

Independent Strategic Review of Legal Aid Call for evidence

Background

Support@ Work is a trade union developed project, led and managed employability support initiative that operates within the boundaries of City of Edinburgh Council (CEC), and NHS Lothian. S@ W has been operating since 2004 (funded since 2005) and was originally developed and initiated by Edinburgh Trades Union Council (ETUC) to provide employment rights support and advice to clients. From this starting point, an early emphasis based largely on advising and representing clients who were experiencing difficulties with their employers or employment, the S@W initiative has developed within the framework of the Joined up for Jobs (JU4J) strategy (ie the CEC Employability Group). It is currently funded for its work within CEC boundaries by the ESF matched by Challenge Funding from CEC. Additionally, it has developed a strong partnership with NHS Lothian Vocational Rehabilitation Work Support Services This includes the NHS Lothian Working Health Services and Macmillan Cancer and Work initiative. S@ W is managed by the ETUC and the Scottish Trades Union Congress (STUC).

Project aims

The primary aim of S@W is to improve the chances of sustained employment for workers who find this difficult (e.g those entering/ returning to the workplace after a period of unemployment, caring responsibilities or ill- health) providing employment support, advice and training. It also works through cross referral and joint working, with NHS Lothian patients who are accessing the above Vocational Rehabilitation services, and at work and struggling or off work across the whole range of health conditions including long term health conditions, and disability.

An evaluation of Support@ Work from May 2014 conducted by Dr. Robert Stewart and Professor Patricia Findlay is attached which summarises and evaluated the project. The funding base has changed to a degree and while CEC remains committed to funding the project, matched ESF funding ends in October 2017, and the areas of the NHS (community and primary mental health teams, and GP practices, for example) seeking access to the service grows without a funding base to meet this need.

Staff

The project is currently managed by Terry Anderson, community development officer from the STUC, who is supported by Des Loughney an experienced trade union official who is secretary of ETUC and Kathleen Bolt, an experienced employment lawyer and mediator, although not acting as a solicitor in this project.

Philosophy

Support@ Work operates on the basis of early intervention to assist clients to retain employment. Clients have access to a telephone helpline, face to face advice and support, and when appropriate trade union representation in the workplace even when not themselves a member of a union.

Specialist expertise has been developed in supporting those with long term health conditions and disabilities to retain employment in partnership with health professionals, including coaching, attendance at workplace meetings around sickness absence, return to work and securing reasonable adjustments. Constructive support from those with expertise in employment and equality law and in workplace representation retains people in work. Support@Work is often described as a bridge to trade union style support for clients. Trade unions are not active in large parts of the private and third sector where workers are, at times, less protected in a collective agreement & workplace policy context.

Policy context

Support@ Work transcends a number of current Scottish policy objectives. It sits within the Scottish Governments aims for CREATING A FAIRER SCOTLAND EMPLOYABILITY SUPPORT, and the FAIR WORK AGENDA. In terms of the National Performance Framework indicators, relating to the strategic review – this project is tackling the significant inequalities in Scottish society, and contributes to closing the disability gap, and achieving fair work for all. Support@Work was involved in consultation periods on both the above Scottish Government policy commitments via both STUC and Edinburgh TUC.

The review invites respondents to consider a number of questions, and to tell them about, inter alia, examples of projects, services or innovations or improvement work, including evaluations or assessments, which may be relevant to the work of the service.

What shared values and ethos should underpin legal aid services, and how best can they be embedded in the delivery of the legal services in the future?

The positive model of access to justice currently underpins legal aid services. S@W is fundamentally a project that aims to provide access to justice for workers and employees based on an innovative model of delivery. This is perhaps more critical than ever in the current economic climate with the growth in precarious employment, the gig economy and decline in union membership and difficulty for unions in reaching these sectors of the workforce. Clients in all of these employment sectors are accessing our service and obtaining representation in the workplace as non-union members, empowered to secure their employment rights and resolve conflicts with employers. Further access to justice is critical in reducing the disability gap and sustaining people in employment with long term health conditions and disabilities and our project again works alongside health providers to tackle this issue.

How best can wider organisational arrangements (including functions, structures and processes) support and enable the delivery of effective legal services?

The model of service delivery developed by S@W provides a unique and innovative means for workers and employees to access advice, support and representation around employment rights. The organisational arrangement builds on traditional models of union supported employment rights advice and representation but is unique in the speed with which it can provide access to highly quality and expert advice and if necessary representation. It would fit well with a further tier of legal advice and representation that enabled employees and workers to protect and pursue their legal rights where resolution could not be achieved. This second tier of service would be an innovative means to enable access to justice around employment and equality rights, along with alternative dispute resolution through access to mediation services, addressing the current failures within the legal aid system in terms of meeting this unmet legal need. Albeit ABWOR is currently available for representation in the Employment Tribunal it is apparent to us that few, if any, solicitors continue to provide this service, and alongside the decline in access to the Employment Tribunal for a myriad of complex reasons including the introduction of fees, early conciliation and the decline in availability of representation, the submission of claims to the Employment Tribunal in all areas has plummeted. Where there is a commitment to support people through these processes-including access to remission on fees, and this work can be sustained due to grant funding subsidising legal advice and assistance and ABWOR such as the employment law services provided by Castlemilk Law Centre this can work. However those seeking to sustain this work in private practice find this almost impossible and most legal firms do not even want to try. In addition the length and complexity of employment tribunal cases means that while CABx, for example, can provide some advice and support they do not have the means to provide representation which is needed. CLAOs do not necessarily take up employment cases and other organisations providing support to some such as some of the community law centres is

patchy. Support@ Work has the potential to be developed as a national model supported by a further tier of legal advice and representation, and mediation services.

How best can legal aid services achieve positive outcomes for and with the people of Scotland?

Legal aid services have the potential to support the delivery of the fair work agenda and the need to close the disability gap. Through a new approach in the field of employment and equality law it has the potential to fund early intervention approaches to the resolution of work place difficulties, which proactively provides the direct support and representation people need to resolve these issues, sustaining people in fair work. There have been innovative approaches developed in relation to the provision of money advice for people in recognition that money difficulties and debt can contribute to a downward spiral for people leading to more and potentially costly need for interventions and legal services. We submit that a similar approach be taken to employment issues- this works to maintain people in employment with proper access to pay, holidays and sick pay, and enforcement of rights as pregnant women, disabled people, and much more. Reference is made to the recent report from Oxfam, and the University of the West of Scotland with the support of the Warwick Institute for Employment Research: Decent work for Scotland's low-paid workers: a job to be done: Oxfam Scotland 2016, which highlighted a number of shocking statistics, including that 118,000 employees in Scotland do not receive the statutory minimum paid holidays. Further it can work to retain people with long term health conditions and disabilities in work, a further and key goal of the agenda to ensure fair work and reduce inequalities. There are further positive implications for disability welfare reform and costs.

If you were designing a system of legal aid today what would you do differently from the current system to make it more effective and person- centred?

Current models of legal aid services mostly focus on client's pursuing legal rights and remedies at an end stage of legal difficulties. Our experience of working within this system and traditional points of entry, help us assess the benefits of an early intervention model which can resolve difficulties at an early stage and prevent the escalation of legal disputes. This not only keeps people in work but empowers them and informs employers about best practice and dispute resolution. This needs to sit alongside the ability to access legal rights where issues cannot be resolved and knowledge that remedies are available. This is important for effective employee/ employer relations. It is our view that exploring ways of funding a model as proposed mixing the skills of trade union representatives with those of solicitors in partnership with NHS, and others can address the unmet legal need in relation to employment rights and equality in the workplace.

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