

WELFARE REFORM - REDRESS FOR THE DISABLED

A confidential independent report by Mo Stewart

EXECUTIVE SUMMARY

This detailed evidence report is offered to members of the House of Lords as a contribution to the delayed debate on Welfare Reform, now planned for September 13th, and was prepared at the personal invitation of noble members from the House.

As a retired Healthcare Professional I have invested in excess of 12 months of my time, health permitting, to investigate the relationship between the American insurance corporate giant UNUM Insurance, the Department for Work & Pensions (DWP) and Atos Healthcare (AH). AH is the private contractor engaged by the DWP to conduct the medical assessments of the chronically sick and long-term disabled population of the UK, who are in receipt of disability benefits, yet this company is not regulated by the Care Quality Commission and so the public have no protection. The parent company, Atos Origin – another foreign corporate giant – have been awarded several significant government contracts, including the very lucrative IT contract for the 2012 Olympic Games, that the government ensured was awarded as part of “fair and open competition.”

It is cause for enormous concern that, when engaged as UK government advisers on welfare reform, in 1994, Unum Insurance were known as Unum Provident Insurance. This corporate insurance giant dominates the income protection (disability) insurance market, worldwide, with 25 million clients in the US alone. Unum Provident Insurance have a diabolical reputation, with strong evidence of atrocious tactics, and a resistance to funding the income protection insurance once a client made a claim following the onset of chronic ill health or permanent disability. (A*)

By 2005, following copious numbers of successful legal cases throughout the USA, the California Department of Insurance Commissioner, John Garamendi, stated that “Unum Provident is an outlaw company. It is a company that has operated in an illegal fashion for years...” By 2007, the American Association for Justice identified Unum Provident as “..the second worst insurance company in the US.”(5) Therefore, given this company’s proven record of sustained misconduct, one must surely enquire why they were ever permitted to be involved with the welfare of British citizens on a statutory basis.

Following the statement by the American Association for Justice in 2007 Unum Provident Insurance once again changed its name and is now known as Unum Insurance. Unum Insurance deny culpability for the past history of the company and, mysteriously, the majority of the evidence of past wrongdoing by Unum Provident Insurance has disappeared from the public domain, including the transcript of a BBC News report, from 2007, happily rescued from obscurity by researchers who predicted that the UK was at risk of adopting a copy of the American healthcare system, funded by insurance. With the latest press release from Unum Insurance, announcing that they are about to flood the UK market with mass marketing for income protection insurance, it looks like this is about to become a reality.

EXTRACT FROM BBC REPORT: UNUM PROVIDENT - BBC News 10pm 6th November 2007:

Mark Daly, presenter: But, there are still dozens of bad faith cases and allegations outstanding against the company on both sides of the Atlantic. Despite all of this Unum had senior executives sitting on key government working groups last year, and has provided detailed memorandum on transforming the benefits system. (The government also awarded grants worth £300,000 to Unum’s research centre in Cardiff. See page 4. MS)

Mark Daly, presenter: The BBC has discovered internal documents revealing that Unum believes it is driving Government policy. The Department for Work and Pensions refused to comment on Unum’s past.

WELFARE REFORM - REDRESS FOR THE DISABLED – THE REPORT:

The government’s devotion to its main priority, which is a dramatic reduction of the welfare budget, has meant that the concerns of respected frontline charities such as Citizens Advice(1), Macmillan(2), Scope(3), and the Disability Alliance(4) are all seemingly ignored. These welfare organisations, and many others, have collectively expressed serious concerns regarding growing evidence that the disability assessment system, using the Work Capability Assessment (WCA), is flawed and totally unworkable - but the government doesn’t appear to be listening. On this basis there is a legal challenge now being undertaken by the Disability Alliance, which may lead to a Judicial Review of the government’s welfare reforms.

Government concern expressed for the welfare of the chronically sick and disabled people of this nation can only be considered to be totally insincere when employing the services of Atos Healthcare (AH) to assess them. Indeed, the assessment of the long term sick and disabled population by a private contractor with no formal accountability structure, using computer

(A*) New York Attorney General Spitzer’s ruling: www.insure.com/articles/healthinsurance/unum-settlement.html

(1) Citizens Advice: www.citizensadvice.org.uk/not_working_march_2010_final.pdf

(2) Macmillan: www.macmillan.org.uk/Documents/GetInvolved/Campaigns/Benefits/FailedByTheSystemReport.pdf

(3) Scope: www.Scope.org.uk/sites/default/files/counting_the_cost.pdf

(4) Disability Alliance: www.disabilityalliance.org/dbcpress3.htm

(5) <http://unumclaimsdenial.com/2011/07/unum-ranked-2nd-worst-insurance-company-in-america>

software instead of a detailed physical examination, has been identified as unnecessarily traumatic.(1-4,6,7) This dangerously flawed medical assessment system uses a computer questionnaire, based on a points system, as recommended by government advisers Unum (Provident). Why does a UK government use a discredited US corporate insurance giant as advisers if not to adopt their system?

Successful government propaganda has the able bodied general public convinced that the majority of people in receipt of Incapacity Benefit(IB) or Disability Living Allowance(DLA) are mainly 'scroungers.' This is despite the fact that all evidence supports the fact that, out of the entire DLA budget, less than 0.5% were bogus applications with 1.5% admin error.(1,4,6.) So why do the other 98% need to suffer other than because the chronically sick and disabled population make very easy targets? Since when is the opinion of medical experts, namely consultants and specialists in the relevant fields of the claimants' disability, unacceptable as a level of a patient's ability to work other than when the DWP need to reduce costs? This is a very dangerous and medically unacceptable precedent, imported from America, that has administrators without relevant qualifications and an unaccountable medical assessment system deciding the fate of often desperately ill and chronically disabled people. Many people in receipt of DLA do work as the award of DLA is unrelated to employment, but they work because they are well enough to engage in employment, and not when forced to look for employment by DWP medical tyranny because Job Seekers Allowance is much cheaper to fund than disability benefits.

The DWP's resistance to employing qualified medical administrators has meant that basic grade administrators, known as "Decision Makers", who have confirmed that they lack the ability to interpret medical evidence,(7) have betrayed the sick and disabled people the WCA was meant to protect. The actual disability assessment, as reported by the AH contracted healthcare professional (HCP), is simply one extremely limited opinion derived from a dubious computer evaluation programme, as confirmed in the WCA review by Professor Harrington.(7) The main responsibility of the DWP Decision Makers, as identified in the government contract with Atos Origin Healthcare Services, is to correlate all presented medical evidence including the detailed reports of GPs and consultants, who know the claimant and have actually treated them. Given that the opinions of these medical specialists are accepted in every court in the land, it seems more than reasonable to consider their clinical judgement when deciding if anyone is fit to return to work or to retain disability benefits.

However, the Harrington Review (7) confirmed that Decision Makers routinely failed in their responsibility and exclusively accepted the opinion of the contracted HCP from Atos Healthcare, who enjoy "total immunity from all medical regulation" according to the General Medical Council (GMC) and the Care Quality Commission.(6) Because of this, large numbers of chronically sick and genuinely disabled people are being forced to appeal the often alarming decisions of under qualified junior civil servants.(1-4) Welfare agencies now advise that nothing has improved since the Harrington review, hence the challenge by the Disability Alliance.

This deeply flawed medical assessment process was identified for a long time by His Honour Judge Robert Martin as President of the Appeal Tribunals. For over a decade Judge Martin's consecutive annual reports constantly identified serious problems with the AH medical assessments (8). Indeed, Judge Martin was insistent that "...the same problems and errors are repeated year after year, with no sign that anyone takes any notice of feedbacks from Tribunals" as confirmed in evidence to the Work and Pensions Select Committee.(9) The evidence confirmed that almost half of the Appeal Tribunals find in favour of the applicant (9) with 70% of claims being upheld for claimants who have representation at the Appeal Tribunal.(10) However, the stress and distress of the need to wait for several months to attend an appeal, in order to retain financial support to which these claimants are morally entitled, is totally ignored. If these were civil cases, generous compensation would be offered as an acknowledgement of the unnecessary distress and suffering caused to the many victims. However, all successful applicants can expect is a reluctant reinstatement of their disability payments, and a back dated award to when they were forced to accept Jobseekers Allowance instead of Incapacity Benefit or, more recently, the new Employment Support Allowance.(ESA) DWP letters to their many victims remain unnecessarily hostile and the enforced disability debt is an ever growing problem. These victims of this AH assessment system lose their disability funding instantly, when they fail to obtain the necessary points at assessment. Yet their DLA payments are already committed to fund their Motability car or to identify the need for essential home care as provided by local authorities. This is brutal, and these consequences appear to be dismissed by the government.

With plans to rapidly transfer Incapacity Benefit to the new ESA and DLA being renamed and reallocated to the Personal Independence Payment (PIP), all reference to incapacity or disability is being systematically removed. How can a chronically sick and/or disabled person, who will never again be fit enough for paid employment, be allocated a benefit named Employment Support Allowance when employment is not a realistic possibility? How does this support anyone with a permanent serious illness or profound disability? What happened to welfare? The Minister for Welfare Reform happened to

- (1) Citizens Advice: www.citizensadvice.org.uk/not_working_march_2010_final.pdf
- (2) Macmillan: www.macmillan.org.uk/Documents/GetInvolved/Campaigns/Benefits/FailedByTheSystemReport.pdf
- (3) Scope: www.Scope.org.uk/sites/default/files/counting_the_cost.pdf
- (4) Disability Alliance: www.disabilityalliance.org/dbcpress3.htm
- (5) <http://unumclaimsdenial.com/2011/07/unum-ranked-2nd-worst-insurance-company-in-america>
- (6) Care Quality Commission: <http://www.cqc.org.uk/aboutcqc.cfm>
- (7) The Harrington WCA Review: www.dwp.gov.uk/docs/wca-review-2010.pdf
- (8) HH Judge Robert Martin: President of Appeal Tribunals, Report 2007-08
- (9) Decision making and appeals in the benefit system. Second Report of Session 2009-10 - the House of Commons Work and Pensions Select committee: www.publications.parliament.uk/pa/cm200910/cmselect/cmworpen/313/313.pdf
- (10) Citizens Advice Scotland: Unfit for purpose: www.cas.org.uk/Publications/publications/Evidence+reports/unfit-for-purpose

welfare... and it is cause for serious concern that the input of this one unelected official can threaten the welfare provision for millions with care, concern and compassion replaced with a price tag (11).

The Minister made his intentions clear in a press interview (11) in 2008 when he claimed that: "... somebody will see a gap in the market and make their fortune" and the article went on to claim that the Minister's idea was to eventually put the private sector in charge of the long-term unemployed. "There will be bonuses for hard cases, and no special treatment of disabled people or lone parents with children at school."(11) As Minister for Welfare Reform, Lord Freud's past history in finance demonstrates a dangerous lack of any comprehension that a serious illness or chronic disability can indeed be permanent, hence past awards of DLA offered to recipients who, by definition and especially by diagnosis, are profoundly disabled or very ill. These conditions can be exacerbated by exhaustion that often accompanies chronic ill health and serious disability. American style medical tyranny can't make them well, and can't make these genuine claimants fit for work, but constant threats of losing their financial support can and does cause unnecessary distress.

Now, the most vulnerable people in our society, already faced with a limited quality of life, are being terrorised by the DWP with the threat of an annual review of their DLA financial support, despite their confirmed and permanent illness and/or physical limitations. Any annual assessment is therefore, by definition, a total waste of limited resources for the vast majority of these people. The sudden removal of DLA may remove a Motability car, or funding for taxis, and may remove the County Council funded home carers as County Councils will not provide carers unless the client is in receipt of DLA for care at the highest level. Any AH assessment is simply one day in the life of the disabled claimant, and cannot be presumed to identify their permanent state of health. Government claims that AH assessments are to establish ability, and not to emphasise disability, whilst demonstrating a dangerous lack of concern for identified consequences is offensive to many.

Urgent decisions need to be made to enable justice to be seen to be done.

SUMMARY:

The DWP should employ qualified Medical Administrators, as real Decision Makers, who will comprehend when a given diagnosis means that the patient is far too ill or profoundly disabled to ever consider paid employment. They would even comprehend that the majority of chronic disability and ill health are, by their definition, variable conditions, and therefore it is absurd to expect such people to be fit enough to look for paid employment, only to become too ill to work within a short period of time. Not only would Medical Administrators be able to remove the totally unnecessary distress faced by the innocent victims of this assessment process, but it would also save a great deal of money by greatly reducing the numbers of people going to these AH assessments and, hence, reduce the numbers of Appeal Tribunals. Any increases in salary costs will be negated by the very significant savings from the reduced costs of tribunals and appeals, as well as the reduce requirement for continued reassessment in many cases. It would also remove the distress now faced by this vulnerable community.

The DWP can then either cancel this fatally flawed disability assessment contract with AH, or introduce a generous compensation scheme. There are now many thousands of genuine chronically sick and/or seriously disabled victims of this DWP funded medical tyranny, masquerading as medical assessments, as conducted by Atos Healthcare following guidance by Unum Insurance, formerly known as the totally discredited American corporate giant Unum Provident Insurance.

It is no coincidence that Unum Insurance are about to launch a massive UK media campaign to promote their Income Protection Insurance as, clearly, it has been planned since 1994 as the UK takes another step forward towards the American style health service, funded by insurance. (12)

Costs can't be the only concern in any civilized society. Care, concern and compassion must be returned to the UK to arrest tyranny, using foreign companies, against those least able to find social justice. 5000 disabled people and carers didn't march in London for no reason, and it's time someone listened to them.

More detailed information may be found in a book by Ray Bourhis, namely Insult to Injury: Insurance, Fraud and the Big Business of Bad Faith, published in 2005, and in the published papers at the Yale School of Law: The Unum Provident Scandal. (13)

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(11) Welfare is a mess, says adviser David Freud:
www.telegraph.co.uk/news/politics/1577313/Welfare-is-a-mess-says-adviser-David-Freud.html
The Daily Telegraph – 2nd February 2008. David Freud interview with Rachel Sylvester and Alice Thomson

(12) <http://www.ifaonline.co.uk/cover/news/2083156/unum-unveils-consumer-campaign>

(13) http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1483&context=fss_papers&seiredir=1#search=%22Yale%20Law%20School%3A%20Unum%20Provident%20Scandal%22

BBC 10pm NEWS - 6th November 2007 - Transcript

Hew Edwards, anchor: A multinational insurance company accused of racketeering and cheating thousands of Americans out of welfare benefits, is giving advice to the British government on welfare reform. A BBC investigation has found that executives from Unum have held meetings with senior Whitehall officials to discuss changes to the benefit system. Mark Daly has this exclusive report:

Mark Daly, presenter: US-based multi-national insurance giant, Unum, has shown a keen interest in UK welfare reform since the mid 1990s. This is Unum's HQ in Portland in Maine. Unum are the world's largest disability insurers, with more than 25 million customers in the US alone. But in 2002, a series of whistle blowers came forward with damning allegations. Linda Nee was a claims handler for UnumProvident, as it was called then.

Linda Nee: I was often placed in the position by a consultant, who was my supervisor, of denying a claim. Of telling me to deny a claim, or having a manager tell me to remove documentation from a claim so that an attorney would not have an opportunity to see it.

Mark Daly, presenter: It was alleged that UnumProvident cheats tens of thousands of disabled Americans out of their rightful benefit claims. Many of them came from California. Joan Hangarter had her own business before falling ill.

Joan Hangarter: An impartial, unanimous jury of 12 people found that Unum had wrongfully terminated my benefits. They had lied, they had cheated, they had misrepresented the facts.

Mark Daly, presenter: She was awarded \$7.5million in damages but allegations of racketeering persisted. Then, in 2005, insurance commissioner John Garamendi declared: "UnumProvident is an outlaw company. It is a company that for years has operated in an illegal fashion." In a unique settlement signed by all 50 States, it was fined \$23million, ordered to reopen 300,000 denied claims at a cost of half a billion dollars. (Denied claims still not reinvestigated as of Oct 2010. MS)

Peter Dewis, Unum Customer Services: I think the important thing to recognise is that those issues that were found in relation to the US claims management practices now belong to history. They were critically reviewed when the regulatory findings came out, a number of very important changes have been made. In the UK we reviewed all of our claims management practices and found ourselves not to be wanting in relation to anything that the US regulators were saying.

Mark Daly, presenter: But, there are still dozens of bad faith cases and allegations outstanding against the company on both sides of the Atlantic. Despite all of this Unum had senior executives sitting on key government working groups last year, and has provided detailed memorandum on transforming the benefits system. The government also awarded grants worth £300,000 to Unum's research centre in Cardiff.

Ian Gibson MP: I think the government should have them in front of them in an open scrutiny process in Parliament, and we should ask them what their game is. Why it happened in the States first, could not happen here if they have still got the same philosophy. There is some indication now that they haven't changed that much. The leopard hasn't changed its spots.

Mark Daly, presenter: The BBC has discovered internal documents revealing that Unum believes it is driving Government policy. The Department for Work and Pensions refused to comment on Unum's past. A spokesman said: "Throughout the process of developing our policies.... Ministers and officials have met and spoken to hundreds of organisations and individuals like Unum to find out what works." As Unum attempt to leave its chequered past behind, the debate over UK welfare reform will rage on.

Mark Daly - BBC News

NB: This transcript was removed from the BBC website and was recently provided by a national disability charity. MS