

# **Office for Disability Issues, Right to Control Consultation Response from The Disability Employment Advisory Committee, Department for Work and Pensions**

## **Introduction:**

The Disability Employment Advisory Committee (DEAC) is pleased to respond to the “Right to Control” consultation paper and trusts that our comments and constructive criticisms are helpful.

This paper includes contributions from a cross section of the varied membership of DEAC, as well as the input of the DEAC Access to Work subgroup. As DEAC’s remit is employment and disabled people we have focussed on our area of expertise: our paper sets out an introduction to the consultation, outlines a number of key themes and details our responses to each theme.

DEAC was established in 2002 by DWP Ministers to help the Department for Work and Pensions (DWP) to deliver its remit on improving the employment opportunities of disabled people and in particular the delivery of DWP’s specific Public Service Agreement target to “significantly improve the employment rate of disabled people”. One of DEAC’s stated functions is to provide advice in confidence on the effectiveness of labour market policies and programmes, focusing on specialist and mainstream programmes, retention and rehabilitation measures and employment advice for disabled people, including delivery of programmes by Jobcentre Plus.

## **Summary of themes covered:**

- Context
- The economic and policy context
- Commissioning employment support
- Assessments
- Independent brokerage
- Strategic analysis of links and alignment with DWP funding streams
- Supporting the development of a customer-friendly market
- Disabled People as commissioners and employers
- The need for independent employment advocacy

- Summary and conclusions

## **Context:**

The Government has launched a national consultation on a new right for disabled people: the Right to Control is intended to give disabled people in England more choice and control over the services and funding they're eligible for.

Under the new scheme, disabled people will be able to choose who delivers their services and how they receive them. For example, public bodies may currently only be able to offer a limited choice of services, such as access to a daycentre and a specific employment programme. In the future, a disabled person could decide to employ someone directly to help them with work, home and leisure activities.

The Office for Disability Issues (ODI) is running this consultation, which asks which sources of funding should be included and how it could work in practice. After the consultation, the Right to Control will be tested by a number of local authorities.

Funding streams: the Right to Control proposal (RTC) potentially includes the Access to Work (AtW) funding stream, as well as the specialist Disability Services. It is planned to align with Community Care funding (direct payments), as this is already covered by legislation, and to also include Disabled Facilities Grant (DFG), Independent Living Fund (ILF), the Disabled Students Allowance and 'Supporting People' funding (housing related). Eight 'Trailblazers' are to be selected, with decisions due in January 2010, with a remit to demonstrate how RtC can work, and to identify the legislative and regulatory barriers which prevent the effective roll-out.

DEAC warmly welcomes the principles behind RtC and believes that there are significant issues arising from its implementation that must be addressed if there are not to be negative consequences.

"Valuing Employment Now" (VEN) identifies the barriers to employment for people with learning disabilities and describes steps to overcoming those barriers. The issues highlighted apply also to the full diversity of disabled people, and are also key to the success of RtC. The actions that will flow from VEN will set the conditions where the RtC can have a greater enabling impact, for example by having quality standards in supported employment.

It is also essential that RtC works for the full range of disabled people; for example - sufficient numbers of deaf people need to be included in the RtC Trailblazers in order to measure how effective the Right to Control is for them. This is important because of their need for information in accessible formats.

## **The economic and policy context:**

The potential impact on RtC of the impending public expenditure efficiency targets, and well publicised expenditure cuts for the spending review period of 2011-2014, on different national government and local authority budgets may be one of the biggest barriers to the implementation of RTC. The potential success of RtC is fundamentally dependent on there being sufficient funds to enable disabled people to exercise their new rights meaningfully: the consultation paper suggests scenarios where, for example, it would be more expensive for an individual to access a service or equipment previously acquired more cheaply by bulk purchase, and several other questions related to funding issues. The questions seem to be focussed more on the administrative side (i.e. different funding regimes) than on the total resources that might be available in the future. For example, time limited support tends not to work for people with significant and complex impairments: how can this uncertainty be accommodated with a finite allocation of resources?

The economic climate will have a knock-on effect for the voluntary sector, so services such as advocacy, deemed essential to the success of RtC, will be facing funding pressures in the context of an increased demand for services and the economic impact on third sector organisations is expected to be considerable.

It is important to also bear in mind the well-established correlation between poverty and the incidence of disability. Local council areas with the heaviest levels of existing demand on their services are also likely to contain the highest numbers of disabled people.

The potential for a 'post code lottery' of implementation, given the roles of a range of different organisations, not least local authorities, who will have big expenditure cuts and may therefore narrow eligibility criteria further; in addition, there are concerns that bringing together expenditure streams might further mask reductions in allocations for disabled people.

The disconnect between different Government policies is of concern, not least the impact of welfare reforms, and how much of RtC is aspiration rather than reality.

## **Commissioning employment support**

The Right to Control represents a fundamental culture shift in how people are supported, both for the people themselves and for their providers.

Currently there are clear benefits from commissioning support from a service of a reasonable size e.g. investment in staff training, ability to provide continuity of support and contingency planning, access to wider pool of employers etc. However, as an example of good practice for RtC, in supported employment there is increased interest and investment of a non-service approach - through family-led jobs for example.

Having a non-service approach has undeniable advantages, such as meeting the training needs of “natural supporters”. Managing capacity and continuity is something to be resolved; for example, the supported employment sector lacks a common standard and this must be addressed. There are also many ‘values’ issues around expectations and what is a ‘good job’, matters which must be considered by commissioners, particularly where they are commissioning support services for RtC.

In the current economic climate getting a job is harder for everyone and this applies equally, at least, to disabled people. It will be challenging to assess what is poor performance in relation to the support provider and what is really down to the market, as the reported struggles of current providers illustrates.

Generally speaking, Adult Social Care departments are only just beginning to fully understand their role in referring people for Direct Payments and are therefore going to struggle with RtC unless clear guidance, training and LA processes are in place. Many LAs do not appear to have in place processes and procedures for ensuring safeguards are in place: this will be doubly vital as RtC rolls out: the tendency will be to be ‘risk averse’ when in fact the approach of using risk in an enabling process will be the most helpful.

It is important that RtC ensures that the transition of young people from school to adult life – including finding work and training – includes the ability to access any extra support that they require in order to exercise the Right to Control, such as voice recognition software or British Sign Language interpreters.

### **Assessments:**

The pulling together of such a wide range of funding streams will bring a need to simplify, streamline and accelerate assessment processes: any such

development should include support for self-assessment, to mitigate what is essentially a very intrusive process.

In terms of employment, currently not everyone assessing individuals or providing support services believes that all people are employable. Growing the presumption of employability should start from birth – and this should be taken on board by those pilots currently looking at young disabled people and children - and again this is addressed in VEN. There is a more general concern that the perception of who can or should, or indeed the perception of who cannot work may impact on allocation of resources.

Where someone is assessed as able to work - and that is the majority – consideration needs to be given to whether funding through RtC will be available to purchase support for day occupation, which often takes the form of leisure activities or sheltered volunteering? Or, will disabled people only have choice in who provides support for work?

## **Independent brokerage**

Brokerage will be key to RtC working and must therefore be of the highest quality. In many respects it may prove useful to have a second tier for specialist brokerage with a generalist holding the complex package together.

Service users are often unaware of what services or equipment exists, for example regarding community equipment. Public bodies and brokers should implement creative and wide-ranging approaches to raising awareness and providing information as part of the delivery of the RtC. There will be real challenges in ensuring consistency and quality in brokerage. For example, higher education providers who now have considerable experience of independent assessment agencies/individuals in relation to the administration of Disabled Students Allowances had to work hard over a period of time to establish an accepted quality assurance process for assessment centres and suppliers.

For RtC to work for people, especially in relation to employment, brokers will need to, at the very least, show people what to look for in a provider. Within the supported employment sector there is no shared view of what “good” looks like in terms of a job or a supported employment service, though this is currently being addressed in relation to quality standards.

## **Strategic analysis of links and alignment with DWP funding streams**

There are many concerns about the DWP approach to prime contractors and the lack of 'fit' with RtC: it is not clear how the two can be reconciled. Will individuals be essentially subcontractors? Will the choice of provider then be dependent on who is the prime contractor, or extend to the subcontractors? How will the financial and administrative systems work?

Some of the funding streams considered in the consultation paper have UK-wide coverage. However, the paper is proposing to run the Trailblazers in England only. Is the roll-out of RtC to the rest of the UK dependent on performance in England? The devolved administrations need to be involved in discussion about the RtC and Trailblazers be run across the UK.

For example, it is not clear how these developments if rolled out 'nationally' will affect disabled people who move to or come from Scotland/Wales/other parts of the UK as under current proposals councils in England are going to be Trailblazers. The Disabled Students Allowance is UK wide but is provided through quite different agencies in Scotland and England (in Scotland, Scottish Students Awards Agency, in England it has been local authorities until now when the Student Loans Company is to take this responsibility over.

Whilst the DSA certainly fits into the category of 'something disabled people need in order to help them join in' (EasyRead p.15) many disabled potential students would certainly feel they lacked either the confidence and/or the necessary skills and knowledge to decide what they needed, and from whom, by way of personal help and technical equipment to help with study: this has implications for the assessment processes and the need for good brokerage and advocacy support.

In relation to Work Choice (Specialist Disability Services) there is a need to ensure that a "post code lottery" does not emerge due to local authorities taking different approaches: at the very least there is a need for realistic guidance; for example, how will any move to direct payments be aligned with the government's plans around disability employment programmes? These programmes often provide intensive training to disabled people at a considerable distance from the labour market and providers are paid by results. Clarification will be needed as to how the amount of any direct payment in respect of disability employment programmes would be assessed and aligned.

## Supporting the development of a customer-friendly market

Promoting and including the Office of the Third Sector's "Eight Principles of Good Commissioning" would be helpful in ensuring a consistent and supportive approach to developing the market. The Improvement and Development Agency<sup>1</sup> endorse the Eight Principles and say:

"Better public outcomes for individuals and communities which yield efficiency gains and community benefits through smarter, more effective and innovative commissioning, and optimal involvement of the third sector in public service, design, improvement, delivery and holding the public sector to account is the vision of the National Programme for Third Sector Commissioning."

Under RtC disabled people will be responsible for choosing and buying their own support. Therefore, the role of the relevant public body will need to change: whereas in the past they have acted as a commissioner of services they will now be responsible for ensuring that there are a range of providers from which disabled people can choose. It is not clear where this responsibility should lie. For instance, would it be more effective if this activity were undertaken at a regional level, rather than public bodies in each locality undertaking this role separately? Given the diversity of customers and products this will be particularly challenging. An examination of key areas accessed by a cross section of people through the Trailblazers will be a start.

This may also be an issue where the number of people with a particular impairment or combination of conditions are sparsely distributed in terms of geography. It is important that the introduction of the Right to Control does not lead to the establishment of a market that concentrates on the provision of services for more common groupings, providing services for these people and neglecting services for people who have less common needs, for example - specialist services to deaf people with additional needs, such as autism.

In terms of contracts to deliver employment support, currently the commissioner specifies who the service is available to and sets Key Performance Indicators (KPIs). Many current providers have a mix of contracts and individual commissions and would currently struggle to survive on individual commissions alone. Commissioners need to anticipate such eventualities and plan accordingly to ensure the provider market can develop and grow.

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<sup>1</sup> <http://www.idea.gov.uk/idk/aio/6617745>

Experience is showing that LA commissioners are looking to Third Sector organisations to provide solutions to what is a very 'immature' market: however, this is not feasible without commissioner involvement and support to encourage new approaches. For example, partnerships or consortiums are to be encouraged - and are emerging - but it would be naïve to believe organisations will work together if they are in competition for customers.

Similarly, commissioners will need to carry out any market research with customers/clients to find out what they want: unless they do this they cannot give information to service providers. The local authorities cannot give service providers potential customer contact details to carry out their own market research due to the Data Protection Act

The consultation paper recognises the potential knock-on effects for services, for other service users – and staff – of people exercising the RtC: since RtC will be launched in a real existing world, these are big questions that have consequences both in terms of budgets, and in terms of people's lives and jobs. Mechanisms need to be included to minimise the negative effects, and commitments made to negotiate with unions over the effect on current and prospective service staff.

### **Disabled people as commissioners and employers:**

The consultation document, and the proposed DEAC response, acknowledges the challenge resulting from many disabled people who decide to exercise the RtC for the first time becoming employers. The consultation approaches this from the viewpoint of the individual who suddenly becomes an employer. The potential for breaches of employment law, and abuse of good employment practices, needs to be recognised as vast, and RtC will establish a "privatisation" of previously public services on an immense scale. Not only must RtC provide effective support for the disabled employer, it must also recognise the possible difficulties facing the newly employed support worker.

In addition to the point above, there are further major implications for staff, both as users and providers, especially in central and local government and in the voluntary sector. These are not addressed in the consultation, and there needs to be a commitment to making sure they are properly covered.

The majority of disabled people will never have employed PAs or support workers directly and will need detailed guidance and support, including training, if they are to succeed with RtC. Experience of the higher education sector in respect of Disabled Students Allowance has shown that managing

the responsibility for employing staff presents significant challenges for some disabled people, for example young disabled students away from home at university or college for the first time. DSA awards can be substantial as they can involve expensive technical equipment/intensive labour costs. Again, experience shows that for many students there are real practical challenges in coping with suppliers of specialist equipment and services and in managing the financial transactions that accompany awards. This links heavily with the need for peer advocacy and support, and good brokerage. Public sector bodies, those delivering funding streams, and commissioners can address this in their plans and strategies and ensure that disabled people have access to a range of support services including HR, financial and legal.

## **The need for independent employment advocacy**

The programme to develop user-led organisations, being delivered by the Department of Health, has recognised peer-led independent advocacy as an essential component of the support which needs to be available to service users. Indeed, the RtC proposal also recognises the central role that such provision would have in ensuring a successful development.

Disabled people are often currently faced with a bewildering mix of service providers and assessors who are ostensibly there to “help”. Unfortunately many individual disabled people find that, despite best intentions, they get offered what is available, rather than what they need. With RtC the potential for this situation is multiplied. Independent employment (and other) advocacy is needed to ensure the needs and wishes of the individual are what is addressed. This is a very complex area as there are still people controlling services, for example for people with learning disabilities, who do not believe that disabled people can work.

This situation has particular implications for commissioners, to ensure that appropriate advocacy support is available and is resourced.

## **Summary and conclusions:**

The national roll out of RTC could have far-reaching impacts on disabled people and employment support and retention in the following ways:

- Disabled people will be entitled to ‘buy’ their own employment support: whilst this can be seen to be a significant way to encourage

independence and individual control, nevertheless this will be an unfamiliar activity in strange environment. Support to make effective choices, possibly from a range of providers, will be essential.

- The 'market' is undeveloped and providers are not familiar with relating to disabled people as the 'purchaser'.
- The RTC funding streams will not include 'direct payments' but will rather align with them, and there are no proposals to change eligibility criteria : the challenge here will be to incorporate the 'presumption of capacity for employment' and to align that in a seamless way with AtW and the Specialist Employment schemes.
- The DWP funding streams proposed for inclusion in RtC are national streams, which will need to mesh with local streams such as DFG: this will also need strategic discussions at a national level.
- The DWP Commissioning Strategy (Prime Contractors) is at direct odds with the RtC proposals: there will need to be strategic discussions at a national level as to how this can be addressed.
- It is not yet clear how the proposed RtC funding streams relate to revised Welfare to Work arrangements, including ESA and the ESA Support Group.

### **Issues relevant to the individual disabled person might include:**

- Point of access – a clear and transparent entry point
- Information and advice – about what's available, especially across a range of activities, which may be happening separately or concurrently, such as employment support, learning support and where to look for it, housing support, and so on.
- Assessment is intended to be simplified and streamlined: this should remove unnecessary and intrusive processes, but may well require independent advocacy for the individual to ensure entitlements are met.
- Advocacy – support is needed on how to make the right choices
- Ongoing support – is RtC still delivering, are changes needed, who can help identify and implement them, who can help with grievances or complaints.
- The disabled person as employer of PA's who may provide support both at home and at work: support with payroll, HMRC, disciplinary and grievance matters, training and career development, H&S matters, and so on.

DEAC has been pleased to respond to this consultation and hopes that the particular focus on employment has been especially useful. We look forward to seeing the resulting report, and the implementation of Trailblazers.

Disability Employment Advisory Committee,