

Guaranteed preventable harm through the continued use of the work capability assessment.

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Abstract

Introduced in 2008, the work capability assessment (WCA) is used by the United Kingdom (UK) government to limit access to its main out-of-work benefit for chronically sick and disabled people, the Employment and Support Allowance (ESA). The evidence suggests that premised upon the biopsychosocial model the WCA is a dangerous and fatally flawed assessment model, but such concerns continue to be disregarded by UK governments. This article identifies the influence of the American corporation, UnumProvident, in the development of ESA and the WCA, and argues that what has been identified as being the problems of the WCA for disabled people were intentional and preventable.

Keywords

work capability assessment, welfare reforms, biopsychosocial model

Introduction

The recent Green Paper, *Work, health and disability: improving lives* (DWP 2016), outlines how the UK government intends to increase the number of disabled people in paid work. Most important for this paper, it outlines a continuing role for the controversial WCA, which is the main mechanism used by the Department for Work and Pensions (DWP) to determine whether disabled people are entitled to financial support through the ESA. In this short paper the continued use of the WCA is considered. In particular, it examines the origins of the WCA in an idea closely associated with ‘Thatcherism’ that people are better served by private provision rather than state provision, and the detailed evidence that the WCA causes preventable harm to disabled people. The paper argues that the introduction and continued use of the WCA are ideological with little regard to the devastating impact that its use has on chronically sick and disabled people.^{N1}

Private and public pains: UnumProvident and the BPS model

In 1992 the John Major Conservative government invited the American corporate giant UnumProvident Insurance to consult with it in regard to the future welfare claims management of the number of people claiming income replacement disability benefit.^{N2} By 1994, the company was appointed as official government advisers. It is arguably no coincidence that the Social Security (Incapacity for Work) Act 1994 introduced Incapacity Benefit (IB) as a means of limiting access to out-of-work disability benefit. The number of people claiming IB had significantly increased due primarily to claims for mental health problems. By 2005 39% (just under one million people) of IB claimants were in receipt of the benefit for a mental health problem (WPSC 2006). Since that time, politicians have prioritised the reduction of claimant numbers by one million suggesting that, along with other disabled people, those living with mental distress were of little significance other than as a drain on resources.

IB was changed to the ESA in October 2008 by the New Labour government. To access the ESA, claimants would be assessed by the WCA as Ministers continued to prioritise reducing claimant numbers regardless of devastating and predictable human consequences, including increased levels of mental distress, greater social isolation and suicides (Barr B et al, 2015; Butler, 2015). Not to be confused with a medical assessment, the WCA is described by the DWP as a ‘functional assessment’ model when using an IT tick-box questionnaire as the basis of the WCA.^{N2}

Government concerns with access to out-of-work disability benefits existed long before the introduction of the ESA. However, in the context of New Labour’s approach to rewriting the ‘welfare contract’ between the state and British citizens UnumProvident Insurance funded the former DWP Chief Medical Officer, Professor Sir Mansel Aylward, at a new research Centre at Cardiff University for five years from July 2004 with a £1.6 million grant (Cover 2004). Along with Dr Gordon Waddell, Aylward rapidly produced a policy-based research report, *The Scientific and Conceptual Basis of Incapacity Benefits* (Waddell and Aylward, 2005). Commissioned by the DWP, this report was subsequently used to justify the use of a biopsychosocial (BPS) model of assessment (as used in the WCA) to resist future out-of-work disability benefit claims. The BPS model of assessment disregards medical diagnosis, prognosis and prescribed medication and measures the physical functioning ability of the claimant on the day of assessment, when using a tick test questionnaire for the WCA. The Waddell and Aylward 2005 report suggested that the approach to assessing disability benefit

claimants should be accompanied by a toughening of benefit sanctions (p165 - 167), which was included with the introduction of the ESA. As a consequence, disabled people can have their entire income sanctioned, often for weeks, for minor transgressions of the rules such as being five minutes late for a Jobcentre appointment.

The version of the BPS assessment model recommended by Waddell and Aylward (2005) was a British equivalent of the BPS model adopted by UnumProvident Insurance in America. The influence of UnumProvident Insurance was demonstrated in evidence provided to the Work and Pensions Select Committee (WPSC 2006) following the publication of the Welfare Reform Green Paper in 2006 (DWP 2006), which identified the transformation of IB to the ESA. The requirement to '*resist diagnosis*', '*revise the sick note*', '*encourage the Government to focus on ability not disability*', '*change the name of Incapacity Benefit*' and '*benefits not to be given on the basis of certain disability or illness but on capacity assessments*' (UP 2006, item 2) have all come to pass as British welfare policy was directly influenced by the arguments of UnumProvident Insurance.

The corporation uses a version of the BPS model of assessment in America to maximise profit and limit access to income protection insurance payments, after people have paid substantial premiums to protect their incomes. As a result, UnumProvident Insurance were fined \$31.7 million in 2003 in a class action law suit in California for running '*disability denial factories*' and \$15 million in 2005 by the California Department of Insurance Commissioner, John Garamendi, who stated that '*Unum Provident is an outlaw company. It is a company that has operated in an illegal fashion for years...*' By 2006 the State insurance commissioners of 48 American States approved a settlement in an investigation of the UnumProvident Corporation that required the healthcare insurance giant to reconsider 200,000 claims and to pay \$15million in fines. At the same time as these fines in America for malpractice, the company were funding Waddell and Aylward at Cardiff University.^{N1,2}

UnumProvident Insurance changed its name to Unum Insurance in 2007 to distance itself from increasing negative publicity following various legal actions against it and a paper by Law Professor John Langbein, which identified Unum's '*deliberate program of bad faith denial of meritorious benefit claims*' (Langbein 2007:1315). By 2008 Unum Insurance was identified by the American Association of Justice (AAJ) as the second most discredited insurance company in America (AAJ 2008). Despite these various actions, and DWP claims

of public consultations, it would appear that the only opinions seriously considered by the DWP to inform out-of-work benefit policies for disabled people were those of Waddell and Aylward whose work, as we have seen, was sponsored by Unum (Provident) Insurance.

The BPS model used for the WCA has also been criticised in the academic literature. Shakespeare and colleagues (2017, p 22-41), for example, argue that the Waddell and Aylward BPS model of assessment, has '*no coherent theory or evidence behind it*' and demonstrates '*a cavalier approach to scientific evidence*'. They identify the research by Waddell and Aylward as being '*policy based research*' used to justify the DWP's approach, rather than being '*evidence based research*'. As such, the use of the BPS model in the assessment of people's capability to work can be described as being bogus.

The Freud Report and reducing disability benefit claimants

Having established a flawed assessment model to guarantee fewer people would qualify for state financial support on the grounds of disability, further '*independent*' research was needed to persuade the House of Commons that additional '*reform*' of social welfare benefits was required. The former city banker, David Freud, freely admitted that he '*didn't know anything about welfare*' (Sylvester and Thomas, 2008), yet he was commissioned by the New Labour government in December 2006 to offer recommendations on how to reduce the amount spent on out-of-work disability benefits.

Commonly known as 'the Freud Report', *Reducing Dependency, Increasing Opportunity* (Freud 2007) was rapidly produced in only six weeks, with claims of a potential to massively reduce IB claimants (by a million). Critics such as Professor Danny Dorling (2007, p10), however, argue that Freud had '*got his numbers wrong*' and had misinterpreted his own references. The consequence was that it was unlikely there would ever be the predicted fall in claimant numbers. The 'reforms' that included the introduction of ESA, therefore, were informed by two DWP commissioned reports discredited by academic scrutiny.

Freud benefitted from writing his 2007 report. While he was commissioned by the New Labour government to write his report, he was later ennobled by David Cameron when leader of the Conservative Party. Despite being unelected, Freud was appointed as the DWP Shadow Minister for Welfare Reform in 2009. He was then appointed in 2010 in the new Cameron-led

government as the DWP parliamentary under Secretary of State for the Coalition government, and was reappointed in 2015 as the DWP Minister of State for Welfare Reform in the Conservative government. Freud retired from government in December 2016 having been responsible for recommending some of the most savage austerity measures witnessed in Britain. This included the extending of sanctions that stop a claimant's entire income, an approach that has resonance with Waddell and Aylward (2005) arguments and which disproportionately impact upon disabled people.

Many people have paid the ultimate price as such welfare 'reforms' have been associated with suicides and with some people starving to death in C21st UK (Gentleman 2014). A combination of a discredited WCA, along with severe austerity-driven cuts aimed at forcing people not in work into acute poverty, suggests the overall DWP priority is with benefit 'dependency' and cost, and not the consequence of policy decisions. Such decisions are arguably inhuman and informed by an approach outlined by UnumProvident Insurance (UP 2006, item 2) that is essentially concerned with restricting access to income replacement disability benefits.

Conclusion

The developments outlined in this paper point to an ideological basis for changes in the financial support of workless disabled people. They were unnecessary and demands from coroners, academic experts, the Work and Pensions Select Committee, the British Medical Association, the Royal College of General Practitioners, the Royal College of Nurses, the British Psychological Society, the President of the Appeal Tribunals for Social Security and disabled peoples' organisations that the WCA should be stopped have been disregarded.^{N2} The government remains committed to the WCA. The death toll related to this fatally flawed government assessment is rising and there will be more to come if the WCA is not abolished.

Acknowledgements

I am very grateful to Dr Chris Grover for helpful comments and guidance on earlier drafts.

Disclosure statement

No potential conflict of interest was reported by the author.

Notes

The arguments in this paper draw heavily from my earlier work, published in my book and online via ResearchGate: https://www.researchgate.net/profile/Mo_Stewart/publications

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17th August 2017