With significant numbers of disabled people including those with substantial impairments now being deemed Fit for Work, it’s imperative that the ATW system is adequately funded and administered to make work viable for them. We need those people with substantial impairments to act as role models for their peers, colleagues and employers to improve acceptance of disabled people in the work place. Only a tiny proportion of working disabled people receive ATW support and the numbers of those with substantial impairments and complex needs requiring support workers is even smaller. Yet the “30 hour” policy that was being applied to this latter group is likely to apply disproportionate risk and responsibility upon those potentially least able to manage such.

1. **Scope.** It’s vital that the inquiry is not limited to employees and employers. Disabled people who work are more likely to be self-employed than their non-disabled peers (Census 2011). There are over half a million self-employed disabled people and most of them will be sole traders without employees.

2. **Clear consistent published policy and processes.** The most significant gap is the absence of any readily available detail on the working of the ATW system across the country – and it needs to be consistent as working disabled people do move. This could result in cost-savings in administration of the system if all recipients were using the same routes, guidance, formats, on-line information etc. Consistency is vital in terms of time. ATW support can continue for a very many years so that recipients are acting in compliance with what they were told in the past – changing policies at subsequent dates needs to take this in to account.
   For example, it would avoid an ATW recipient being told of a “30 hour” policy at a 3 year review despite having had ATW support for over a decade – and the policy conflicting with the arrangements that had been in place throughout that period. There also seems to be little consistency in how ATW is handled on a day-to-day basis.
   For example, requesting a change/addition is never clear and no-one tells recipients that the processes have changed. It all becomes a real muddle which is just time/cost consuming for all.
   Overall, there are parts of the system that could be much better administered. There is also no clarity as to decision-making and requests for reconsiderations/appeals against decisions.

**Recommendations:**
1. Published policy and processes.
2. Policy changes not introduced without consulting recipients and detailed consideration of consequences on individuals.

3. **Customer service levels.** There is clearly an issue with the staff handling ATW - perhaps case loads are too large or this may simply be a by-product of the lack of consistent policy and processes.
   For example, asking a question of ATW doesn’t elicit any response despite two follow up e-mails and a phone message over a month. This indicates that the staff are not sufficiently motivated/interested in providing any level of customer service – yet they may be doing their best but are overwhelmed.
   If response levels are equally poor for employers, is their continuing support of a disabled employee likely to be maintained?

**Recommendation:**
- Published customer service levels and complaints process.
4. **Three yearly reviews.** Such reviews are clearly sensible to ensure that public money is being properly spent but there seems to be more emphasis on how support can be reduced than on whether the recipient’s needs have changed. There doesn’t appear to be a straightforward and consistent process for conducting these reviews, the information required or the time scales.

**Recommendation:**
- Published review policy and processes.

4. **Adaptive equipment.** With the emphasis on “digital by default”, adaptive IT equipment is increasingly important for disabled people to continue working. This inevitably drives cost.

   For example, resisting IT upgrades with their implications for adaptive software is not possible when operating systems are no longer supported by the manufacturer. So as Microsoft XP has lost its support, a JAWS screen reader user has to upgrade the operating system, JAWS and the IT equipment itself to handle it all. This is costly and will often cover two machines (PC and laptop) and still doesn’t take account of the need for training on the latest versions of Windows and Office. The implications are very considerable in terms of support needs, costs and work-time.

Support workers assisting with adaptive IT equipment often require considerable technical knowledge – which means that they are not cheap nor the easiest to find.

**Recommendations:**
- ATW funding takes account of rapidly changing and often inaccessible IT.

5. **Support workers.** It seems that ATW has introduced a policy that anyone receiving over 30 hours of support worker assistance per week should be employing them (unless taken on by their own employer or the support workers are themselves self-employed). Although the minister appears to have suspended the “30 hour policy” pending the outcome of this enquiry, this does not appear to have changed the approach of ATW staff who are still pushing some recipients to end agency-provided support. The following points are relevant:

   **Appropriate policy/responsibilities?** Taking into account that more working disabled people than others are self-employed, the “30 hour” policy raises broader issues: is it appropriate to expect people struggling to work themselves to take on the responsibility of employing someone else. A similar issue arises for those who use their social services personalised budgets to pay for care. There might be scope for better coordination of policies between DWP, HMRC and other agencies to enable anyone supporting disabled people at work or in the home to be self-employed regardless of how that support is provided.

   **Policy and implementation needs to take account of employment law.** ATW staff and, probably, policy makers do not seem to be sufficiently aware of the implications of changing the employment status of support workers.

   **Recipients complying with previous instructions.** It should be recognised that ATW recipients may have obtained support workers through agencies on the instructions of ATW staff.

   **Self-employed support workers.** ATW staff are suggesting that support workers currently employed by an agency can be moved to either self-employment or employed by the recipient. The staff seem unaware of the HMRC guidance on self-employment [http://www.hmrc.gov.uk/employment-status/index.htm#1](http://www.hmrc.gov.uk/employment-status/index.htm#1). This raises the risk that disabled people are acting on the advice of ATW staff but in breach of HMRC requirements.
TUPE implications. Advice from ACAS and their on-line guidance http://www.acas.org.uk/media/pdf/l/1/9908-2901767-TSO-ACAS-TUPE_is_changing-ACCESSIBLE.pdf indicates that it is likely that an ATW recipient seeking to employ support workers previously employed by an agency is likely to come within the terms of TUPE as “service provision change” (Situation 2). ACAS further advises that such a recipient should gain legal advice about such a transfer. It would seem sensible for DWP to obtain such advice at the policy development stage. However, individual recipients may still need legal advice/funding to take account of their individual circumstances. It is therefore likely that support workers subject to TUPE will have existing benefit rights and accrued redundancy rights which need to be reflected in ATW funding. Additionally, undertaking a TUPE process can be challenging even for those familiar with employment law and may be well beyond the capacity of some recipients. But, the recipient may not be able to use existing support workers during the TUPE process due to conflict of interests. Despite requests to ATW, it is not clear as to how the accrued TUPE rights or the penalties imposed by agencies will be funded.

VAT. Additionally or alternatively, there are significant savings to the ATW budget available if provision of support workers by agencies was Zero VAT rated. This would reduce nugatory transfer of funding between Government Departments and could enable recipients to retain agency-employed support workers and so avoid the complexity and risk of becoming employers themselves/TUPE.

Realistic costs. With regard to costs, ATW staff may have limited understanding of the realistic pay levels required to attract support workers of relevant calibre. They need to acknowledge that some workers require specialist skills. For example, see 4 above regarding adaptive equipment, BSL translators and more, some may need high levels of literacy and numeracy plus other professional skills to operate at the level of the recipient.

It would be unfortunate if ATW funding policy is based on the assumption that all disabled people requiring support workers only undertake low level work and so undermine the Government’s “Fulfilling Potential” goals.

Existing savings. ATW staff may be taking little account of cost savings that recipients are already making: not seeking cover for holidays or sickness absence, negotiating reductions with agencies, negotiating no increased agency charges for future years. Overall, regardless of the “30 hour” rule, it seems that ATW is still placing pressure on those who require support workers due to their more complex needs to reduce the cost of that support and change the employment status of those workers. This is likely to place most burden and risk on those already at full stretch to maintain their working lives.

Recommendations:

- Change HMRC guidance so that all who support disabled people can be self-employed.
- Ensure that ATW policy makers and other staff are familiar with employment law and have taken legal advice on TUPE and self-employment before they require recipients to change the employment status of support workers.
  
  For Example, recipients being required to employ support workers need information and assistance to arrange contracts, payroll, automatic pension enrolment, statutory sick pay and statutory maternity pay plus much more.

- Provide relevant, accessible legal and practical advice to ATW recipients required to change the employment status of their support workers.
- Zero rate for VAT all provision of support services for disabled people at work or in their homes.
- Consider the skill levels required of support workers relevant to each recipient’s actual work when balancing costs and fulfilling potential.
• Be realistic as to costs especially where they have been reduced/maintained for long periods.
• Specify/guarantee ATW funding to cover all employee-associated costs for the duration of the support workers’ employment.

20 June 2014