Freedom of Information request 778/2011

Received 11 March 2011
Published 1 April 2011

Information request and DWP response

In your (DWPs) response to a formal request for a statement from the National Association of Disability Practitioners, Access to Work has decided that certain items are considered standard and should be provided as reasonable adjustments by employers. In relation to this, I have the following questions:

I have answered each of your questions in turn below:

What legal advice was sought before drawing up this statement of reasonable adjustments?
Access to Work guidance for many years specified that funding cannot be provided for standard equipment that an employer would need to supply to any employee to enable them to do their job. In the past we have allowed Access to Work advisers to form local judgement about what should be regarded as standard equipment and this has led to inconsistent decisions. The revised list of equipment has been included in the Access to Work guidance in order to assist advisers in making operational decisions on each case under consideration for funding and ensure consistency across the country. The list is not exhaustive and advisers have the discretion to identify other types of equipment as standard for a particular industry or occupation.

The list of standard items is in relation to what any employer of any size could be expected to provide for any employee, whether or not disabled. So it should not be confused with the issue of “reasonable adjustments”.

Where in this statement is a reference to the size of an employer? This is a key factor for tribunals making determinations and its omission shows a clear lack of understanding of both the principle and specifics of the current legislation which includes DWP as well as other bodies.
As noted above, the list of standard equipment is in relation to what any employer of any size could be expected to provide for any employee, whether or not disabled. So it should not be confused with the issue of “reasonable adjustments” as it would be considered by a tribunal.

If a disabled person plans to use this official list of reasonable adjustments as evidence of an employer not fulfilling their duty and fails

in a court case, what indemnity will DWP offer for providing incorrect advice?
As noted above, the list of standard equipment is in relation to what any employer of any size could be expected to provide for any employee, whether or not disabled. So it should not be confused with the issue of “reasonable adjustments” as it would be considered by a tribunal.

The Access to Work letters that advise customers and employers about the decision on their case make it clear that binding decisions about reasonable adjustments can only be made by employment tribunals and that an Access to Work decision on a case does not influence such a tribunal’s decision.

Why, in the statement dated 19/10/10, was the official involved referring to compliance with the DDA when the legislation was superseded by the Equalities Act 2010 on October 1st?
We are not certain what statement is being referred to.

The two Disability Discrimination Acts were subsumed into the Equality Act 2010 rather than superseded by it.

What authority has been granted for DWP to make determinations about reasonableness of adjustments (as stated in the e-mail), who granted this authority and which Statutory Instrument allows DWP to assume decision making powers reserved for the courts?
Access to Work is a discretionary scheme under Section 2 of the Employment and Training Act 1973 which provides assistance to “disabled persons” (within the meaning of Section 1 of the Disability Discrimination Act 1995) in order to help them obtain or retain employment which their disability might otherwise prevent them from doing.

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If DWP has incorrectly and possibly unlawfully usurped the courts, what disciplinary action will be taken against the individuals involved?
As noted above, the list of standard equipment is in relation to what any employer of any size could be expected to provide for any employee, whether or not disabled. So it should not be confused with the issue of “reasonable adjustments” as it would be considered by a tribunal.

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