

Towards a rights-based framework in UK welfare-to-work services

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Introduction

Given its expansion of employment support to a wider pool of claimants than previous programmes, merging of separate programmes into a single scheme and the large scale use of for-profit providers and payment-by-results contracts, the Work Programme is a step-change in the UK's welfare-to-work policy. As such, the design, implementation and functioning of the programme has been of great interest to policy scholars, and one of the key emergent themes has been the extent to which the programme offers good quality employment support to claimants most in need of help to return to work. Concerns have been raised that employment programmes which emphasise rapid entry into employment and structure provider incentives accordingly – as the Work Programme does – will poorly serve claimants with complex and/or multiple employment barriers, with evidence of this coming from previous UK programmes and schemes in the USA, Australia and elsewhere in Europe. Organisations representing people with physical disabilities, learning difficulties, mental health issues and other people experiencing labour market disadvantage report poor claimant experiences of the Work Programme and there is evidence of routine 'parking' of such claimants, in favour of 'creaming' of easier-to-help people.

Participant rights in the Work Programme

Such concerns draw attention to a number of problematic features of the Work Programme, including the ineffectiveness of incentives for providers to give longer-term and specialist support and the under-participation of third sector providers. Whilst such factors are important, the argument here is that many of the reported problems of the Work Programme can be traced back to a more fundamental weakness: that it is not underpinned by a concept of a right to employment-related support. Until participants have an enshrined and enforceable right to a

clear package of services, it is argued here that the Work Programme will continue to fail claimants with greater needs.

Crucially, the Work Programme does not offer a service guarantee to participants. There are no central minimum standards – either in terms of the types of services offered, or the frequency and duration of contact with the provider that the claimant is entitled to. Individual prime providers do issue their own statements of the support they offer, but these vary significantly in the extent to which they specify what types of support are available, and few make clear what specialist support can be accessed by claimants with multiple and/or complex employment barriers, for example, claimants with health conditions or disability who are now accessing the programme in far greater numbers than previously. That the absence of a support guarantee makes it possible for providers to 'park' claimants with greater support needs was a concern voiced in some recent fieldwork I did speaking to policymakers involved in employment programme design:

'I think a critical point is that there are no centralised minimum standards attached to the Work Programme so it entirely depends on what the providers offer. They have to set their own minimum standards and those vary quite widely. It's entirely conceivable that somebody could go through two years of the Work Programme and not really receive the meaningful intervention that addresses their barriers to work ... In employment programmes *there are no rights: just responsibilities*' (DWP Official, quoted in Heap, 2015: 12).

Claimants are not in a strong position should they feel the need to complain due to having received poor support from their provider. The only option open to them once they have exhausted their provider's complaints procedure is to take their case to the Independent Case

Examiner (ICE), the ombudsman for the DWP, its agencies and contracted providers. Given that only 277 cases were received and 55 investigated in 2013/14 – out of 1.5m participants – this does not appear to be a well-used route for claimants to complain about insufficient support. (This figure relates to complaints received by ICE regarding all DWP contracted provision. Separate figures for the employment programmes and the Work Programme in particular are not available.) This makes the relationship between claimant and provider extremely unequal, as providers can request that the DWP sanction a participant's benefit if they are deemed not to be fulfilling their responsibilities. Furthermore, providers are responsible to the DWP primarily on a *contract-wide* basis for their *performance* in getting claimants into work, rather than for what they provide. DWP does inspect providers for their adherence to their minimum delivery standards, but some have proved too vague to be monitored adequately.

When put in historical and international context, the absence of central minimum levels of support and an enforceable right to employment support appears highly unusual. Previous employment programmes, such as Pathways to Work and the New Deals, specified the delivery of certain intervention at given times, and offered claimants menus of services they could access. A number of countries have a *de facto* or *de jure* right to employment support. Denmark, for example, has a long-established notion of a claimant's 'right and duty' to access activation services. As in the UK, claimants can face benefit sanction should they be deemed not to be making sufficient efforts to return to work, but this is balanced by a legal responsibility on the part of local social welfare authorities to help them do so. They must make a comprehensive assessment of the needs of the claimant and develop a plan to help them move into employment and, depending on their age and type of benefit, claimants are entitled to be enrolled in an activation programme for a guaranteed number of hours per week and for a minimum number of weeks. The local authority is fined if they fail to offer the right support in the amount owed to the claimant. To maintain a minimum standard of quality legislation lays down what

kinds of activity that can be publicly funded and guarantees a claimant's access to one or more of subsidised employment, workplace training or skills and qualification upgrading. Specialist services for people with reduced work capacity are available and some are offered by right: claimants able to demonstrate significant incapacity have a right to an employment position with reduced hours and/or adjustments with a subsidy paid to the employer. Claimants who lose entitlement to benefits because they have not been provided with sufficient activation are entitled to compensation. Also important is the 'dialogue principle' – legislation gives claimants a right to influence the decision-making process related to their move back to employment and imposes a duty on the local authorities to ascertain if and how the claimants want to do this. The principle emphasises that the claimant is an active agent with rights, rather than the passive object of administrative action.

Features of a rights-based employment service programme

Whilst policy choices from countries with an established right to activation cannot simply be imported into the Work Programme, some changes to the rules and functioning of the programme could be made to make the claimant's access to the service less dependent on provider discretion and foster the concept of a participant's right to support:

- While providers should continue to have the flexibility to create innovative employment services, government should establish a minimum level of support – in terms of type and quantity – that the claimant can expect during the several phases of the return-to-work process: needs assessment, movement towards work, seeking work and in-work support. These minimum standards could form the basis of a charter of employment service user rights.
- There is also a case for having further guarantees for claimant groups with complex and multiple employment barriers. By creating different payment groups and paying more for supporting certain groups – for example, ESA

claimants – the Work Programme explicitly acknowledges that some claimants require more extensive support, and so it is questionable for government only to require a general minimum service statement and not one for each payment group.

- Providers should be responsible for the type and quantity of support – and not simply for a given number of employment outcomes – on both a contract-wide and *individual* basis. DWP inspectors should have the power to deduct from payments to the provider in the case of poor service provision.
- There should be an ombudsman specifically for the DWP's contracted employment programmes to which claimants who feel they have received a sub-par service can turn.
- A reformulated Work Programme should enshrine the participant's right as a co-decision maker in their return-to-work process. More radically, as has been trialled in a number of countries, including the Netherlands, the participant could have their own personal budget to spend on additional services at their discretion.

It should be obvious that such recommendations fly in the face of the thrust of recent welfare-to-work policy, which assumes that providers working on a 'black box' and payment-by-results will yield positive employment outcomes for participants. The experience of the Work Programme so far – in addition to evidence from similar programmes elsewhere – shows that it is difficult to use market incentives to drive desirable and discourage undesirable provider behaviour, and that relying on them to do so deepens the labour market disadvantage of already disadvantaged people. At a minimum, for the sake of social justice, some level of service prescription and greater monitoring of employment service provision will be required. Taken further, this could form the basis of an emergent right to employment support, whereby people out of work can lay claim not just to a minimum income through benefit payments but also a realistic chance to find and progress in employment through a package of quality services, and

one that is not dependent on the discretion of profit-driven providers.

References

Heap, D. 2015 (forthcoming) 'Disabled people, welfare reform and the balance of rights and responsibilities', in L. Piggott and D. Grover (eds) *Work, welfare and disabled people: UK and international perspectives*, Bristol: Policy Press.