

Comments on "Improving the Life Chances of Disabled People"

Following our telephone conversation on 29/3/05 I thought it would be useful to summarise my comments on the above Strategy Unit (SU) report:

1. Overall

I think this is a good report which has identified some of the real difficulties that disabled people face. By contrast, the green paper on Adult Social Care is weak and does not respond adequately to the recommendations in the SU Report.

2. Direct payments and employment status.

One of the assumptions made in the SU report (and in the new Green paper on Social Care) is that if direct payments are used to engage a carer/support worker directly, then the disabled person automatically becomes an employer with all that that entails. **THIS IS NOT THE CASE.** It is perfectly possible to engage a self-employed carer using a Contract for Services, providing that the contract detail reflects reality and the contract is not a sham. This has enormous advantages for the disabled person concerned as their responsibility is reduced to paying invoices from a designated bank account. By way of contrast, the WECIL documentation regarding employment is some 1.5 inches thick and is beyond the understanding of most people.

The employment status of the carer depends on the particular circumstances of the case. However, the Inland Revenue persists in issuing guidance to LA's and NCIL to the effect that the use of Direct Payments leads to an employment situation. They conveniently ignore the fact that Ann Redston (Senior Tax Partner at Ernst and Young) established in court that Self Employment is possible, even in cases where intensive support is provided.

In many cases, such as that of my my son, where care/support levels are less intensive, the carer will have multiple clients and it is relatively straight forward to

establish that self employment is the appropriate status for the care/support worker. Despite this, neither North Somerset Social Services nor WECIL showed any interest in assisting my son in procuring a Contract for Services. Both organisations rely on the Inland Revenue guidance which is incomplete. Fortunately, Ann Redston very kindly gave me advice on how to procure a relevant contract template in a cost effective manner. However, I was reliant on my own professional engineering contract experience to edit the template to suit the particular circumstances. Few people can do that.

I regard this issue as one that requires URGENT attention and one that may partly explain why the take up of Direct Payment remains low. I would therefore suggest that:

- a. The Inland Revenue is instructed to update its guidance to reflect the law, not its own prejudices. Specifically it should acknowledge the legitimacy and benefits of self employment.
- b. LA's and NCIL/WECIL are given guidance on employment status and assistance in creating Self Employment Contract Templates that can be adapted to particular circumstances.
- c. The Inland Revenue should stop pursuing disabled people for tax/NI owed by care/support workers.(i.e. they should pursue the worker).

3. Direct payments and VAT

One of the current anomalies is that if direct payment is used to procure services from an organisation registered with the Care Standards agency (CSCI) no VAT is chargeable. However, if the organisation is not registered, then VAT is chargeable. This particularly affects support provided under the Supporting People regime where the person is procuring the service using a direct payment. It even affects individuals supplied as support workers via recruitment agencies and will severely affect a disabled person's right to use direct payments or personal budgets to procure a variety of services from a variety of sources.

The solution is to make all payments made from direct payments or personal budgets VAT exempt. Otherwise, budgets will have to be raised by 17.5% and the money re-circulated back to the government via VAT payments – a complete waste of time.

4. Coverage of Needs

The SU report proposes that disabled people take charge of their needs assessment, albeit with support to advise and guide them. The empowerment is welcome BUT, the key issue is that of ensuring that once identified, all the needs are met. Unless a fundamental change of thinking is enacted, government departments will still insist on strict, narrowly defined eligibility criteria and are more focussed on process than outcome. This results in the fragmentation of services described in the SU report. It is not clear to me that the latter really provides an answer to this problem since :

- a. Nobody with any power is responsible for (i.e. owns) the whole problem.
- b. Eligibility criteria will still exist for individual services. There remains no mechanism for ensuring that gaps in services are eliminated.
- c. "Meeting needs" will not be a statutory responsibility. Unmet needs will therefore continue to exist with no-one trying to remedy the situation, just as at present.

The latest Green Paper on Adult Social Care is disappointing because it offers no additional resources and the strategy is based on the assumption that Fairer Access to Care will cover all disabled peoples Social Care needs. It will not. The statutory obligations on LA's are limited. (As an example, have a look on the web at what North Somerset provides as a response to the Fairer Access to Care guidance). In general, Social Care needs extend well beyond that defined as statutory provision. For example, the Supporting People programme receives almost no attention in the SU report or the Adult Social Care green paper even though it falls within the latter's definition of Social Care. For large numbers of people, the interface between Social Services and Supporting People will be crucial but no specific mechanism was identified for resolving the difficulties. It would help if the SP programme was recognised by ODPM for what it is – Social Care.

5. Transport

The statements (P82) on transport needs are important. Many disabled people (including my son) are not able to use the limited public transport that exists. You correctly note that transport needs are not normally assessed as a part of Social Service care assessments. In the context of my remarks in section 4 above, who do you think is going to address such needs? ATW will help with taxis to work for those lucky enough to work more than 16 hours/week. However, despite being an essential requisite of independent living, transport is not covered by the statutory social service provisions. As a result, recommendations 4.12 and 4.13 will prove worthless as they stand.

6. Employment

The focus on employment in the SU report is welcome. However I would make the following observations:

- a. For employment purposes disabled people can probably be grouped into one of three categories:
 1. Those whose disability does not materially impact on their ability to execute a particular job. They can compete with those who are not disabled, with discrimination law to support them.
 2. Those whose disability does affect their ability to execute a particular job. For them discrimination law is singularly useless. At interview, they will never be "best on the day" and companies can quite legally fail to employ them.

3. Those disabilities are so severe that work is probably beyond them

b. Many of those in category 2 (such as my son) wish to work but finding a job is extremely difficult, even if support is available. The Job Centre Plus arrangements are totally ineffective. The real problem is that nobody has any real contact with or commitment from employers to employ disabled people who need support or are less able than the general workforce. Why should they – there is no incentive.

c. The complicated rules that differentiate between more or less than 16 hours/week working create huge anomalies and in many cases actually stop people working at all. The complex way the benefits/tax credits system and fairer charging regime work simply compounds the problem.

I am not convinced that the report recommendations will address the above.

7. Financial Support from Relatives

One issue that the SU Report did not touch on was that of financial support from relatives. Most disabled people exist on low income and are subject to means testing from the benefits system and/or the Fairer charging for Care regime. Any financial assistance provided by relatives immediately results in reduced contribution from the state. This also applies to capital left to disabled people following the death of relatives. The only way around the latter is to leave money in discretionary trust but this brings the enormous complication of long term trustees.

I am sure that solutions could be found to this problem but it needs Treasury involvement to think through the issues.

Yours sincerely



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Cc

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