Shaping Future Support: The Health and Disability Green Paper

Consultation response submitted by Business Disability Forum, October 2021

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### About Business Disability Forum and our submission

* 1. Business Disability Forum is a not-for-profit membership organisation which exists to transform the life chances of disabled people. As a membership organisation working with over 450 businesses, we are uniquely equipped do this by bringing business leaders, disabled people, and Government together to understand what needs to change to improve the life opportunities and experiences of disabled people in employment, economic growth, and society more widely.
  2. Business Disability Forum does not focus on benefits as we are predominantly business facing. However, our interest in this consultation is twofold: firstly, we welcome the approach that brings the employment and benefits settings closer together, as both receiving disability related benefits and being in work is the reality of many disabled people. Secondly, we have seen an increase in disabled people using their own funds or their Personal Independence Payments (PIP) to pay for medicines, equipment, or other aids or provisions to manage their conditions which ultimately helps them stay in work.
  3. To develop our response to this consultation, we have spoken to some of our members and disabled employees who work for them. All footnote references are from the consultation document unless otherwise stated.

# New guidance from HSE on sickness absence and return to work

* 1. It is unfortunate that guidance on managing disability, sickness absence, and return to work is being based and written within the Health and Safety Executive (HSE).[[1]](#footnote-1) Disabled people have long fought against being seen as **a ‘healthy and safety issue’** or risk and are still seeking to change this narrative in many workplaces today. We would question why this is not being led by the Work and Health Unit (particularly following years of work and engaging with organisations on *Health Is Everyone’s Business*); or, given that the Disability Unit was set up to coordinate joined up working across Government, why this could not be guidance owned jointly by multiple departments.
  2. We urge that this guidance is developed with disabled people’s experience of sickness absence and returning to work – at design and at final draft stage – as well as the many employers who are working on the inclusive work and health agenda. We would also request that this guidance is not badged as ‘health and safety’ guidance or as a document from HSE. As above, this would be a huge step back in the narrative disabled people are too used to battling – a narrative that was prevalent decadesago.

# Improving work opportunities through Access to Work

3.1 The consultation asks what more the Government could do to support employers to improve work opportunities for disabled people through Access to Work (ATW).[[2]](#footnote-2) Some frustrations with the current process for employers are as follows:

* + 1. The use of **‘standard’ adjustments and adjustments catalogues**. One employee told us the following: “There are standard adjustments for many conditions, and there are standard adjustments for dyslexia. But if you have dyslexia and a hearing impairment, you need a different combination of things, or different kit entirely. I didn’t fit into the standard technology list, and I therefore didn’t get any support when I was assessed”. Another employee said, “It is like this: Is it on the list? Yes. Done. Off you go. Access to Work need to get away from dishing out the same specialist stuff”.  Assessments are not tailored enough to the impact of an individuals’ condition and job they are employed to do.
    2. The process is **too long**. We repeatedly hear from employers that applications and assessments continue to take a long time. One employer recently told us that an employee in their organisation started their ATW nine months ago and they still have not received the assessment report.
    3. Many employers tell us that ATW is, in one employer’s words, a “one shot deal” where recommendations were made and then there is no contact again. There is **no case management** and no clear way of employers getting in touch to ask questions or query recommendations that had been made. Employers frequently tell us they cannot get in touch with ATW, and this also means they cannot track or ‘take over’ an employee’s application when that employee is unwell or off sick. Many employers tell us that, for this reason, the ATW application process, in effect, stops when an employee is off sick. This **works against employers’ legal duty to make adjustments** for employees in work (as per the Equality Act 2010, it is not for the employee to arrange their own adjustments) and, when an employee is off sick, it is the employer’s duty to get adjustments in place to proactively try and get that employee back to work. The current ATW process and structure does not allow employers to do either. Employers want a named case worker they can contact about an individual’s support, for the whole durations of the award period.
    4. Assistive Technology (AT) and IT solutions are the most common recommendations made to our members by ATW that either do not suit the employee or are not compatible with the systems the employee needs to use in their job. Employers told us that, as IT cloud-based programmes update almost weekly, the need for updating AT is greater, and ongoing **AT upgrades are not covered** by ATW’s current assessment or funding model. One employer referred to this as amounting to “the gradual degradation of the user experience”. ATW has not kept up with the development of and the pace of upgrades in the AT market.
    5. Funding updates to ATW have centred around extending the support cap. For some employees – particularly those who are Deaf and BSL users, have a learning disability or complex conditions, and with ‘severe’ speech impairments – the cap does not cover the cost of **full time ‘human’ support**. The businesses we work with regularly agree that for many people who needed ‘physical’ adjustments (such as assistive technology or ergonomic equipment), the costs do not reach anywhere near the support cap. Then, one employer said that the British Sign Language (BSL) interpretation costs for a much-valued employee had reached to around £72,000 and, for another employer, £74,000 per year. The current support cap is, however, £60,700 per year. One employer said that this meant an employee who communicates by BSL and needed an interpreter all the time in his job had to reduce his hours so that their support did not exceed the ATW cap. Another employer said they had to redeploy a Deaf member of staff to a job where less communication support hours were needed. DWP has been unable to answer the question on why, when many ATW users’ support costs do not meet anywhere near the annual support cap, the ‘leftover amount’ cannot be redistributed to those who adjustments cost greater than what the current cap allows. One employer told us, for people who need communication or personal ‘human’ support, the cap is literally “disabling” for BSL users. This has become even more urgent because, since the increase in home working and online meetings, the demand for remote captioners and BSL interpreters has pushed prices up in the accessible communications market, meaning even less hours of communications support can be funded by the current support cap.
  1. There are also two additional ways ATW could be extended to more people at earlier stages of the job search:
     1. ATW is only available to people in a job interview or who already have a job. ATW should be available to all disabled people who are **economically active**, or who are **seeking to become** economically active. This is because we repeatedly hear that people find it difficult to search for jobs, contact prospective employers, attend local jobs fairs (whether online or in person) and apply for jobs without adjustments. “Access to Work” is not living up to its name unless it truly enables access to the employment market. It is not currently doing this, because it is not available to people who are looking for and applying for jobs. ATW should be extended to any economically active disabled person, and ATW should therefore also have a base and be applied **in every Job Centre** at the stage of someone **wanting to look for a job.**
     2. It can be hard for employers to understand someone’s suitability for a job at the point of interview when the employee does not yet know what adjustments would be available to them in the job. Implementing an **‘agreement in principle’** whereby ATW had already been involved at the point someone is attending an interview would allow the employee and employer to better understand if the employee would be able to access appropriate support if appointed. Although we know the Government has committed to piloting ATW ‘Passports’, this does not help someone who is applying for their first job or who has not previously had an ATW assessment or support.
  2. We noted that the Access to Work case study in the consultation document was about someone who experience migraines and musculoskeletal conditions and whose adjustments are predominantly ergonomic. It is important that people with these conditions are supported, but we were disappointed by the missed opportunity to offer a case study here of how ATW can support people with multiple and complex disabilities who use ‘human’ support funded by access to work. This ‘group’ of people are furthest from the labour market and, research shows[[3]](#footnote-3), employers have most concerns about employing.[[4]](#footnote-4) It is really important that case studies cover the full breadth of disability and the full breadth of adjustments and support packages. Otherwise, the multiple employment gaps between those who are ‘easier’ to provide adjustments for (for example, with equipment or technology) and those who require a combination of interventions and/or human support will only become more entrenched.

# An Access to Work Passport to transition from education to employment

* 1. Many employers and higher education practitioners have shared concerns about the ATW Passport that seeks to transfer the adjustments someone has in education to employment. This solution over-simplifies the issue. The key issue students have with transitioning from (particularly) university to employment is not lack of adjustments, but that the same adjustments they have at university very much cannot be replicated in industry. Disabled graduates, university careers teams, and employers all tell us the same.
  2. Instead, the three main issues when transitioning from university to employment are:
     1. Many universities use assistive technologies that are cloud based, and many industries cannot use these due to complex, secure IT infrastructure and IT data security. This means graduates have completed their degrees using IT solutions that are not data secure and therefore cannot be used in industry. In one employers’ words, “Graduates repeatedly come to us expecting to use and ask us for Grammarly, and it’s a flat-out immediate ‘no’”. We see this particularly in the legal, financial and accountancy, professional services, and insurance sectors.
     2. Many students are granted additional time for coursework and exams during their degrees. However, in some sectors, additional time is not reasonable for some occupations. We often hear from – for example – sales, courts, accountants, and law firms that graduates come to them expecting to be given extra time for tasks, but how the business and client relationships operate in these sectors cannot always accommodate that. Again, as above, adjustments that are ’reasonable’ when completing a degree can be unreasonable when working in industry.
     3. Graduates are not equipped to discuss adjustments and how their conditions affect them with potential and new employers. Better communications and confidence skills are needed to be built with students in the final year of their degree programme. In research we carried out last year on disabled graduates’ experiences of transitioning from education to employment, disabled professionals each said the best thing they learnt to be was “forthright” – i.e., communicate well – about what they had used at university and what could be used instead in industry. We spoke to graduates who did not feel they had confidence to be ‘forthright’ and they generally fared less well in their transition from education to employment. This reinforces how important equipping disabled students with good communication and confidence skills before they leave university and look for their ‘first’ job really is.
  3. The issue is therefore not about ensuring adjustments in university can be replicated in employment – this is ideal but rarely realistic. The solutions, instead of an ATW Passport which too easily sets unrealistic expectations for disabled people, are to:
     1. Properly equip final year students with disabilities with communication skills and the effective techniques to value their skills and communicate confidently what they need and how they work; and
     2. Bridge the ‘policy’ gap between education and employment by making ATW available for students to get an ‘Agreement in Principle’ at the stage they are applying for jobs (see section 3.2(b) above).
     3. Allow students to keep their DSA support to apply for jobs to help them transition from leaving education to applying for jobs. Although students who receive DSA can often keep some equipment after they leave their course, other support that people may need to apply for jobs (a support worker or interpreter, for example) generally stops
  4. The consultation paper says that the Passport will “provide greater flexibility and reduce the need for requested workplace assessments when changing job roles or working on time-limited contracts”.[[5]](#footnote-5) This is true in some places where some adjustments can be transferred but we would caution the following:
     1. Passports must include caveats that prevent disabled people from expecting that they will be able to transfer all of the adjustments they had in a previous job to their next. As above, this is ideal but unrealistic. Many disabled employees have a poor experience of Passports because of this and, equally, managers tell us that the Passports often sets up ‘tense’ conversations soon into the employee-manager relationship because of this implied expectation.
     2. Passports must not be in place of employers having a conversation when an employee changes job or role. Employers have a legal duty to make sure a re-assessment of support takes place whenever an individual’s job or circumstances change. Therefore, a Passport that has the purpose of transferring adjustments too easily allows employers not to have these conversations with employees. In many cases where this happens, we hear that the employee may need more support in the new role compared to their previous but, because of the Passport, **inaccurate or ‘not enough’ adjustments have been transferred** to the new job. The employee is then lacking support and struggles in the role before they – the employee – then has to instigate a potentially difficult conversation with their manager about needing to request more or different adjustments.

# Disability Confident

At the time of writing, we are also completing our response to the Disability Confident review which is being undertaken by the Disability Confident team. We are still analysing our findings from employers on this, and we will be submitting to the team on Friday 15th October.

# Knowledge and expertise in Job Centres[[6]](#footnote-6)

* 1. When we conducted research to respond to BEIS’ consultation on in work progression, we asked our members about their experiences of working with job centres. We also hear members’ experience of interacting with Job Centres through our Advice Service. They tell us the following:
     1. When establishing a relationship with a Job Centre Adviser, our members generally say the Adviser is helpful. Members wish the Advisers were more ‘proactive’ and dynamic with communicating with them, though. For example, members speak about a regular ‘update’ which is sent to them from the Job Centre; however, some of our members said they would like Advisers to “pick up the phone” as soon as a potential candidate is there in the Centre.
     2. We repeatedly hear that Job Centre Advisers and Disability Employment Advisers do not know about the Disability Confident or Access to Work schemes. One employer has had to send an Adviser information from us about this to educate them. Another employer said that they had told the Adviser, “We are a Disability Confident Leader, so we are happy to flex the recruitment process to the candidate’s needs”. The response from the Adviser is “What is the Disability Confident scheme?”
     3. We are also told Job Centre Advisers rarely know enough about adjusting the recruitment process or inclusive alternatives to interviews. As an example, one of our members told the Job Centre Adviser that they would be keen to try work trials where the ‘traditional’ interview and assessment process may not suit a candidate. The Adviser did not know what a work trial was. After discussing this with the Adviser, the employer said it was clear that disabled candidates had been turned away by the Job Centre that the employer would have otherwise “given a chance” to.
  2. The above examples evidence two important actions:
     1. There should be **no division between a Disability Employment Adviser and a ‘non-disability’ Employment Adviser**. Everyone Adviser working in Job Centres must know the same information about inclusive recruitment, adjustments, ATW, the Disability Confident scheme, and must be able to encourage employers to flex their recruitment methods instead of this being the other way around. “Employment Advisers” should be **one role** who can support anyone, regardless of their disability or health status.
     2. There needs to be **consistent and ongoing knowledge and skills training** for Job Centre staff. This should not be a ‘one off’ training session. Recruitment and inclusion practices move fast, as do the types of adjustments and interventions available. Job Centre Advisers need to be equipped to keep ‘on top of’ this knowledge.

# Concerns regarding proposals on future assessments

* 1. There are two concerning sections in Chapter 4, titled “Re-thinking Future Assessments to Support Better Outcomes”, which indicates a lack of awareness of the availability of assistive technology to disabled people, and a lack of understanding of the difference between occupational health and occupational therapy.
  2. The consultation says, “Since the assessment criteria [for WCA and PIP] were introduced, some of the activities referred to may have become less of barriers to independent living and employment. For example, new assistive technology has become available”.[[7]](#footnote-7) The consultation question in this section then asks what changes to “PIP activities and descriptors” should be considered. DWP must join up with the current work some of its policy units are doing on understanding the gap in provision of assistive technology. This work is identifying that many assistive technologies are available and are rapidly developing but disabled people cannot access these. The All-Party Parliamentary Group (APPG) on Assistive Technology recently carried out an inquiry into the roles of assistive technology in employment, and we suggest DWP looks at the research gathered for this. Our research that we contributed shows that disabled people rarely have access to assistive technology unless they are in education and have a Disabled Students Allowance or are already in work and have assistive technology through ATW. It is a mistake to suggest that **assistive technology is widely available** (and affordable) enough to disabled people, and that PIP assessments and criteria should be changed as a result.[[8]](#footnote-8)
  3. The case studies titled “Support from an Occupational Health Professional”[[9]](#footnote-9) describes the role of an Occupational Therapist (OT) – who is typically based in the health setting – not an Occupational Health (OH) practitioner who is typically based in the work setting. Both case studies illustrate the crucial role OT plays in providing home adaptations and working with social care providers to help people re/gain life skills that may eventually help individuals work up to getting a job or returning to working life; but **this is OT, not OH**. We ask DWP to clarify which profession it wants to bring into the process here. OT should rightly be available to many more disabled people to help them with the support and skills they will need to look for and get a job, but this chapter appears elsewhere to be talking about OH.

# PIP is enabling people to stay in work

* 1. People who receive PIP told us that they are spending it on adaptations and interventions that would otherwise mean they would not be able to work. For example:
     1. **Medicines and medical intervention** – including medical treatments not covered by the NHS (one person mentioned lymphatic drainage and compression garments), quick and easy access to physiotherapy, and medication.
     2. **Non-medical aids and equipment** – including assistance dog expenses, wheelchair, adapted furniture, assistive cutlery, accessible clothing, adaptations to the home (such as wet rooms).
     3. **Vehicles** (which are used to get to work) – Motability, and adaptations to non-Motability vehicles.
  2. We therefore have huge concerns that consultation suggests people could be able to swap “all or part” their PIP for “access to aids, appliances, and services”.[[10]](#footnote-10) This suggests an intention to stop providing what many people **already have access to**.
  3. Our concerns resonated with disabled people. For example, in one person’s words:

“I worry that this is an excuse that they won’t provide the aids that I already get through other means. Will I now have to fund my own prosthetic?”

* 1. The proposal caused anxiety among disabled people we spoke to. The “voluntary” element seemed ‘neither here nor there’ to many, and some wondered if there would be an ‘unofficial pressure’ to voluntarily swap PIP for what they needed.
  2. Although people said getting PIP was enormously stressful (and often a hugely inaccessible process), those who eventually get PIP say that it gives them **flexibility to** source what they need to be **tailored directly to their needs** and **when they need it**. In one person’s words:

“I am able to fund and buy my own aids. It’s maybe even better value for money if I buy them, not some scheme. Aids also must meet very individual and specific requirements. I really don’t see the benefit of such a scheme”.

* 1. This resonated with a common type of case we receive to our Advice Service. Many employees who need hearing aids are provided with a ‘basic’ product by the NHS, only to find that it is ‘good enough’ to use around the acoustics of their own home, but not effective enough for their workplace. They then use their PIP or ask their employer to fund a better version. This ’doubles up’ provision; in every case we have received on this, the employee knows the type of hearing aid that will suit them, but it is not provided on the NHS. Therefore, the NHS pays out to provide something that the individual then does not use. The employee then asks the employer to help with funding hearing aid that will suit each environment they need to work and live in. Some employers have even told us they have funded heading aids ‘three ways’ – between the employee, the employer, and Access to Work. This current system is not cost effective. The NHS needs to be able to tailor products to the environment in which an individual lives and works, and individuals should not be picking up the cost. Where this does happen though, PIP is helping people pay for what suits them – and it means they are getting it quickly. We are hearing from an increasing number of employees who are funding their own medical treatments and surgeries because the NHS waiting lists are too lengthy, or because NHS policy determines that a condition has to ‘advance’ to a certain stage before the NHS will carry out the procedure.
  2. A ‘voluntary swap’ scheme also risks introducing processes and admin that will **slow down** the processes of people getting what they need which is the key benefit of PIP.
  3. There were also concerns that this scheme would not suit people with **fluctuating conditions** or whose conditions change regularly. In one person’s words:

“My MS means that my needs change regularly and the proposal does not allow me to adapt my care to my changing circumstances. The focus is always on saving money, not quality of life”.

* 1. When we asked individuals what PIP allows them to do, “**independence**” was top of the list. When people gave further detail, responses fell into two categories:
     1. PIP **enables people to work**.
     2. PIP bridges the ‘extra costs’ of being disabled.[[11]](#footnote-11)

# The absence of the health setting in the proposals

* 1. The absence of the health setting in this consultation was somewhat disappointing, particularly since *Health is Everyone’s Business* effectively affirmed how closely the three settings – employment, welfare, and health – need to progress alongside one another.
  2. This consultation frequently refers to the provision of medical equipment, aids and adaptations, getting medical proof for assessments, and reliance on medical-based skills and services such occupational health – yet there is an **absence of strategic vision** for how the three settings need to come together to make the suggested proposals – or any proposals that affects the lives of people with disabilities and long-term health conditions – a lived reality.

# Summary of recommendations

* 1. Involve disabled and consult with employers on the new guidance on sickness absence and returning to work (section 2).
  2. Improve ATW by speeding up the process, ridding of ‘standardised’ adjustments catalogues, removing the support cap, introducing a named case manager, and revising the funding model to include AT upgrades (section 3.1)
  3. Extend ATW to be available to people earlier in their job search, so that people can be eligible for ATW when looking and applying for a job and implement and ‘agreement in principle’ provision (Section 3.2).
  4. Revise the ATW Passport to ensure it does not provide unrealistic expectations for disabled people or prevent them from getting all of the support they need when changing jobs (section 4).
  5. Link up with the Disability Confident team to ensure insights from the current Disability Confident Review are embedded in future developments to support employers and disabled employees to get into and stay in employment (section 5).
  6. Expand and invest in the skills and knowledge of Job Centre staff. This includes disability employment advisers not being separate to roles to non-disability employment advisers (section 6).
  7. Refrain from altering WCA and PIP criteria based on the assumption that assistive technology is more available now (section 7).
  8. Clarify the difference between OT and OH when developing future support (section 7).
  9. Do not go ahead with the proposal that people can “voluntarily swap” some or all of their PIP to pay for aids, appliances and service” (section 8).
  10. Ensure the health setting is a key part of future developments to continue the multi-disciplinary approach to disability, health and work as established in *Health is Everyone’s Business (*Section 9).

# Contact for further information

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1. Paragraph 101. [↑](#footnote-ref-1)
2. Paragraph 113. [↑](#footnote-ref-2)
3. A recent example includes the finding that 24 percent of employers said that they would be less likely to hire a disabled person (Leonard Cheshire, 2019, “Reimagining the workplace: disability and inclusive employment”). [↑](#footnote-ref-3)
4. Paragraph 109. [↑](#footnote-ref-4)
5. Paragraph 111. [↑](#footnote-ref-5)
6. Paragraphs 119 and 132. [↑](#footnote-ref-6)
7. Paragraph 242. [↑](#footnote-ref-7)
8. For our research on the provision of assistive technology, see our written evidence to the inquiry here: <https://businessdisabilityforum.org.uk/knowledge-hub/resources/the-future-of-assistive-technology-in-education-and-employment/> Or contact us for a copy. [↑](#footnote-ref-8)
9. Paragraph 260. [↑](#footnote-ref-9)
10. Paragraph 316. [↑](#footnote-ref-10)
11. In one person’s words: “It is a matter of fairness to get PIP. Disability is an expensive matter. It’s just fair that this is not an individual’s problem but is mitigated with PIP”. [↑](#footnote-ref-11)