



For better  
mental health

rethink



SAINSBURY CENTRE  
for MENTAL HEALTH  
removing barriers achieving change



## Welfare Reform Mental Health Coalition

### Committee Stage Briefing House of Lords - June 2009

### Amendment 94: Entitlement to tailored employment and career support

*Working together, Mind, Rethink, Royal College of Psychiatrists and Sainsbury Centre for Mental Health are seeking important changes to the Welfare Reform Bill to ensure that it works for people with mental health problems.*

*Combined, our organisations represent a coalition of people with direct experience of mental distress, carers, psychiatrists and academics with expertise in this field.*

## 1. Amendment to be made

### After Clause 8

LORD SKELMERSDALE

LORD TAYLOR OF HOLBEACH

LORD RAMSBOTHAM

BARONESS THOMAS OF WINCHESTER

94 Insert the following new Clause—

#### **"Entitlement to tailored employment and career support**

- (1) All new employment and support allowance (ESA) claimants and existing incapacity benefit claimants who are migrated to ESA, who have a diagnosed mental health problem which impacts on their ability to undertake work, shall be entitled to an assessment carried out under, or linked to, the Access to Work scheme to determine what reasonable adjustments may improve the likelihood of retention should they find employment; and this assessment must be carried out before the claimant may be compelled to undertake any compulsory work-related activity.
- (2) The assessment to be carried out under subsection (1) shall include evidence-gathering from agencies responsible for a person's employment support and for the provision of health services here appropriate and must include at least one interview with the claimant.
- (3) Any reasonable adjustments, recommended by the assessment, shall be funded through the Access to Work scheme and shall be available to any employer wishing to employ the claimant.
- (4) Available funding for reasonable adjustments shall be communicated to employers by a claimant's employment adviser and shall be transferable to a new employer in the event that the claimant moves jobs or employers.
- (5) The assessment shall be reviewed regularly when the claimant moves jobs or employers (or both) to identify any changes to the adjustments required by the claimant."

## 2. Purpose of amendment

Amendment 94 gives all ESA claimants an entitlement to an assessment carried out by, or linked to, Access to Work funding to determine the necessary reasonable adjustments that may improve the likelihood of retention should they find employment. A claimant cannot be compelled to undertake compulsory work-related activity until this assessment has taken place.

This amendment ensures that the reasonable adjustments recommended in the assessment are to be funded through Access to Work and are to be available to any employer.

## 3. Reasons for amendment

Evidence suggests that Access to Work does not yet work effectively for people with mental health problems; too few people with mental health problems are taking advantage of the scheme, and employers do not have sufficient support and understanding. We believe that greater flexibility in the timing of Access to Work assessments, so that people could receive an estimate of the support that they could expect to receive, would improve take-up and actively reduce employer discrimination.

At present Access to Work does not support individuals to sell themselves to prospective employers as it is not perceived as part of the individuals 'capital'. Very often the slow bureaucracy puts people at a severe disadvantage.

Individual assessments before interview, followed by an offer for paid-for adjustments, would make people with mental health problems more attractive to employers. These adjustments, and the funding attached, should follow the person through their career so as to ensure that barriers are not perpetuated for people with mental health problems as they progress through their career.

It would be a powerful counter balance to the fears of an employer, of costs involved in adjustments and potential time off, if a person is able to explain how much investment Access to Work is likely to provide.

#### **4. Access to Work: Background**

Access to Work is administered by Jobcentre Plus and aims to assist people with a disability or health condition who are in paid employment or about to start a job by providing practical support and helping to meet additional costs associated with overcoming work-related obstacles resulting from their disability or health condition.

Dame Carol Black's review of employment called for tailored support for people out of work, both in finding employment and then in keeping it. We believe that schemes such as Access to Work are incredibly valuable for improving retention amongst people re-entering the workplace, but more needs to be done.

Mental health organisations have been lobbying for greater involvement in the Access to Work programme for people with mental health problems. In 2007/2008 just 180 claims to Access to Work were made for mental health adjustments, out of an overall total of just under 30,000. This is simply unacceptable.

#### **What Access to Work might involve for someone with a mental health problem**

- Providing a range of short-term or more regular support such as job coaches, personal mentors, advocates to provide help with negotiating and problem-solving skills, counsellors and support workers, for example, a travel buddy who would accompany the customer when travelling to and from work where the customer cannot manage travelling alone.

- Providing indirect support by paying for awareness training to help a customer's colleagues to gain a better understanding of the customer's mental health condition.
- Covering the additional costs arising from the use of taxis if someone found public transport difficult.
- Covering the costs of temporary cover for periodic but significant sickness absence the individual may experience.

'Yes I have experienced the Access to Work scheme for a physical disability. I am not aware that there is any provision within the Access to Work scheme for people with mental health issues.'

**Mind survey respondent**

'I was awarded support from access to work of two hours per day classroom assistant to help me prepare the classroom for the day, and to help at the end of the day with non-teaching tasks. The governors were reluctant to agree to the support as 'all the other teachers are tired too' showed a complete ignorance of the nature of depression and the complete and utter exhaustion I was suffering from. It was agreed to eventually when I informed them they were in danger of breaching the DDA, but it was too little too late.'

**Mind survey respondent**



For better  
mental health

rethink



SAINSBURY CENTRE  
for MENTAL HEALTH  
removing barriers achieving change



## Welfare Reform Mental Health Coalition

### Committee Stage Briefing House of Lords - June 2009

#### Amendment 154: Training

*Working together, Mind, Rethink, Royal College of Psychiatrists and Sainsbury Centre for Mental Health are seeking important changes to the Welfare Reform Bill to ensure that it works for people with mental health problems.*

*Combined, our organisations represent a coalition of people with direct experience of mental distress, carers, psychiatrists and academics with expertise in this field.*

## 1. Amendment to be made

### Contracting out functions under Jobseekers Act 1995

BARONESS THOMAS OF WINCHESTER

BARONESS MEACHER

BARONESS MURPHY

BARONESS AFSHAR

**154** Page 33, line 40, at end insert—

- "( ) shall specify the level of competency required to meet the needs of claimants with mental or physical disabilities (or both),
- ( ) shall specify the level of competency required to meet the needs of claimants with caring responsibilities,
- ( ) shall specify the level of competency required to meet the needs of claimants with drug dependency and alcohol issues,
- ( ) shall specify the level of competency required to meet the needs of claimants who are lone parents with dependent children, and
- ( ) shall specify the level of competency required to meet the needs of claimants who are lone parents and have been victims of domestic violence"

## 2. Purpose of amendment

Amendment 154 ensure that all employees involved in supporting people into employment, particularly Jobcentre Plus staff and Personal Advisers are adequately trained to properly recognise and meet the needs of people with mental and or physical health conditions.

## 3. Reasons for amendment

The Welfare Reform Bill gives greater powers to Jobcentre Plus and contracted staff to direct claimants to undertake certain activities to help them in to employment. Where advisors are directing, as the Government's Welfare Reform White Paper stated, 'clearly understood expectations'<sup>1</sup> it is crucial that they have the training to understand the particular needs and circumstances of people with mental health problems.

We believe the knowledge and understanding of Jobcentre Plus and contracted provider staff will be crucial to whether the proposed welfare reforms work for people with mental health problems. It is vital that a claimant must be able to feel that an advisor has an adequate level of understanding of mental health problem.

---

<sup>1</sup> Raising expectations and increasing support: reforming welfare for the future; Welfare Reform White Paper; DWP 2008; p.80

This amendment will ensure that all employees involved in supporting people into employment, particularly Jobcentre Plus staff and Personal Advisers are adequately trained to properly recognise and meet the needs of people with mental and or physical health conditions.

The importance of sufficiently trained staff was highlighted by the Joint-Committee on Human Rights in their Fourteenth Report, Legislative Scrutiny: Welfare Reform Bill:

*'The Bill expressly provides that any direction must be reasonable "having regard to the person's circumstances". It is unclear whether advisers will have the tools necessary to assess an individual's circumstances effectively enough to know when a particular activity is appropriate or not. If work-related requirements place an onerous burden on individuals who are not able to meet them as a result of their mental or physical disabilities, or which may exacerbate their health difficulties, they may lead to an increased risk of a breach of that individual's right to respect for their private life, and peaceful enjoyment of their possessions, without discrimination (Article 14 in conjunction with Article 8 and Article 1 Protocol 1 ECHR).'<sup>2</sup>*

## **4. Current concerns about the knowledge and practice of JobCentre plus and contracted staff**

### **Lack of knowledge**

DWP's own research suggests that even within Pathways regimes, Personal Advisers admit lacking knowledge and understanding of mental health issues:

*'Mental health issues (including depression, suicide and self harm)...were particular areas [Incapacity benefit personal advisers (IBPAs)] reported having difficulties with. IBPAs did not feel their initial training had prepared them for working with these kinds of customers.'<sup>3 4</sup>*

Further evidence this year suggests that advisers could improve their knowledge of patients' conditions, in particular specialist conditions, like mental health.<sup>5</sup>

We need Personal Advisers to be trained in awareness of mental illness in order that they can make appropriate decisions about conditionality issues and work sensitively with people whose health fluctuates.

A research report into Pathways to Work has expressed concerns that clients could be incorrectly referred.<sup>6</sup> This was the experience of one Rethink member who has a diagnosis of personality disorder and a history of mental health

<sup>2 2</sup> Joint Committee on Human Rights-Legislative scrutiny, 14<sup>th</sup> report, 2008-9 session, page 12, section 1.26

<sup>3</sup> Dickens, S., Mowlam, A. & Woodfield, K; National Centre for Social Research (2004)

Incapacity Benefit Reforms - the Personal Adviser Role & Practices.

National Centre for Social Research, 2004

<sup>4</sup> Knight T, Dickens S, Mitchell M, Woodfield K - National Centre for Social Research (2005) Incapacity Benefit reforms –the Personal Adviser role and practices: Stage Two.

<sup>5</sup> Nice K, Irvine A, Sainsbury R (2009) Research Report 555 Pathways to work from Incapacity benefit. A study of referral practices and liaison between job centre plus advisers and service providers

<sup>6</sup> Dixon J, Mitchell M, Dickens S (2007) Research Report 418 Pathways to work: extension to existing customers (Matched case study)

problems and was referred on to a condition management programme for people experiencing chronic back pain. This was obviously entirely inappropriate to her needs as well as being a waste of Government resource. It seems perverse that such an inappropriate placement should be a condition of someone's benefit.

We are concerned that Personal Advisers may not consider other important issues, such as the sedating effects of medication, before recommending that claimants join Community Work Programmes. For example, some medications make it effectively impossible for people to get up early in the morning. We are concerned that inappropriate referrals to Community Work Programmes could in effect make people's lives more difficult and in fact accelerate more health problems.

### **Discrimination against people with mental health problems**

People affected by mental illness already experience high levels of stigma and discrimination. 12% of people with mental illness report being discriminated against by Job Centre Plus staff<sup>7</sup>.

## **5. Levels of training needed**

As identified in DWP research into the Incapacity Benefit Personal Adviser role, key skills needed for the job include communication skills, having a non-judgemental attitude, having patience and empathy.<sup>8</sup>

In 2008, a Pathways to Work contractor, Reed in Partnership, were recruiting back-to-work-advisers. The person specification required candidates to have experience of working in a customer facing environment and working in a target driven environment and a minimum of 5 GCSE's.<sup>9</sup>

Essential knowledge centred on the referral options open to the Personal Adviser, for example the Condition Management Programme. Pathways to Work Personal Advisers were provided with three months training before beginning to work with claimants in the pilot phase of this programme. Yet many still recognised that they needed more training in 'more challenging' health conditions including mental health problems and information about other benefits.

We believe that competencies should be set by the Secretary of State to ensure all such staff are able to work appropriately with claimants with the full range of mental health problems and other disabilities.

We strongly recommend involving individuals with disabilities in designing and delivering this training, as this has been found to be highly effective in improving understanding.<sup>10</sup>

---

<sup>7</sup> Rethink/Mind/Mental Health Media, Stigma Shout, 2008

<sup>8</sup> Knight T et al (2005) Incapacity Benefit Reforms – the personal adviser role and practices: stage two DWP

<sup>9</sup> <http://www.reedinpartnershipjobs.co.uk> accessed on 1 October 2008

<sup>10</sup> Rethink & Institute of Psychiatry: *How we can make mental health education work*

"A private training provider I used to work for was only interested in results. It was basically a bit like betting on horses. They would cream off those who they could see would get a job and make sure they did. The rest just went through the motions. To be fair to them though many of the referral were inappropriate from Job Centre Plus. The people who got jobs probably would have done so anyway in my view."

**Mind survey respondent**



For better  
mental health

rethink



SAINSBURY CENTRE  
for MENTAL HEALTH  
removing barriers achieving change



## Welfare Reform Mental Health Coalition

### Committee Stage Briefing House of Lords - June 2009

### Amendments 12, 38, 76, and 87 Good Cause: Definition

*Working together, Mind, Rethink, Royal College of Psychiatrists and Sainsbury Centre for Mental Health are seeking important changes to the Welfare Reform Bill to ensure that it works for people with mental health problems.*

*Combined, our organisations represent a coalition of people with direct experience of mental distress, carers, psychiatrists and academics with expertise in this field.*

## 1. Amendment to be made

The text of the amendment below is replicated in four amendments at Grand Committee stage. These are amendments 12, 38, 76, and 87.

**12** - Page 2, line 24 at end insert –

**38** - Page 5, line 28 at end insert –

**76** - Page 58, line 40 at end insert –

**87** - Page 13 line 39 at end insert –

In section 13 of the Welfare Reform Act 2007 (c5) ( work related activity) after subsection (2) insert

### **Text of amendment**

‘( ) Without prejudice to any regulations made under subsection 5 (e) or (f) above, a person is to be regarded as having good cause for any act or omission for those purposes if, and to the extent that, the act or omission is attributable to any of the following circumstances -

(a) The claimant in question was suffering from some disease or bodily or mental disablement on account of which-

(i) he was not able to participate in the scheme or work related activity in question;

(ii) his attendance would have been put at risk his health; or

(iii) his attendance would have put at risk the health of other persons;

(b) the claimant's failure to participate in the scheme or activity resulted from a religious or conscientious objection sincerely held;

(c) the time it took, or would normally have taken, for the claimant to travel from his home to the scheme or activity and back to his home by a route and means appropriate to his circumstances and to the scheme or activity exceeded, or would have exceeded, one hour in either direction or, where no appropriate scheme or activity is available within one hour of his home, such greater time as is necessary in the particular circumstances of the nearest appropriate scheme or activity;

(d) the claimant had caring responsibilities and-

(i) no close relative of the person he cared for and no other member of that person's household was available to care for him; and

(ii) in the circumstances of the case it was not practical for the claimant to make other arrangements for the care of that person;

(e) the claimant was attending court as a party to any proceedings, or as a witness or as a juror;

(f) the claimant was arranging or attending the funeral of a close relative or close friend;

(g) the claimant was engaged in-

(i) the manning or launching of a lifeboat; or

(ii) the performance of duty as a part-time member of a fire brigade;

(h) the claimant was required to deal with some domestic emergency; or (i) the claimant was engaged during an emergency in duties for the benefit of others’.

## **2. Purpose of amendment**

Amendments 12, 38, 76, and 87 all ensure that a definition of the concept of ‘good cause’ on the face of the Welfare Reform Bill. The definition used is taken from the definition of ‘good cause’ in the Jobseeker’s Allowance Regulations 1996 (Statutory Instrument 1996 No. 207).

## **3. Reasons for amendment**

One of the fundamental safeguards in the Bill to stop people being punished for things out of their control is the defence of ‘good cause’. If an individual can show that he or she has ‘good cause’ for not having taken part in activities or schemes that they are directed to engage with then they are protected from unfair benefit cuts.

This safeguard is crucial in upholding Articles 8 and 3 of the Human Rights Act and ensuring that the balance between rights and responsibilities in the welfare system is fair and effective.

Despite the importance of this concept to safeguard claimants, the Welfare Reform Bill does not contain a definition of good cause. Instead the definition will come in regulations, following the passing of the Act. We believe that it is essential that Parliament has the full opportunity to consider permissible grounds for a person’s failure to attend the relevant schemes or activity. This ensures a fair balance in the legislation between the coercive powers and the appropriate safeguards.

This view is stated by the Joint-Committee on Human Rights in their Fourteenth Report, Legislative Scrutiny: Welfare Reform Bill:

‘While the detailed delegated powers memorandum provided by the Government aids scrutiny of the proposals in the Bill, it is difficult to scrutinise proposed safeguards for their impact on individual human rights on this basis. We reiterate our previous recommendation that where safeguards are relevant to the Government’s view on human rights compatibility, those safeguards should be provided on the face of the Bill. Where the Government’s view on compatibility relies on safeguards to be provided in secondary legislation, we recommend that draft Regulations are published together with the Bill. At the very least, the Government should describe in the explanatory material accompanying the Bill the safeguards it proposes to provide.’<sup>1</sup>

---

<sup>1</sup> Joint Committee on Human Rights- Legislative scrutiny, 14th report, 2008-9 session, page 10, section 1.21

This safeguard is particularly important for people with mental health problems. It is in the nature of some mental disorders that the severity of symptoms fluctuates. Some people experience long periods of being well interspersed with occasional episodes of illness. For others a medication regime or other forms of treatment may produce temporary difficulties for a person in fulltime work. Others may have particular anxieties that affect their ability to perform particular tasks but they may be otherwise able to undertake a full range of tasks.

In 2008, the Royal College of Psychiatrists was commissioned by Dame Carol Black's cross government, Health Work and Well-being Programme to produce a report on mental health and work.<sup>2</sup> Below are two examples in this report which highlight particular situations, faced by people with mental health problems.

### **Box 3: The impact of mental ill-health on people's ability to work**

**Liam:** who has suffered from periods of depression for the last few years, said *"I was trying to deal with it myself, but it doesn't really work. Most days I would stay in bed. I didn't really get out, I was always in the house; I lost all my friends over it. It got really bad. I didn't think I could deal with it by myself, but I didn't like to seek advice from anyone."*

Liam tried to find employment but would experience overwhelming anxiety when calling about job vacancies or attending interviews – *"quite a few times I'd get the shakes and put the phone down before anyone had answered. It wasn't something I liked; it really did get in the way. When I had interviews, I didn't have any confidence and people could see that."* *went to hospital".<sup>3</sup>*

---

<sup>2</sup> Mental Health and Work; Royal College of Psychiatrists – commissioned by the cross government Health Work and Wellbeing programme; RCPsych 2008

<sup>3</sup> IBID; p.15.



For better  
mental health

rethink



SAINSBURY CENTRE  
for MENTAL HEALTH  
removing barriers achieving change



## Welfare Reform Mental Health Coalition

### Committee Stage Briefing House of Lords - June 2009

### Amendment 15 - Monitoring of outsourced employment services

*Working together, Mind, Rethink, Royal College of Psychiatrists and Sainsbury Centre for Mental Health are seeking important changes to the Welfare Reform Bill to ensure that it works for people with mental health problems.*

*Combined, our organisations represent a coalition of people with direct experience of mental distress, carers, psychiatrists and academics with expertise in this field.*

## 1. Amendments to be made

### Monitoring of outsourced employment services

#### LORD RIX

15 Page 2, line 40, at end insert—

- "( ) Regulations under this section must make provision to ensure providers of the schemes—
- (a) submit to the Secretary of State data showing the number of participants with a disability at every stage of the scheme by impairment category;
  - (b) are required to show how they will meet the needs of participants with particular disabilities."

#### LORD RIX

21 Page 3, line 21, at end insert—

- "( ) For the purposes of, or in connection with, any scheme within section 17A(1) the Secretary of State must evaluate data showing the number of participants with a disability at every stage of the scheme by impairment category."

## 2. Purpose of amendments

Amendments 15 and 21 ensure that outsourced employment services report on their rates of success with specific disability groups so that the impact of those services can be properly assessed.

These amendments will require providers, contracted by Government to administer the new work-focused interviews, work-related activities and action plans, to monitor the impact of these reforms by category of disability and will ensure that the Department for Work and Pensions examines reports in order to understand how their new reforms are meeting the needs of different types of disability group

They will make providers responsible for showing that they are reaching the widest range of people with a disability. They will also ensure providers do not cherry pick those claimants who are closest to the labour market.

## 3. Reasons for amendments

The Government has acknowledged that, for people with disabilities including mental health problems, the right support and assistance is vital to helping them back into work. For different types of disability that support will take different forms and it is vital that we are able to measure what is working for people with various disabilities.

The Secretary of State for Work and Pensions, James Purnell MP, had committed the Government to monitoring the impact of these reforms by impairment group. (10 December 2008, Launch of Government White Paper on Welfare Reform, *Raising expectations and increasing support: reforming welfare for the future*).

A report from the Work and Pensions Committee, published in April 2009, supported the aim of these amendments and recommended that 'the Government monitors progress (in employment) by physical impairment, mental illness and learning disability, as set out in the Labour Force Survey data, to ascertain whether more progress is being made in some groups of disabled people than in others'<sup>1</sup>.

Without impairment specific monitoring, the Government will be unable to learn from best practice and to identify providers who are failing to deliver for disabled claimants.

#### **4. Previous discussion: Commons Committee stage**

This issue was raised during Committee stage in the Commons. However, the reassurances given by the Minister did not adequately address the need for impairment specific monitoring.

A criticism raised in the Commons was that this amendment forces the Government to 'micro-manage' providers. We do not believe this to be the case. Rather, we are simply asking that their payment and contracts model recognises the fact that people with different impairments experience different barriers to equal participation.

At Committee Stage, the Minister for Disabled People, Jonathan Shaw MP, acknowledged that '*there has been concern over cherry-picking (by the providers), not just under this provision (Flexible New Deal) but under our supported employment programme.*' He continued by saying he did '*not want to see cherry-picking*' and that he would '*develop a payment and contracts model to minimise that risk.*'<sup>2</sup> If the Government truly wants to achieve this they will need to ensure this contracts model includes monitoring of disability by category.

It is not enough to monitor the success rates for disabled people as a whole, the support needs of different groups of disabled people are simply too diverse for a 'one size fits all' monitoring framework.

---

<sup>1</sup> Work and Pensions Committee, *The Equality Bill: How disability authority fits within a single equality act*, P. 38

<sup>2</sup> Commons Committee Stage, Welfare Reform Bill, Tuesday 24<sup>th</sup> February 2009

## 5. Current evidence on the effectiveness of outsourcing employment services

A 2008 DWP commissioned report shows that outsourced employment services using a payment by results system do not work well for those who are hardest to place in work.<sup>3</sup>

This financial structure always pushes the for-profit businesses towards 'cherry picking' and mitigating their risks (both of harm to customers and to their income streams) by avoiding, or 'parking', those furthest from the labour market.

We were concerned that this contracting structure always pushes the for-profit businesses towards selecting people for help who are easiest to place in work ('cherry picking') and mitigating their risks (both of harm to customers and to their income streams) by avoiding, or 'parking', those furthest from the labour market. People with mental health problems are among those who are the most difficult to place and because of this it is likely that they will not be found jobs.

A report out last year from the Social Market Foundation found that: *'Under the proposed uniform payment structure, those furthest from the labour market will inevitably not be offered services appropriate to their needs – they will be 'parked'. This will occur because the design of the payment system sets the profit motive of contractors in tension with the aim to help all clients. This need not be the case and its effects are in the interests of neither the jobseeker nor the taxpayer'*.<sup>4</sup>

---

<sup>3</sup> Rangarajan, A., Wittenburg, D., Honeycutt, T., Brucker, D. (2008) *Programmes to promote employment for people with disabilities: lessons from the United States*. Report submitted to Department for Work and Pensions. April 17 2008. Mathematica Policy Research, Inc. Princeton, NJ.

<sup>4</sup> Prendergrast, Foley, and Richmond (2008); Social Market Foundation; Meeting the Mental Health Challenge for Welfare Reform, SHIFTING RESPONSIBILITIES ,Sharing COSTS



For better  
mental health

rethink



SAINSBURY CENTRE  
for MENTAL HEALTH  
removing barriers achieving change



## Welfare Reform Mental Health Coalition

### Committee Stage Briefing House of Lords - June 2009

### Amendments 37, 42, and 85 Good Cause: Making contact and timeframe for responding

*Working together, Mind, Rethink, Royal College of Psychiatrists and Sainsbury Centre for Mental Health are seeking important changes to the Welfare Reform Bill to ensure that it works for people with mental health problems.*

*Combined, our organisations represent a coalition of people with direct experience of mental distress, carers, psychiatrists and academics with expertise in this field.*

## 1. Amendments to be made

### **Good Cause – reasonable attempts to contact, and timeframe for responding**

**37** Page 5, line 18, after "requirement" insert—

"( ) it has been shown that all reasonable attempts have been made to contact the person,"

**42** Page 5, line 46, at end insert—

"(ba) "the prescribed period" means a period of not less than 10 working days;"

**85** Page 13 line 40 at end insert –

In section 13 of the Welfare Reform Act 2007 (c5) (work related activity)  
(1) for subsection (2) (e) (i) substitute

"(2) (e) (i) fails to comply with the regulations and it has been shown that all reasonable attempts have been made to contact the person"

(2) After subsection (3) insert

"( ) For the purposes of subsection (2)(e) the 'prescribed period' means a period of not less than 10 working days."

## 2. Purpose of amendments

Amendments 37, 42, and 85 put a safeguard in the Welfare Reform Bill to ensure that claimants have 10 working days within which to respond with 'good cause' for failing to attend a work-related activity. They also ensure that proactive steps are taken by staff to make contact with claimants.

## 3. Reasons for amendment

The welfare system currently gives claimants just 5 working days to respond with 'good cause' for non-attendance at work-related activity. We are concerned that for someone who may be unwell, this is not enough time. Two weeks, combined with reasonable attempts to make contact by Jobcentre Plus staff, would be an important safeguard against the very serious risk that a person who has good cause receives a sanction unfairly.

Given that the penalty for not responding within the stated timeframe is the closure of a person's claim, there are just grounds for extending the time period, to prevent a person being unfairly penalised for their health condition. This

amendment puts a safeguard in the Bill to ensure that the period is 10 working days.

The symptoms of mental illness are many, and will vary from person to person. Often, they can be debilitating, particularly during an acute phase. These symptoms will effectively prevent people from undertaking the day-to-day activities of their lives as they would when well. This is why it is imperative that in addition to an extension of the timeframe for giving 'good cause', an onus is also placed on Jobcentre Plus staff to make proactive attempts to contact claimants within this period.

After some tragic suicides of people on Incapacity Benefit who were informed by letter that their benefits would be terminated, Jobcentre Plus ensured that vulnerable clients – especially those who were known to have mental health problems – would always be spoken to face to face before ultimate sanctions were imposed. This ensured that someone would at least be able to assess their mental state and refer on appropriately if they were deemed to be at risk. Such provision should be available to all benefit claimants.

We are not convinced that the Government has fully addressed the impact of their welfare reform proposals on those with fluctuating conditions, particularly with regards to a failure to comply with good cause.

The Government, in their response to the Joint Committee on Human Rights: Second Report of Session 2006-07 on the Welfare Reform Bill (now Welfare Reform Act 2007), stated that:

*'We do not think that the sanctions imposed on claimants for failure to comply, without good cause, with the conditionality requirements will interfere with the rights of the claimant and the members of their family arising under Article 8 ECHR. It is within the claimant's 'gift' at any time to comply with conditionality requirements and compliance will lead to the amount of ESA being payable.'*<sup>1</sup>

This fails to highlight the fact that, for example, an individual experiencing acute depression may be unable in just one week to deal with a request. Furthermore, in the same report the Government said that 'One of the safeguards is that the most severely sick or disabled claimants are not required to participate in conditionality.'<sup>2</sup>

This is not the case in the Welfare Reform Bill, where due to the changes in the way disability is assessed, an increasing number of people with mild or moderate mental health problems, many of which may fluctuate, are set to be placed on Jobseekers Allowance as well as those on Employment and Support Allowance. They will therefore be required to fulfill all of the conditions within the conditionality regime.

'Mental illness isn't like being in a wheelchair or having a bad back - it can take from you the capacity to manage your own affairs. It can mean that you can't

<sup>1</sup> Joint Committee on Human Rights Legislative scrutiny: first progress report 2006-7 session Appendix 1b, Part 4-5, Page 62, section 27

<sup>2</sup> Ibid

summon the mental strength to drag yourself out of bed, let alone open and read a letter, digest the implications and then do the sensible thing and pick up the phone and take the action required.

I've got bipolar and by definition it's a fluctuating condition - you have ups and downs. In my case the downs last at least 10 days or two weeks. It's quite possible when things are at there worst when I'm down that I just would have the wherewithal to respond in time to a deadline from a job advisor. It might be five days later - but that would be five days too late.'

**David, 34, Rethink member**



For better  
mental health

rethink



SAINSBURY CENTRE  
for MENTAL HEALTH  
removing barriers achieving change



## Welfare Reform Mental Health Coalition

### Report Stage briefing House of Commons - June 2009

### Amendment 79 Action Plans: Prescribing of Healthcare Treatments

*Working together, Mind, Rethink, Royal College of Psychiatrists and Sainsbury Centre for Mental Health are seeking important changes to the Welfare Reform Bill to ensure that it works for people with mental health problems.*

*Combined, our organisations represent a coalition of people with direct experience of mental distress, carers, psychiatrists and academics with expertise in this field.*

## 1. Amendment to be made

79

**Baroness Meacher  
Lord Alderdice  
Baroness Murphy**

Page 12 line 45 at end insert –

(7) In section 14 Welfare Reform Act 2007 for subsection (3) substitute

“(3) Regulations under this section may, in particular, make provision for action plans which are provided to a person who is subject under section 13 to a requirement to undertake work related activity to contain

## 2. What is the amendment and what does it do?

Amendment 79 is a redraft of an amendment tabled by Paul Rowen MP at Committee Stage in the House of Commons, which was debated on Tuesday 24<sup>th</sup> February. It amends Section 14 (Subsection 3) of the Welfare Reform Act 2007 to ensure that a claimant cannot be sanctioned if he or she does not undertake any medical treatment, including medication or psychological therapies that are included in their action plan.

## 3. How has the amendment been changed from the amendments debated in the Commons?

The amendment tabled in the Commons was narrower and related only to Clause 2 of the Welfare Reform Bill. This new amendment is to the Welfare Reform Act 2007, which widens the scope of who it covers, so that all Claimants on ESA receive the safeguard.

There is also another important change from the amendment tabled at Committee Stage in the Commons. The Commons amendment proposed that action plans drawn up by a claimant could not include anything relating to the accessing of healthcare provision.

The updated amendment does not place any restriction on what can be drawn up in the action plan, but instead **removes the compulsory nature** of any medical or health related activity in the action plan.

## 4. Why has the amendment been changed?

We have redrafted this amendment to ensure that claimants can, where they wish, draw up and carry out all potential activities in their action plans that might help them in to work. Some medical treatment might help a claimant in his or her progression to work and claimants may wish to include it in their plan.

However, this must always be a decision taken freely by the individual and they must not be sanctioned for failing to carry it out. This amendment ensures that this is the case.

## **5. Previous discussion: Commons Committee stage**

During the debate at Committee Stage in the Commons the Minister, Tony McNulty MP, said that: *'we will never mandate any parent into any health intervention that is delivered by a health professional, including psychological therapies and the taking of medication'*.

However, the Minister did not directly address the amendment tabled and the argument that there needs to be a clear safeguard on the face of the Bill to prevent compulsory medical treatment.

Given that the Government has argued that a claimant would never be mandated for not carrying out health interventions then it would appear that there is no reason why this amendment should not be agreed to.

We are concerned that statements from the Government alone do not provide an adequate safeguard.

## **6. Why this safeguard is crucial**

The legal system sets strict limits on the forcing of medical treatment and provides significant safeguards for those who are compelled to take treatment.

The Government has made clear that activities to stabilise health conditions can be included as part of work-related activity, and hence a claimant is subject to a sanction if they are not undertaken. (see 7. Further Information)

It would it be entirely inappropriate to require an individual to take particular health related measures with which they may not fully agree. To do so would also blur the boundaries between health provision and social control.

### **The boundary of consent could be blurred.**

The measures in this Bill have the potential to blur the boundaries of consent. While the claimant might consent to do particular activities, their consent would not necessarily be entirely voluntary due to the power imbalance between them and the personal advisor, and the consequences of failure to agree.

### **Measures in the Bill widen the powers given to personal advisors**

This Bill gives significantly widens the powers given to personal advisors, which we view as entirely inappropriate.

The personal advisor is not trained as a health professional but could potentially be requiring a claimant to undertake specific activities to improve their health. This might extend to therapy programmes, to medication regimes, or to other activities such as exercise or weight management.

Such decisions are matters that should be decided between a person and his or her clinician or other expert advisor.

## 7. Further information

Work-related activity is a key concept in the Welfare Reform Bill and comprises the tasks or activities that a claimant will be expected to undertake in order to move towards work. The specific activities, which are outlined in an action plan, will be decided between the claimant and the adviser, with the claimant facing benefit sanctions for failure to carry them out.

Given the wide range of activities that might be required from work-related activity, the Government has not specified the exact details in the legislation and it is defined broadly as 'activity which makes it more likely that the person will obtain or remain in work or be able to do so'. However, the Welfare Reform White Paper sets out what work-related activity may involve:

### Box 4.5: What constitutes work-related activity?

Any activities a person undertakes to:

- stabilise their own or their family's situation, for example, assessing childcare options, activities to stabilise health conditions, seeing a debt adviser about stabilising their financial situation and looking at options for improving their housing situation, or joining a Children's Centre;
- manage their health for work, for example, condition management programmes, drug and alcohol rehabilitation, 'Progress to Work' for drug misusers, or therapy or physiotherapy for a common health condition;
- improve their skills for work, for example, undertaking a basic skills programme, or attending a Jobcentre Plus or external training programme;
- look for work, for example, working with a New Deal for Lone Parents or New Deal for Disabled People adviser to consider job seeking ideas, or independent job search; and
- prepare for full-time employment through work tasters, for example, permitted work, work trials, preparation for self-employment, or part-time working.<sup>1</sup>

The Government made a commitment that a clear and comprehensive set of safeguards would be built in to ensure claimants are not required to undertake inappropriate activities.

---

<sup>1</sup> Raising expectations and increasing support: reforming welfare for the future; Welfare Reform White Paper; DWP 2008; p.77.