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Welfare Reform Mental Health Coalition

Report Stage briefing House of Commons - March 2009

Amendment 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.

For more information on this amendment contact:

Neil Balmer
Public Affairs Manager
Royal College of Psychiatrists

nbalmer@rcpsych.ac.uk

0207235 2351 x 145
07736 279 272

1. Amendment to be made

Action Plans: Prescribing of healthcare provision

Mr Paul Rowen

63

Page 6, line 33 [*Clause 2*], at end insert 'provided that such particulars shall not include taking any medical treatment, including medication or psychological therapies'.

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

Amendment 63 is a redraft of amendment 46 at committee stage in the House of Commons, which was debated on Tuesday 24th February. It makes changes to Subsection (4) of Clause 2E (*Action plans in connection with work-focused interviews*). Subsection (4) allows regulations to set out the requirements on a claimant to undertake the particulars of activity contained in his or her action plan.

Our amendment removes the requirement on a claimant to undertake any 'medical treatment' that is contained in his or her action plan.

3. How has the amendment been changed from Committee stage?

The amendment tabled at committee stage in the Commons proposed that action plans drawn up by a claimant should not be able to include 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: Committee stage

During the debate at committee stage the Minister 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 6. 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 provisions as they stand in the Bill could be

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.

6. 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.¹

The Government had 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.

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



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Amendment 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.

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For more information on this
amendment contact:

Michelle Smith
Senior Campaigns Officer
Rethink

Michelle.Smith@rethink.org

0207 330 9123

1. Amendments to be made

Good cause' - making contact and timeframe for responding

Page 5, line 20 at end insert

' and

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

Page 5, line 46, at end insert

"the prescribed period' means a period of not less than 10 working days'

2. Purpose of amendments

To ensure that proactive steps are taken by staff to make contact with claimants, and that claimants have a reasonable timeframe within which to respond with 'good cause' for failing to attend a work-related activity.

3. Reasons for amendments

The Bill as it currently stands 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 nowhere near long enough. Given that the penalty for not responding within the stated timeframe is that the person's claim will be closed, we feel there are just grounds for extending it, to better ensure that people are not unfairly penalised on the basis of their health condition.

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.

Due to changes in the way disability is assessed, an increasing number of people with mild or moderate mental health problems are set to be placed on Jobseekers Allowance as well as those on Employment and Support Allowance. 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.

People with personal experience of mental health problems have told us that five days is inadequate as a timescale to respond to a request to give good cause for failing to comply with a direction. An individual experiencing acute depression may be unable in just one week to deal with such a request. An additional week, 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.

"When I am severely depressed the last thing I am going to do is look at the post. In my deepest depression it is hard enough to get out of bed let alone open official looking documents. They will always be put to one side, in the hope that they will disappear. If it's important enough they will always write back. It will take me days to sum up the courage.

Even if I do open the post my self esteem will be so low that contacting the Job Centre plus to offer an explanation will seem like a mammoth task in itself. You end up thinking they don't care, they won't believe me and they are not going to listen. The spiral of negative thinking will go into overdrive. Before long you are convinced that they will cut my benefits and I will end up worst off".

Geri, 36, Rethink member



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Amendment Action Plans: Reconsideration

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.

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For more information on this
amendment contact:

Neil Balmer
Public Affairs Manager
Royal College of Psychiatrists

nbalmer@rcpsych.ac.uk

0207 235 2351 x149

07736 279 272

1. Amendment to be made

Action plans: Reconsideration

Mr Paul Rowen

57

Page 6, line 32 [*Clause 2*], leave out from beginning to 'may' in line 35 and insert

'An action plan must be considered if the person to whom it is provided makes a request on reasonable grounds for reconsideration to occur and regulations'

Mr Paul Rowen

58

Page 6 [*Clause 2*], leave out line 37 and insert –

'(a) the factors that may be taken into account in deciding reasonable grounds;'

2. Purpose of amendments

The Bill as presented states that Regulations may provide for reconsideration of an action plan *but imposes no statutory duty* to ensure that reconsideration shall be provided for.

Our amendment therefore makes a change to insert a legal right for a claimant to have their action plan reconsidered provided that their request is reasonable.

In Section 5 of Clause 2E, the Secretary of State 'may' produce regulations regarding the "reconsideration of an action plan and [...](a) the circumstances in which reconsideration may be requested". The Bill therefore gives no indication of whether the grounds on which a review may be granted will be narrow or wide.

Our amendment leaves out this paragraph. The effect of this will be that reconsideration shall take place on 'reasonable grounds'.

The effect of the third part of our amendment is to state that Regulations may define what is reasonable.

3. Reasons for amendments

The need for a person to have the legal right to seek a change to an action plan *is fundamental and needs to be on the face of the Bill*. This is because:

- (a) failure to comply can lead to a sanction (loss of benefits) ;
- (b) the claimant is being required to undertake a specific work related activity that they may consider unsuitable or unduly onerous.

Furthermore, even if Regulations are passed under this subsection:

- (a) there is no indication in the Bill as to how broad or how narrow 'the matters to be taken into account' will be in deciding whether to allow a reconsideration;
- (b) it is only fair that if a person has reasonable grounds for objecting to an action plan he/she should be able to have this raised and considered.

4. Briefing on amendments

The amendments above all make changes to Clause 2E (*Action plans in connection with work-focused interviews*) to insert into the legislation a legal right for a claimant to have their action plan reconsidered provided that their request is reasonable.

Action plans

A key element of the process of progressing to work is the drawing up on a personalised action plan. The action plan sets out the specific steps the individual and adviser have agreed will be undertaken.

The lack of a legal right for a claimant to have their case reconsidered on reasonable grounds in the Welfare Reform Bill runs counter to the Government's vision of personalised conditionality, involving a partnership between a claimant and an advisor.

Action plans under the Bill may be very broad and far reaching in their demands on a person. They are an interference with a person's rights to private and family life under Article 8. Any removal of benefit is an interference with a person's human right to property under Protocol 1, Article 1 of European Convention on Human Rights. At present the Bill does not indicate what grounds may be made available for a review and by implication does not provide a review as of right.

The action plan embodies the co-operation and shared ownership of the back-to-work process. In order for the action plans to be workable and effective, then partnership is essential.

Moreover, the Government's Welfare Reform White Paper: *Raising expectations and increasing support: reforming welfare for the future* clearly states that in the

new system of personalised conditionality, the claimant will be ‘responsible for devising their action plan to prepare for work, in partnership with their adviser’.¹

Our concern

The Gregg review recommended, as a key check and balance that ‘when any activity was directed then it would be important for the claimant to have the right for that decision to be looked at again by a third party where appropriate’.²

However, we are concerned that the Bill gives all the power to the advisor, without adequate safeguards to ensure that this is a decision made in partnership. Too much is therefore left to the good intentions and best practice of a personal advisor who may face a busy workload, and who may not have the skills or competencies required to engage with someone with mental health problems.

There are concerns about lack of understanding of mental health problems amongst personal advisors, which could negatively impact on the decisions that they make regarding action plans. Furthermore, nothing in this statute would prevent an advisor from setting the terms of an action plan without engaging a claimant.

Where advisors are directing, as the White Paper states, ‘clearly understood expectations’³ it is important that there are safeguards in place where these are unreasonable. People with mental health problems should not be obliged to agree to these if their condition was to deteriorate and they would not be able to fulfill their obligations.

Checks and balances

In our amendment we are not proposing to give carte blanche to claimants who are unreasonably refusing to engage with advisors. It does, however, ensure that where there are reasonable groups to review an action plan, the Secretary of State must allow this to happen.

For the Bill to ensure fairness in the process it should allow for the development of a true partnership between the claimant and the advisor. By ensuring a right to review it will put more emphasis on advisors engaging with the particular needs and capabilities of the claimant. This is particularly important for people who may be recovering from an episode of ill health, who want to work but will need support and confidence building to enable this to happen.

¹ Raising expectations and increasing support: reforming welfare for the future; Welfare Reform White Paper; DWP 2008; p.8

² Realising Potential: A Vision for Personalised Conditionality and Support; Independent Report to the DWP; Gregg 2008; p.53

³ IBID; p.80

5. Previous discussion: Committee stage

The amendments tabled are similar to amendments debated in Public Bill Committee on Tuesday 24th February. Consequently, they have been altered to take in to account the discussions that took place.

This briefing highlights the key criticisms of the amendments that were made and gives our response.

Criticism 1 - These amendments would make reconsideration mandatory

MPs argued that the amendments would make reconsideration mandatory. This was not the intention of the amendment – (nor what it said).

MPs argued that this led to two key problems:

a) It would therefore apply to people who didn't even want reconsideration

The Minister stated that the amendments: 'would condemn everyone to reconsideration whether or not it was requested'.

This is a misunderstanding of the amendment, which would in no way make it mandatory for everyone to have their action plan reconsidered. However, in order to clarify this further we have tightened the amendment to state explicitly that the action plans will only be reconsidered if a claimant makes a reasonable request.

The amendment does not force all claimants to have their action plan reconsidered.

b) It would shift the balance of power in favour of the claimant.

The amendments do not give carte-blanche to the claimant to simply refuse to accept the responsibilities that are set out in an action plan. This is not about watering down conditionality or giving overall power to the claimant, but is a fair proposal to ensure that there is a workable and effective system of conditionality.

If the requests in an action plan are unreasonable, by law, then surely it is right that a Claimant should not have to a right to reconsideration. This is purely an issue of fairness, which the Bill must legislate for.

Criticism 2 - There is no definition of reasonable

It was argued at Committee stage that: '[The amendment] would merely require that reconsideration shall take place at "the reasonable request" of the claimant without saying what amounts to reasonable.

This is deliberate. It would be wrong to specify on the face of the legislation what reasonable would amount to. The Government and opposition MPs have argued that it is correct to leave the definition of these concepts to Regulations, to prevent 'undue specificity'.

As such, the Bill as presented is also not clear and gives no indication of what will be 'relevant.' In other parts of the Bill there are similar phrases, such as 'good cause' and 'reasonable grounds'.

It is important for Parliament to give a clear steer that the person will have a right of reconsideration if the request is a reasonable one. Amendments 57 and 58 ensure that Regulations may further clarify what is intended to be reasonable factors



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Amendment: 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.

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For more information on this
amendment contact:

Max Wind-Cowie

Parliamentary Officer
Mind

m.windcowie@mind.org.uk

020 8215 2287

1. Amendments to be made

Monitoring of outsourced employment services

Clause 1, page 2, line 40, at end insert the following new subsection -

"() Regulations under this section, must make provision to ensure providers-

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."

Clause 1, page 3, line 21, insert the following new subsection –

"(f) 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

To 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.

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 conditions.

We believe that, 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.

In addition, the Bill provides for mandatory 'work for your benefit' programmes to be piloted for long-term JSA claimants who have reached the end of the Flexible New Deal without securing a job. We are concerned that claimants with mental health problems may have been unable to move into employment due to factors outside the control of the individual – failure by the Flexible New Deal (FND) provider, the unwillingness of employers and so on.

We would like to see assurances on this issue. This should include better monitoring by providers, including monitoring by impairment group, in order to evaluate the success of FND providers in placing people into work.

4. Previous discussion: 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.

We do not wish to advocate for the 'micro-management' of providers. However, there needs to be some recognition of the fact that differences in outcome reflect the fact that people with different impairments experience particular types of barriers to equal participation. 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.

We are seeking this amendment in order to ensure that these crucial services are adequately monitored in terms of their impact on the various groups of people affected.

5. Case Study

"It will force those that are maybe not well enough to work full time into participating in an activity that may be detrimental to their wellbeing."

John, 28, Mind survey respondent