

## BENEFITS



# From nought to support: setting up a volunteer-based tribunal advocacy scheme

**Tom Royston explains how Yorkshire based advice agencies came together in 2012 to develop an advocacy scheme to assist claimants appealing against benefit decisions.**

**Any advice worker can tell you that ESA decision making is often abominable. Many claimants who get 'nil points' from DWP succeed at Tribunal. Indeed, three in five successful appellants got nil points originally.<sup>1</sup>**

This means that many claimants with good cases have no choice but to participate in a court-like process where they are questioned by a lawyer in public about intimate details of their health. Unsurprisingly, many are fearful about undergoing this alone and approach an advice agency seeking representation.

Earlier this year, a number of advice agencies in Yorkshire (Leeds CAB, Bradford Advice Network and Training Partnership and the College of Laws Pro-Bono centre in York) came together to try to think up a way to address the unmet need for appeal advocacy.

The Yorkshire Tribunal Advocacy Project (YTAP) is the result. We act as a clearing house for ESA appeals. Advice agencies, with unmet demand from clients, refer clients to us and law schools or

advice agencies provide volunteer representatives to take those cases. So far, we have won every case we have taken.

We are still in the pilot stage of development but are setting out this account of how YTAP works in the hope that it might encourage others to try similar schemes elsewhere - or to suggest improvements to us!

## WHY WE CREATED YTAP

If you work in the advice sector, you may have encountered the following three problems relating to tribunal representation:

- Clients want someone to accompany them to a social security tribunal, but there are no advice workers in your area with the capacity to do so.
- Some of your experienced generalist volunteers would be interested in undertaking specialist social security representation work, but you can not see how to find the resources for it.
- Law students want to get real-life experience by helping your clients, but you can not spare the

training resources.

YTAP recognises that there are claimants who would benefit from advocacy and people willing and able to assist who were not able to do so. YTAP aims to bring the two together. The following examples illustrate the problem YTAP was created to solve:

- Jim had to leave work five years ago, having worked for 25 years, due to his mental health problems. He claimed incapacity benefit. Upon being transferred to ESA, he scored 0 points in the Work Capability Assessment. His community psychiatric nurse noted in a detailed letter how ill Jim was, and how his mental health was very badly affected by the WCA, but this did not persuade DWP to change their decision. Although Jim was able to find an adviser to help prepare his appeal, the advice agency funding did not allow them to attend hearings. Jim was considering withdrawing his appeal as he could not face going alone.
- Aisha is a retired social worker.

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She volunteers as a CAB adviser. In her professional life she used sometimes to accompany clients to tribunals, and she has a particular interest in welfare rights work, but the opportunities seem to be limited because the bureau can not cope with the administrative burden of having volunteers do casework.

- Mike is in the final year of studying to become a solicitor. He is interested in social welfare law and asked several advice agencies whether they could take him on for a voluntary summer placement. He will have a bit of time over the rest of the year but it will not be regular enough for him to be able to commit to regular days once the academic year begins. The advice agencies all replied that the training required was too long to make a short placement practical.

Put simply, YTAP brings clients and advocates together.

#### WHAT CASES DOES YTAP DEAL WITH?

For the time being, we are doing social security work only and, within that, only work capability assessment appeals. This is firstly because we wanted to keep things simple to start with and, secondly, because WCA appeals account for such a high proportion of demand. If we expand our scope we will probably move next to DLA appeals.

Our project was inspired by the example of the excellent, and long-established, Free Representation Unit in London who deal with all kinds of social security cases as well as employment and other tribunal work. But it seemed to us that we should start small.

#### HOW DO CASES GET REFERRED TO THE SCHEME?

We take referrals from local advice agencies. We make it very clear that if a client can be referred to a full representation service then they should be.

Because we cannot promise to take on every case referred to us, we have worked hard to minimise the amount of work required to refer a case. All that a referring agency initially has to do is complete our short online form, so there is no telephoning, printing or posting required. We estimate the form takes no more than one to two minutes to complete. We essentially ask only for a case reference number, the date and time of the tribunal hearing, a one-sentence case summary and the contact details of the agency.

All our case management records are kept securely online and can be administered from anywhere. And once a case has been referred to us it is immediately visible to our volunteers.

#### WHO ARE THE ADVOCATES?

One group of advocates are CAB advisers supervised by a CAB welfare rights worker. The other group are postgraduate law students supervised by a law school staff member. We ran a compulsory training day on ESA and tribunal procedure and also insisted that volunteers perform a structured series of Tribunal observations before they took their first case.

It is the host organisation (the CAB or the law school) that is responsible for the client when a case is accepted. YTAP itself does

not do any work for clients. Indeed, we do not even know the clients names. This makes it simpler for us to run and to expand as each group sorts out its own professional liability insurance, for example.

#### WHAT DO THE ADVOCATES DO?

Once an advocate agrees to take a case, they will arrange to be sent the bundle. They will then meet with the client. If necessary they will produce a written submission for the Tribunal. Finally, they will attend the hearing with the client, acting as a reassuring presence, clarifying any unclear matters to the Tribunal, and where necessary questioning the client to elicit useful evidence.

#### WHAT DO THE ADVOCATES NOT DO?

The advocates do not do casework, so they will not be involved in preliminaries like writing off for medical evidence. Where appeals fail, they will not advise on the prospects of a further appeal. They deal only with the tribunal hearing. This keeps the amount of supervision and training needed to a minimum.

#### WHAT SUPERVISION DO THE VOLUNTEER ADVOCATES REQUIRE?

Provided they have been carefully selected, not a great deal. It is sometimes useful to talk with an advocate before they meet the client to clarify what needs to be discussed. It is almost always necessary to talk between that meeting and the hearing to make sure the advocate is confident. Finally, there may be a debrief session after the hearing. But the

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total supervision time is certainly less than one hour per case.

### WHAT DOES IT COST TO RUN?

Practically nothing, so far. The YTAP steering group have all been able to work on the project in their spare time, as have the group supervisors, and that has proved perfectly manageable. The website [www.ytap.org.uk] was simple and free to set up. If we expand, we will need to look for funding for staff time and office costs, but we thought it best to show the concept works and is popular before bidding for funds.

### WHAT ARE THE PROBLEMS?

We thought there would be problems with recruiting good quality volunteers, keeping up with the administration required by the project, and satisfying Tribunal judges that our advocates presence was desirable. We were wrong about all three. Actually most things have gone quite smoothly.

The biggest challenge is matching supply of advocates with demand for assistance. We were anxious that referring agencies should have a positive first experience of the project, so we have deliberately tried to keep the flow of cases below our estimated capacity. We have only had to decline one case so far due to a lack of volunteers. But we do not yet know how agencies will react when the project gets busier and we have to decline more cases. We hope it will not cause agencies to stop referring clients.

### HOW CAN PEOPLE GET IN TOUCH?

If you have any further questions, or are based in our area and want

to get involved, by all means visit our website [www.ytap.org.uk](http://www.ytap.org.uk) or email: [admin@ytap.org.uk](mailto:admin@ytap.org.uk)

### FOOTNOTE

1. HC Deb, 28 June 2011, c662W.

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### CAPITAL

#### Beneficial ownership and property held on trust

*SB v SSWP (IS) [2012] UKUT 252 (AAC)*

*CIS/2319/2011*

Judge Lane, 3 July 2012

The claimant applied for IS but her claim was refused on the grounds that she owned a house in which she did not live, the value of which exceeded the capital limit for IS. Her husband had purchased the property in her name. A FtT decided she was the legal and beneficial owner of the property and there could be no trust because there was no trust deed. The claimant appealed to UT.

HELD: Appeal allowed and case remitted for re-hearing. The FtT had failed to investigate whether there was sufficient evidence to show that a trust had been created, even if there was no formal deed of trust. In any event, the house was in the claimant's name so if there was evidence that her husband had purchased it, then this would normally give rise to a resulting trust in favour of the husband and as they were claiming as a couple it would still be treated as belonging to them jointly. However, the claimant had indicated on her claim forms that she held money for her disabled son and the FtT had failed to investigate whether this referred to the property. The case was remitted for re-hearing to consider whether any trust in favour of the son could be established and how that would fit with any resulting trust that might arise in favour of the husband.

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