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mental health

rethink



SAINSBURY CENTRE
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removing barriers achieving change



Welfare Reform Mental Health Coalition

2nd Reading briefing House of Lords - April 2009

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.

Introduction

We give cautious welcome to the Government's Welfare Reform Bill. In this Bill the Government intend to achieve their aim of an 80 per cent employment rate for people of working age by increasing flexibility and personalisation of benefit conditionality and support, and abolishing incapacity benefit (IB). All IB claimants will be moved to Jobseeker's Allowance (JSA) with differing degrees of conditionality, or to Employment and Support Allowance (ESA).

The changes to the welfare benefits system introduced in the 2007 Welfare Reform Act and extended in the current Bill have a direct impact on people with mental health problems and learning disabilities who will be required to attend work-focused interviews and may be directed to undertake specific work-related activities. Almost 40 per cent of the people that this legislation will move in to the new benefit system will have a mental health problem.

Like other disabled people, people who have had a mental health problem, or who continue to have fluctuating conditions, are generally keen to enter the workforce. They remain some of those most subject to poverty and social exclusion and stand to gain from the benefits of paid work, whether on a full or part time basis.

If it is carefully and sensitively planned, a gradual entry to work can have beneficial effects on a person's recovery and on their general wellbeing. Some who have recovered wish to restart their lives, but may need support at the initial stage and beyond in some cases. The obstacles to employment are considerable. Employers' prejudice, or lack of knowledge about mental ill health, and the failure of Access to Work to be used effectively for this group are all widely recognised as key

contributors to their lack of employment opportunities. People with learning disabilities face similar challenges but with appropriate support can overcome them.

It is important that this legislation works for people with mental health problems and learning disabilities as well as for the larger group of non disabled people for whom it is primarily designed. In our view the Bill at present contains some worrying features and it lacks sufficient detail for us to be confident that it will achieve this aim.

Below are some of our key concerns.

Sanctions for ESA claimants

We have a general concern about the effectiveness of conditionality on disabled people or people on long term health-related benefits. The evidence for imposing extra conditionality on this group is very thin indeed. The Gregg Review (2008), commissioned by the DWP, found that it has only ever been tried in the UK, through Pathways to Work, where it stopped short of insisting that people had to do work-related activity, and in some partial disability benefit schemes in Europe.

A study of women with mental health problems in the US, meanwhile, found that sanctions did not encourage them to seek work and that this group was more likely than most to lose benefits as a result. It concluded that: "Rather than creating behavioural change, sanctions imposed on unresponsive groups are punitive." ¹

Requiring a person to attend a work-focused interview (WFI) can be beneficial. Well-managed WFIs can help to motivate people and build their confidence: the two most important factors in getting people 'work-ready'. But adding further conditionality to the system could lead to people who find it hard to gain work, especially where employment is hard to come by, being placed on repeated training activities which do not help their job search and which may, in fact, demoralise and de-motivate them.

Prescribing of health-related interventions

Clause 8 in Part 1 of the Bill increases the powers given to personal advisors to require benefit claimants to carry out particular activities as a part of mandatory work-related activity.

In the Bill, work-related activity 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' (Clause 1(17A (3))). However, the Welfare Reform White Paper sets out what it may involve, which might extend to therapy programmes, to medication regimes, or to other activities such as exercise or weight management.

These sweeping powers cover a wide range of activities - exceeding those that are directly related to a specific type of employment rather than wider employability. There is no built-in requirement that the activities required are proportionate to the

¹ Meara E and Frank R, 2006, Welfare Reform, Work Requirements and Employment Barriers. National Bureau of Economic Research, Cambridge MA

objective of finding work although a direction to undertake a specific activity must be 'reasonable, having regard to a person's circumstances '(Clause 8(2)(a)).

Such decisions are matters that should be decided between a person and his or her clinician or other expert advisor. The training provided to personal advisers (which appears to involve at most a day of training around mental health in general) is inadequate to be making healthcare-related judgments but also their right to coerce people into therapy and other treatments is inappropriate and non-therapeutic.

Whilst we have no objection to health-related matters being included in a voluntary action plan the existence of a direction and a sanction changes the complexion of the issue. There is no protection in the Bill against these powers being exercised in a way that could breach Article 8 rights to private and family life.

The Explanatory Memorandum states that specific work-related activity for ESA claimants under Clause 8 will not extend to medical treatment but there is no such restriction in the Bill. We believe that the Bill should clearly state that claimants cannot be sanctioned for failing to carry out any health-related interventions that are in their action plans.

'Good Cause' and timeframe for responding

Part 1 sets out a framework by which a claimant may be sanctioned for failure to attend a work focused interview or undertake a work related activity unless s/he can show good cause for the absence. Regulations define good cause and provide for the procedure to prove it. The claimant will have just five working days to respond with 'good cause' for non-attendance. For a person experiencing an episode of mental ill health five days is inadequate as a timescale to respond. An individual experiencing acute depression for instance would be most unlikely to deal with such a requirement effectively

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. An extension of the timeframe combined with reasonable attempts by Jobcentre Plus staff to make contact, would act as an important safeguard.

Training and competency of employment advisors

The effect of the Bill is to extend the considerable powers of personal advisers to direct claimants, through personalised action plans, in to work or work-related activity. We are concerned that these advisers are insufficiently trained on mental health issues. The Bill has no proposals to increase training to support staff who will have to make important decisions and there are no plans to introduce national competency standards.

Where a claimant is not complying with requirements and they are not addressing their main barriers to work, such as skill needs or problem drug use, the Bill will allow personal advisers to decide the appropriate activity they should undertake. In these

cases, claimants will be required to take part in the specific activity their advisor has chosen. Judging what will be appropriate will require significant knowledge of people's conditions and needs. The result of this could be personal advisers prescribing an activity which could be damaging to someone's mental health.

Monitoring of outsourced employment services

This Bill will effectively outsource Government services to companies, charities and voluntary organisations. Whilst we understand the Government's motivations for this initiative, it is imperative that these services are effectively monitored in order to ensure that the most vulnerable clients are being helped. It is not enough for service providers to report on their performance for a generic 'disabled' cohort. Different impairment groups have very different needs and the effectiveness of providers must be reported in a way that reflects this. We are calling for a duty, to be placed on providers, compelling them to monitor their performance for specific impairment groups (including people with mental health problems) and to make this information available to the Government and the public. This duty would bring private providers in line with the monitoring responsibilities that the Government currently has in this area. It would also ensure transparency in a sector that will have enormous power over the lives and wellbeing of some of the most vulnerable individuals in our society.

Employer discrimination

We know that people with people with severe and enduring mental health problems have the highest 'want to work' rate of any disability group, yet the lowest actual employment rate.² 60 per cent of employers write off people with any form of mental ill health, and more than 75 per cent of employers say it would be 'impossible' for them to employ someone with schizophrenia.³

We are concerned that by emphasising the responsibility of the claimant, the Welfare Reform Bill is missing an opportunity to address the primary barrier to people with mental health problems finding and retaining work: the poor understanding and discriminatory attitudes and behaviour of employers together with a widespread lack of knowledge about assistance through Access to Work. Legislation that places an onus on individual responsibility can only fail people affected by mental ill health if it does not take place in tandem with measures to tackle negative employer attitudes, and a commitment by the government to do so should be on the face of the Bill. At present those employers who are public authorities under the Disability Discrimination Act 2005 have duties to promote positive attitudes to disabled people but this duty does not apply to all other employers. We consider that widespread and vigorous action is required for those with mental health problems and that a general duty to promote positive attitudes to employers in the private sector should be placed on government.

² UK's Office for National Statistics' Sept - Dec 2006, *Labour Force Survey*. Figures quoted for people of working age only.

³ Social Exclusion Unit, *Social Exclusion and Mental Health*, ODPM 2004