

Creating and supporting an informed employer and employee relationship within the self-directed support sector

FINAL REPORT June 2009



Introduction

SPAEN and UNISON Scotland interviewed a small number of people who use direct payments to employ personal assistants and a similar number of people employed as personal assistants in 2008. The aim of this pilot study was to identify what issues exist in the employment relationship between these two groups of people.

We would like to thank the Scottish Government for providing funding for this research and to Carole Wilkinson, Chief Executive of the Scottish Social Services Council, for her assistance.

Summary of Findings

- 1 Within this survey there was a lack of awareness amongst employers of where to access support on such matters as training and funding for training. This includes training for themselves as employers and their employees.
- 2 Whilst most employers complied with most employment law in areas such as the issuing of contracts and job descriptions; paying at least the national minimum wage; the working time directive, health and safety; statutory leave entitlements; including dependents leave; payment of statutory sick pay and maternity pay, there was a significant minority who failed in one or more of these areas.
- 3 As a result of these failings there were a significant number of employees who did not enjoy their minimum employment rights and there were a significant number of employers who were at risk of having awards given against them at Employment Tribunal.
- 4 Employees in the survey, typically, did not have access to conditions of employment which are common in other sectors. These include access to additional annual leave beyond the statutory minimum, payment by bank transfer, and sick pay higher than SSP.
- 5 There was an indication of a lack of awareness amongst employers of equality issues. Most did not have an equal opportunities policy.

Interim Report

In June 2008 we published an *Interim Report* of the findings of the research. This can be accessed at www.unison-scotland.org.uk or www.spaen.co.uk

This interim report allowed for discussion on the initial findings and the recommendations of the research group within both organisations and with other stakeholders.

- 6 Most employees were not paying into a pension fund.
- 7 A significant minority of employers expressed difficulty in knowing how to deal with managing issues of employee competency and capability. This raised concerns about potential risk in relation to the weakness of effective disciplinary procedures.
- 8 Within the survey there were concerns in relation to bullying, harassment or violence experienced by a number of employers from their employees, agency workers, social work staff or family members. There were also a number of employees reporting bullying, harassment or violence from their employer, or the employers' family or friends.
- 9 A majority of employers received no guidance on accounting.
- 10 A large number of employers did not make arrangements for "contingency". This referred to arrangements for staff sickness, holiday cover and unusual circumstances. Those who retain a contingency fund found that, often, the local authority "clawed back" monies which were "unused" in the employers account.
- 11 In a number of cases both employers and employees reported that instructions from the employer were contradicted by others such as the employer's family or an associate of the employer.

Conclusion

This pilot study was based on a small number of employers and employees and, as is always the case in such situations, cannot be assumed to be representative of the whole sector. However, UNISON and SPAEN are confident that it provides a baseline snapshot which is sufficiently indicative of general issues across the sector to allow for a number of recommendations to be put forward for consideration and action.

Recommendations

- 1 Further comprehensive research should be commissioned into the employer/employee relationship in the self directed support sector to generate a fuller picture. This research should also consider the sources of advice for employers. In particular consideration should be given to the qualitative difference between available advice in those areas with existing employer support organisations and those areas without.
- 2 Research into the level of funding provided to employers to enable them to comply with their employer responsibilities should also be conducted.
- 3 SPAEN and UNISON should produce guidance on good employment practice for employers and employees.
- 4 Funding should be provided to provide:-
 - a) training for current and prospective employers
 - b) awareness raising amongst current and prospective employees within the sector of their employment rights.
- 5 UNISON should produce guidance for employees on employment rights.
- 6 Self directed support organisations should conduct their own research to establish the level of good practice in their own constituency and act to ameliorate any deficiencies found.
- 7 Local authorities should review their current assessment procedures to ensure that prospective employers are aware of their responsibilities as employers; that funding packages include provision to meet these responsibilities; that reviews include assessments of compliance with employment legislation and; that employers are able to either undertake training or access professional advice on employment law.
- 8 UNISON and SPAEN should research and produce proposals for dispute resolution within the sector which would seek to ensure that resolutions are achieved without recourse to confrontational and costly procedures.
- 9 UNISON should establish a “personal assistant” (or self directed support sector employee) network to channel advice and support to employees. This should be funded, partly, by the Scottish Government and local authorities.
- 10 UNISON and SPAEN should meet with the Scottish Government, local authorities, employer support organisations and employees to discuss these findings and recommendations and contribute to a clear strategy to address these issues.

Developments

Following the publication of the *Interim Report* both SPAEN and UNISON were keen that this pilot study should influence the policies of both organisations and also that the recommendations were considered by government. We are therefore pleased to report the following progress:-

- 1 The Scottish Government has commissioned a major research project to look into the employment relationship further. Both SPAEN and UNISON will be involved in supporting this research.
- 2 SPAEN are among a number of organisations who have been funded by the Scottish Government to encourage the uptake of self directed support by providing information and training to local authority workers within the field of community care and relevant NHS staff throughout Scotland. SPAEN will focus on employer responsibilities for people seeking to employ their own staff to meet their support needs.
- 3 SPAEN have produced a detailed guide on the employment responsibilities involved in employing personal assistants.
- 4 UNISON has produced a guide for personal assistants on their employment rights and where to get support when they have concerns as a first stage to developing a support network for personal assistants.
- 5 UNISON and SPAEN have begun working on a dispute resolution model to assist both employers and personal assistants.
- 6 Seminars have been organised across the country to publicise the findings of the research, raise awareness of the issues and offer advice on how to receive advice and support as an employer or personal assistant.

UNISON

UNISON is the leading public sector union in Scotland and has many members employed to provide support and services to disabled people. UNISON is committed to supporting its many disabled members to overcome the barriers which they face in the workplace, encourages them to organise within the union through our Disabled Members Group, and is committed to the principles of the right to independent living for all disabled people be they UNISON members or people receiving services.

Contact UNISON on 0845 355 0845 or at www.unison-scotland.org.uk

SPAEN - Scottish Personal Assistant Employers Network

SPAEN exists to be the authoritative voice of personal assistant employers in Scotland. It is a Scotland-wide user-led organisation. It provides personnel, management and employment law support, advice and indemnity cover, information, training and disclosure checks for disabled people (and other community care client groups) who manage their own support packages and employ their own personal assistants through direct payments.

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