ombudsman would not replace existing appeal rights, but would deal with disputes between claimants and Jobcentre Plus, or between claimants and private or third sector providers of welfare to work services. All providers engaged in Government contracts would be required to belong to the scheme.

We would expect the Claimants’ Charter to include the following key areas:

1. A copy of the Charter should be given to each claimant at their initial contact with Jobcentre Plus, together with information about the independent Employment Services Ombudsman.
2. Claimants who are not in employment should not expect to live below the poverty line as a consequence of claiming benefits. Jobcentre Plus and providers of contracted out services must work with claimants to maximise their income by ensuring full take-up of benefit entitlements.
3. Claimants must be treated with dignity and respect and not subject to degrading or discriminatory treatment in any of their interactions with

Jobcentre Plus and external providers of services, including taking steps to meet disabled people's needs, even if this requires more favourable treatment as required under the Disability Equality Duty.

4. During the first interview with Jobcentre Plus, claimants must be informed of, and given appropriate and accessible information about, the conditions of their benefit claim as well as the consequences of failing to meet those conditions. This information could be incorporated with that currently given to claimants about requirements to report changes.
5. Claimants can expect to have their claims for benefits, as well as changes of circumstances, dealt with in a timely and accurate manner, with the ability to monitor progress of claims free of any telephone charges. Claimants who have difficulties using the telephone must be entitled to a face to face service.
6. Claimants must have an opportunity to appeal against a decision to reduce their benefit in the form of a sanction and should be clearly advised of this right before a sanction is applied.
7. Claimants are entitled to high-quality, individually tailored support, based on their needs and aspirations, and must be given access to services that will improve their ability to enter good quality, sustainable work, including education, training, condition management programmes, treatment programmes and legal support in instances of employer discrimination.
8. Claimants must be made aware of, and advised on, all of the support for training, childcare, transport and interview costs that they are entitled to receive. Claimants shall not be required to participate in an activity which would otherwise be a condition of benefit entitlement if appropriate childcare, or other reasonable support required to participate is not available, nor if participation would exacerbate health conditions.
9. Claimants should not be required to take part in activities for which it would be reasonable to expect payment, unless they receive compensation for that activity in line with the National Minimum Wage. Activities for which it would not be reasonable to expect payment, except for expenses, include voluntary work, limited periods of work experience, work trials etc.
10. Claimants must be able to access free, independent and appropriate advice in relation to all of the above. The Government has the duty to advise how claimants can access independent advice.