

BASE response to the DWP's Design and Procurement Proposals for a new Specialist Disability Employment Programme



This response has been produced by the British Association for Supported Employment, a national association representing nearly 200 supported employment providers.

Procurement Questions

Question 1: We are considering contract packages of 1 or 2 per region/country

BASE does not believe this is a good idea. We have long opposed the notion of regional contracts for specialist services. We believe that this would fail to provide a good quality service for customers or employers.

If DWP wants to ensure that the right people get onto the new programme then the new provision must be able to maintain strong links at a local level with social care day services, community mental health teams, further education colleges and community based voluntary organisations. This will simply not be possible under the proposal.

Further, the use of prime providers will diminish the resources available to support end users. After management fees and allowances for profit, subcontractors will have to provide increased outcomes using fewer resources. This may make it an unviable option for local authorities, who currently form the majority of Workstep providers. We believe that voluntary sector organisations will be pressured into agreeing contracts which are not sustainable.

Whilst current provision is of variable quality, it seems absurd to exclude those that are performing well whilst introducing prime contractors with an equally variable track record or with no experience in this sector.

BASE presents two options which we think offer the greatest set of advantages to users and commissioners. We state no preference and present them as alternative courses of action for DWP depending on whether they wish to retain some responsibility for the management of specialist disability employment provision.

Option 1

The first option takes the logical step from assuming that DWP wishes to absolve management responsibility for provision and that would be to hand over the resources directly to local government. This would mean a significant sum being handed over to each local authority to deliver an employment support function. Resources could be apportioned and ringfenced along the lines of the Department of Health's Mental Health Grant, thus avoiding the lost resource which will otherwise go into management fees and profit margins. This option would divest DWP of the responsibility for overseeing specialist support and allow local authorities to tailor their provision to meet local priorities and PSA targets as well as integrate it with the new education funding responsibilities.

This option would allow local authorities to provide an employment support service themselves or contract it out to a voluntary or private sector provider. It would enable close linkages with the local forums for planning and delivering health, social care and education services and would directly link to activity delivered through PSA16 or through multi-area agreements.

Option 2

Option 2 assumes that DWP wishes to retain management responsibility for employment support programmes. In order to maximise the engagement of education, health and social care referral

routes, BASE proposes that the new programme should be tendered at Jobcentre Plus district level. This would entail the award of 50 contracts across England, Scotland and Wales and would allow specialist providers an opportunity to form consortia with a nominated lead provider.

We do not think it should be beyond DWP's capacity to monitor 50 contracts, a substantial reduction from the existing 400 contracts. Though contracting would be at district level, we would like to see regional contract management arrangements remaining in place. Customers would have a choice of service by being able to choose between the programme provider and Remploy provision.

We would like to see a requirement for each potential prime provider to submit a separate Invitation to Tender (ITT) document for each district contract so that they can demonstrate an understanding of local conditions. These should be subject to scrutiny by local government, and City Strategy Partnerships where relevant, during the scoring procedure.

Question 2: What type of support from DWP would enable the alignment of businesses in the supply chain network?

DWP will be well aware from previous tender exercises that networking events help to broker partnerships between prime and subcontractors. Given that we oppose the notion of regional contracts, we would like to see this networking support offered on a district basis. JCP Partnership Managers could bring together local authorities, PCTs and other stakeholders to help raise awareness of local needs, provision and circumstances.

We would like to see DWP bring in experts to support the formation of special purpose vehicles and work with local government associations to develop template contracts that would speed up the process considerably. This needs to be done as soon as possible but it will be difficult to make any progress with forming SPVs until the contract geography is confirmed.

It is vital that processes are streamlined if smaller organisations are to participate as they do not have the infrastructure, experience or resources to negotiate effectively with bullish prime providers. We would like to see standardised subcontracting procedures so that the same type of information is requested by each potential prime provider. Exclusivity deals should not be sought. It would greatly help if DWP specified maximum management fees and the Code of Conduct needs a thorough overhaul to give it teeth and legal enforceability.

Question 3: What would you like to see DWP to facilitate networking opportunities?

See above. It is critical that effective communications exist. The current practice of publishing notices on obscure parts of the DWP website is inadequate and will exclude many smaller providers.

Question 4: Concerns about the Code of Practice

We have had longstanding concerns about the Code. It was developed by prime providers without any consultation with subcontractors. It is vague, unenforceable and not legally binding. It needs a thorough overhaul based on a full and open consultation and needs to be an integral part of the contracts. It needs a stronger appeal process with independent arbitration.

BASE understands that the Third Sector Task Force has recommended making performance under the Code part of the STAR rating system, and producing a set of contracting norms to help subcontractors negotiate with prime contractors from a more informed perspective.

The DWP Commissioning Strategy committed the Department to active stewardship of the supply chain. Either DWP sees no role for itself in policing commercial arrangements, in which case there is no purpose for the Code, or it will become active and enforce a much stronger and fairer Code.

Whilst BASE fully recognises the potential benefits of a supply chain in mass flow programmes, we believe that there is no case for it in specialist programmes. The impact of the Commissioning Strategy on disadvantaged groups has not been examined and the potential risks have not been analysed. The DWP Equality Impact Assessment is woeful and DWP is being neglectful in considering these issues fully.

Question 5: The option of a 50%/50% split on delivery and outcome payments

BASE recognises that funding models drive behaviour and appreciates that DWP has moved from its standard percentages in recognition of the amount of prevocational and long term support likely to be offered to customers in the new programme. We tend to think that there is an considerable underestimation of the prevocational support needed and would propose a 70% delivery 30% outcomes split. This is an issue for further discussion.

It is worth emphasising that the prime provider is under no obligation to mirror this split with subcontractors and the potential for market failure amongst subcontractors is high if delivery payments are not adequate.

Question 15: Supported Business protection

BASE believes that protection proposed is inadequate and will just delay the mass closure of businesses with the resultant loss of thousands of jobs. We do not feel that this is scaremongering but a real prospect. Protection should be for the life of the contract and should be for each place rather than participant. This would allow businesses to modernise.

We agree with the proposed payment amount but two years is insufficient. BASE is not clear about the terms of the payment. Would supported businesses have a subcontract or would they just receive a mandatory payment? In either case it is likely that prime providers will terminate payments or subcontracts at the end of the two year period. The majority of businesses would close shortly afterwards as local authorities would see no incentive to spend on a non-statutory requirement.

When Workstep was introduced many, if not most, of those Workstep participants employed by local authorities pre-2001 gained a protection against the requirement for progression. It is not clear how this would be affected by the proposals.

It should not be underestimated how much of a storm will be caused by closures. Local authorities will be liable for redundancy payments and capitation expenses. There will be a media furore and this could be easily avoided by offering protection for the term of the contract.

Design proposals

Question 1: Should DEAs be the sole referral point?

On balance, BASE believes that DEAs should approve eligibility to the programme but we have grave concerns about the capacity of DEAS to become heavily involved in the new programme. They have a low profile within Jobcentre Plus and we are disappointed that the opportunity has not been taken to re-establish district teams of DEAs. Their turnover is high and many have inadequate knowledge and training.

We are not sure that DEAs have been adequately consulted on their envisaged role and DEAs that BASE members have spoken to appear to be in the dark about the proposals. This is an issue that DWP might like to consider further.

It is important that referrals come increasingly from education, health and social care sectors. This will place many demands on DEAs but many have excellent links with these sectors already. The key question is how to raise awareness of the new programme amongst support staff within other sectors such as the NHS. DWP must engage with other departments to raise awareness of the programme. Indeed, it must raise awareness internally as many district JCP staff regularly forget the programme when discussing routeways.

The proposals for the new programme have totally ignored the local work being undertaken to support PSA16 and the LSC's strategy, *Learning for Living and Work*. This is simply unacceptable and risks missing a historic opportunity to link cross-sectoral provision.

Question 2: What key things should the customer be able to access in module 1?

We are not sure why this is being asked as it was covered in the original consultation. DWP wants to encourage innovation by not specifying activity but then seeks a list of possible activities. It would be easy to list the usual components of work experience, basic skills support, information and guidance, confidence building activity etc but any activity should be geared towards the personal needs of customers as identified through a holistic assessment.

Question 3: What is the best way to ensure the customer has choice over their activities?

Surely it would be to ask them what would be most relevant and to guide them appropriately in making these choices.

Question 4: Should the customer be required to participate for a minimum number of hours in module 1?

No. It would be very difficult and expensive to monitor and would serve no ends. Providers should be judged on outcomes not process.

The proposal for a minimum number of hours of customer participation also seems to run contrary to it being a voluntary programme. Volunteers are not normally mandated to undertake a minimum level of participation.

BASE would like clarification about the voluntary nature of the programme as this was stressed at the events. If other employment programmes such as Flexible New Deal or Pathways to Work take precedence but do not provide a service that is suitable for the customer, then the customer may be referred to the new programme. We don't understand how it would be voluntary for them to participate and this leaves the provider managing support to a customer who has been mandated to take part in activity on the new programme.

Question 5: How long should module 1 last?

The proposal for 3 months will simply screen out those customers that the programme seeks to assist. We can not understand how this proposal for seriously considered and it betrays a lack of understanding of the customer cohort. Time periods are at total odds with the drive for personalised services. Many customers are likely to experience a 12 to 18 month prevocational journey and we believe that if DWP has to insist on a limit then 12 months would be appropriate. We would like to see the option of an extension with the agreement of the DEA. An extension would be judged on progress achieved and distance travelled.

Question 6: Should customers leaving module 1 have an action plan?

Yes, customers leaving module 1 should have an action plan. The questions are why are they leaving the module, who should do the plan, and what other options are available for the customer?

We are concerned that, under the current proposals, too many people will leave module 1 because of cherry picking or because of inappropriate time limits. It is debateable whether the DEA should complete the plan as the customer will go back to them for alternative signposting. The provider should support this process with clear information on the achievements and continuing needs of the customer.

Fundamentally, there are very few options for customers who leave module 1. As Connexions advisors know only too well, provision and opportunities are sparse. It would not be acceptable to refer someone back to day services but meaningful alternatives are thin on the ground. This is why it is essential that the new programme offers personalised and long term support for the journey towards employment.

Question 7: Should financial incentives to employers be allowed?

This is a difficult issue with many different views. On the one hand, most employers seem to prefer ready access to practical support from experienced practitioners than a financial subsidy and many employers tell us that the subsidy is just subsumed in head office income rather than being used to support the employee. Highly rated providers have never used subsidies and have no problem in securing job outcomes.

On the other hand, providers tell us that a tapered subsidy can make all the difference in securing a job, particularly with micro employers or with customers who have more complex needs. In this case, the subsidy can sometimes be used for direct support measures or to reduce the cost of the additional employee. It has been suggested that the arrangement of a subsidy be replaced by describing it as a training grant and specifying conditions for its use.

There are some employers who have told providers that the removal of a subsidy will result in redundancy and this will present a challenge for incoming providers. Any renegotiation of terms is likely to need a considerable phasing in period if the job is to be retained.

There are a number of providers, often larger ones, who act as the employer and invoice the host employer that provides the placement. Ironically, this arrangement was often used for placements within Government agencies. It is unclear how TUPE will affect these arrangements and this needs urgent clarification. It is an undesirable arrangement as it does nothing to reinforce a sense of employer – employee relationship within the workplace.

BASE is aware that Remploy is currently offering subsidised placements with reports that employers are being charged just over £2 per hour for employing Remploy candidates within open employment settings. This arrangement represents unfair competition, particularly when used with national employers and BASE would like to know the scale of this use of subsidies.

Question 8: How long should a customer spend on module 2?

Again, we believe that setting time constraints works against the principle of personalised services. The term “unsupported work” is a bit of a misnomer as few quality providers would leave a customer totally unsupported. There is ample evidence that withdrawing support totally tends to lead to a job loss in the future as employers tend not to go back to a provider in times of crisis or if job duties change substantially. This is particularly the case if there has been a change of line manager in the intervening period. Most providers provide this support on an unresourced basis

while others may unnecessarily retain a customer on the programme whilst providing this infrequent but ongoing support. There is a valid debate to be had about whether and how this support could be funded by Access to Work but it is vital that it is provided.

The issue of progression towards unsupported working should be considered within the framework of development plans and regular reviews. The purpose of these reviews should be to determine what actions are needed to progress towards unsupported work. The quality of this process will do far more to secure progression than the imposition of artificial time constraints.

If DWP insists on setting a time limit then, on balance, BASE feels that 12 months offers an opportunity to formally assess progress. The decision to extend support through module 2 should be approved by the DEA but be taken in consultation with the employer, customer and provider. By provider, we mean that provider offering the support rather than the prime provider. If the DEA makes a decision which is not agreed to by the employer or customer then there should be a right to appeal.

Question 9: Should distance travelled tools be used to measure progress?

BASE supports the use of tools to measure distance travelled and many BASE members have participated in the developmental work undertaken through Northumbria University. Any system used needs to be streamlined and not involve undue resources from the provider or employer. The use of a distance travelled tool offers the opportunity to gauge progress in achieving the softer skills and behaviours that employers consistently say that they require. It should not incorporate the gaining of work-related qualifications which offer a different perspective on achievement.

We do not understand why DWP seems to be reluctant to include the tool being currently developed and it would be helpful to understand the concerns of DWP. It is clear from provider feedback that the measurement of distance travelled has done much to focus the process of development planning through the use of smarter objectives that are clearer and more structured. This contributes significantly to raising quality standards and helps a sense of ownership by the customer. It offers a valuable tool for employers and families to comment on progression but care must be taken not to aggregate figures for use with payment mechanisms otherwise it would detract from individual approaches and lead to cherry picking.

Question 10: Should only DEAs authorise access to module 3?

Please see our response to Question 8. The issues are the same.

Question 11: How long should a customer spend on module 3?

Please see our response to Question 8 as the issues are the same. The notion of time limited support is misleading. Support should be offered for as long as it is required by the customer or the employer – no longer and no less. Infrequent support could be offered through Access to Work but it is vital that consistent approach is taken and that relationships are maintained. Any move towards the use of prime providers in the delivery of Access to Work will result in discontinuity and the loss of critical knowledge about the customer and employer perspective. There are clear advantages to ensuring that the ongoing support through Access to Work be provided by the same provider.

It is worth noting that it might well be cheaper to maintain an employee on the programme rather than support them through Access to Work if the support is anything more than a four or five hours per week.

Most existing customers from pre-2001 consider themselves to be exempt from the requirements for progression to independent working. This applies particularly to employees within supported businesses. BASE would like clarification of how the proposal might affect them. It has been

suggested that the funding of these customers be secured from outside the proposed programme so that their ongoing support does not affect the opportunity for new entrants to the programme. This would in effect be a fourth module but would require additional funds. No new customers would be eligible for support through this module.

Question 12: An automatic right to return after 12 months

Customers may leave the programme at any stage and for a variety of reasons. The key point is whether they are eligible for support through the programme. If they are then they should have a right to request support. BASE has no strong opinion on whether this should be an automatic entitlement.

It is worth noting that the programme may be fully occupied at that stage and resources not available to support the returning customer. If a customer leaves before gaining a job then there is the possibility of a rolling participation in module 1.

Question 13: Should employers be made aware at the outset that support is time limited?

BASE recognises that it is good practice that employers are clear that the aim of the programme is for customers to gain job outcomes and move towards working with less support. However, that is a different proposition to approaching them on the basis of an offer of time limited support. It would be a strange way to engage employers if providers had to stress the time limits at the outset. It is likely that this sort of approach would influence the decision of whether to offer a job and would raise a number of valid concerns amongst employers. We do not support this approach. It should be made clear to employers that support is available for as long as, and only for as long as, the employer or customer requires that support. The length, intensity and type of support should be reviewed regularly and should focus the content of development planning.

Flexibility is paramount. There must be recognition of fluctuating conditions and the impact of family crisis or substantial workplace changes that allows participants immediate re-entry to the programme if they need more intensive support to retain their job.

Question 14: The transfer of existing customers to the new provider

The transition from Workstep to the new programme poses significant challenges that should not be underestimated. We do not anticipate significant challenges with customers of the Work Preparation programme as procedures exist already to deal with overlapping financial claims etc.

It should be clear that where there is a change of provider there will be many issues relating to the transfer of customer knowledge, employer relations and historic information held on databases. It is not clear whether incoming providers will be resourced prior to contract start to capture this information.

Many employers and customers may not associate the support received with the Workstep branding and so not fully understand the reason for change. This will need careful and sensitive handling.

As stated, there are significant TUPE issues relating to the transfer of customers who are currently employed by the provider and placed with a host employer. There are also TUPE issues relating to the transfer of provider staff. Many incoming providers will be reluctant to accept transferred staff and may seek cost-sharing arrangements for redundancy with the previous employer, many of whom are local authorities. It will be difficult to separate which staff should be covered by TUPE arrangements where Workstep or Work Preparation provision is part of a wider service delivery.

Perhaps the greatest risk to a smooth transfer is the possibility that outgoing providers will progress their customers prior to contract transfer. It would not be good practice and BASE would not condone such behaviour but it might be understandable that providers wish to mitigate redundancy costs by maximising income prior to the transfer. Whilst this might assist DWP by effectively creating an empty programme, it will inevitably lead to the massive loss of jobs of unsupported customers.

BASE is not sure what JCP can do to support the transition. We tend to feel that six months is too long a transition process and that this will lead to problems rather than help resolve them. Clearly, staff of outgoing providers will seek alternative employment and will be very difficult to replace on a temporary basis. This will cause widespread disruption and a loss of service during the transition period.

Summary

BASE remains supportive of the general principles behind the design of the new programme though we have grave reservations about the proposed time limits. The proposals from DWP appear to be largely process driven and many repeat the issues consulted on during the Spring of 2008. It is surprising that issues relating to quality and employer experience have not appeared during the recent events. BASE is disappointing that such little progress was made between April and November 2008 and that the imminent procurement schedule is preventing a reasoned discussion on the best steps forward.

We are obviously concerned about the procurement proposals which we believe are overly rigid. They are not within the flexibility envisaged in the DWP Commissioning Framework which states "an approach that is not specific to any particular programme and does not set out to be definitive on how we will give effect to the principles". The proposals are in direct contradiction to earlier statements from DWP that it would be interpreted flexibly. We are particularly concerned about reports that other DWP officials are telling providers that the procurement arrangements are non-negotiable and "set in stone".

BASE does not believe that the proposed procurement process will result in an improved service to customers or employers. Indeed, without major modifications, it is likely to cause widespread distress and result in thousands of job losses, massive disinvestment by local authorities, reduced access to employment support services, a significant loss of specialist expertise and failure within the subcontractor sector.

The proposals seem to have been designed in isolation from the wider environment and DWP risks missing a historic opportunity to create a coherent customer offer by linking with local initiatives around PSA16, education, health and social care. We urge the DWP to put a hold on the procurement timetable and to take time to consult more carefully with partners and stakeholders before deciding on the next steps. There is overwhelming opposition to the proposals as they stand and more careful consideration would certainly help to minimise the risk of unintended consequences taking place.