

Communication Workers Union

Reforming the Medical Statement Consultation on Draft Regulations

**Response to the Consultative Document issued
by Department for Work and Pensions, Health,
Work and Wellbeing Directorate.**

The Communication Workers Union Response

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*Medical Statement Regulations - Consultation
CWU Response*

Introduction

The Communication Workers Union (CWU) is the biggest union for the communications industry in the UK with 250,000 members. We represent members in postal, administrative, financial and telephone companies including Royal Mail Group and BT Group, o2, Virgin Media, Orange, ComputaCenter and the Alliance and Leicester. Our members' expertise includes delivery, distribution, processing, engineering (electronic, electrical, lifts, mechanical, gas, plumbing, motor vehicle, manufacturing), facilities maintenance, security, computing, clerical, call centres, mechanical, driving, cleaning, retail, financial & Banking, TV Licensing and manual skills.

Overview

- The CWU welcomes the opportunity to respond to the DWP/HW&W consultation document and agrees that the current Medical Certification system needs to be reformed.
- The CWU believes that many workers who are recovering from long-term illness or injury would welcome being given the opportunity to make a medically managed, phased and monitored return to work.
- Such arrangements are not provided for under the current system under which GP's medical certificates are issued to individuals on the basis that the person concerned is either too ill or completely unfit to return to work or is completely recovered. Employers invariably adopt the position towards employees – telling them that there's no such thing as 'light-duties' and if you're not 100% fit then don't return to work. Employees on the other hand are put under pressure by "draconian" sick absence control procedures which in many circumstances force workers to return to work on their full duties before they are ready to do so and thereby risk further illness, injury, stress and anxiety.
- We welcome the fact that the general principles underpinning the concept of GP's Medical Certification of sickness is to be retained. Whilst GPs will not necessarily have Occupational Health skills and training, they are still best placed to make judgments on their patients, the people they are familiar with and who's medical history they are aware of.
- The CWU is firmly of the view that it is vital for Government, DWP and HW&W to ensure that alongside the proposed changes, people who are on long-term sick leave are given occupational health support to return to work.
- There also needs to be a formal 'Rehabilitation System' contained within which will be the requirement for each worker to have a 'Rehabilitation Plan' drawn up by the Employer/Employers Occupational Health provider in consultation with the GP or Consultant, the individual and Trade Union Health and Safety Representative. Then the plan needs to be jointly monitored to ensure compliance. However the CWU does agree

that changes to the Medical Statements process are necessary. The idea that a person is either totally too ill to work, or well enough to fulfil their full duties does not reflect the real experience of those who are recovering from a long-term illness who would often like the opportunity of returning in a phased or supported way. Those on long term sickness absence must be given the opportunity to have a graduated supported return to work. These policies recognise however that the main barrier to a return to work after a lengthy absence is not necessarily physical, but can be psychological. This was recognised in the HSE guidance to sickness absence. Good employers therefore see return to work as being more than a medical issue, but instead a partnership between the GP, the HR department, the line manager, the worker and their health and safety representative. It is therefore important that any review of the medical statement recognise this. GPs are unlikely to have sufficient knowledge of workplace and occupational health issues and some Employers do not have sufficient in-house or out-housed occupational health support to implement the changes.

- Workers will also need supportive sick absence control policies in place, drawn up in consultation with the workers Trade Union. Government and the DWP/HW&W need to influence employers to move away from current widespread 'draconian' sick absence procedures that for example penalise workers who are injured in accidents at work, Road Traffic Accidents or falling victims to Pandemic Flu.
- There also needs to be firmer assurance and health and safety compliance to ensure safer workplaces and Safe working methods are out in place so as to avoid illness or injury recurrences or Stress at work.
- The Workplace needs to be adequately staffed and equipped and all Staff need to have access to comprehensive, independent, accredited, occupational health services.
- CWU has several concerns regarding the consultation which is very narrow, restricted to certain specific issues and proposed changes without looking at or asking questions on some of the major changes proposed.

Other concerns about the Medical Statement Regulations are:-

- Some employers may not have the ability or be willing to co-operate with the proposed changes.
- The changes may achieve the opposite of what is intended if an employee's medical condition recurs.
- The changes are not a substitute for good sickness absence and rehabilitation policies on their own. The changes can only be successfully implemented with the other changes required around worker support and assistance.
- The assumption that "work is good for you" is wrong and the message need to be clear "Good Work and a good Workplace is good for you" - "Bad Work and Bad Workplaces are Bad For You" The DWP/HW&W must acknowledge the negative effect that work has on the health of several million people or that there are health risks that may need to be managed in the workplace.
- The assumption that work has become less physically demanding and less rigid is a major flaw. This is not the case in the postal Industry which is still very manually intensive and there is little evidence of significant change. Long hours, heavy loads and tight targets are all features of the current work practices.
- Much work has been done in trying to address the difficulties in ensuring better medical input into sickness absence. Proposals for occupational health advisors in GPs surgeries, better training of all doctors and the development of GPs with an interest in occupational medicine are all positive moves which the CWU has welcomed. We have however stated repeatedly that we believe that all workers and all employers should

have access to a national occupational health service. At present it is estimated that less than 20% of workers are covered by any kind of basic occupational health support and only 3% of employers provide access to a comprehensive service.

Key Changes Required to be implemented

CWU believes that there are three main, essential changes required to reduce sickness absence and improve the health of workers:

- **Prevention** of injury and illness at work including work-related stress through increased enforcement activities by HSE and LA enforcers coupled with improved rights for Safety Representatives in order to help achieve this.
- **Access** to Occupational Health expertise and treatment plus rehabilitation if appropriate.
- **Rehabilitation/Return To Work Policies requirement on employers** which involve TU Health and Safety Representatives and support the worker in the transition back to his/her full job description at work.

Background

The proposals for reforming the medical statement have several components. The first is that the note will be completed and stored electronically by the GP. Secondly there will be space for a doctor to provide an assessment of a patient's fitness to work and indicate that a person may be able to do certain work. The doctor will also be able to suggest changes that would assist a return to work. It is also proposed to merge the current Med 5 form with the main medical statement (Med 3) and abolish Med 4.

In determining whether these proposals would be an improvement, the question must first be asked about what is the primary role of the GP and of health-care in general. The CWU would contend that it is to improve the health of the individual patient with an aim of ensuring that they are able to be as free of pain, illness or disease as is reasonably possible. There are often circumstances when being at work will assist a person's recovery either physically or mentally. However the aim of the doctor is not to get the person back to work. It is to make them better. In some cases that may mean encouraging an early return, but in other cases it would not. The criteria for the GP should be the medical outcome for the individual patient.

It is important to emphasise that, in respect of the workplace, the GP's role is essentially advisory and the people who have the main duty of care for the worker when he or she returns is the employer.

The CWU believes that the key to reducing long-term sickness absence has three components. The first is prevention of injury and illness, both in the workplace and out with. Secondly, early access to treatment and, if appropriate rehabilitation. Thirdly, good return to work policies which are worker-centred and which aim to support the worker in the transition back to work. To be effective these components must work together and complement each other.

DWP Proposals

On balance there are parts of the DWP proposals which the CWU welcomes and other parts that we have grave concerns about. In addition we believe that there are some changes which could be made that are not being considered.

Computer generated medical statements - These would be welcomed by the CWU. There is an advantage to them being completed and stored electronically, and they may make them more easy to read. In addition a copy will always be kept by the GP. However our support is on the basis that they will continue to be given, in paper format to the patient and not sent direct to the employer.

The CWU would however wish the DWP to take the opportunity of amending the regulations to allow the GP to print out two copies when necessary. This is currently forbidden but creates difficulties for those employees who have more than one employer (as many part-time workers have).

May be fit for some work now/Suggesting changes to the workplace or role - These two proposals can be taken together as they complement each other. The CWU has some concerns over how the changes would work in practice and whether the Med3 is the correct vehicle for encouraging change.

Certainly we have to get away from the idea that an employer cannot allow a worker to return to work until fully recovered, however much of this will only be achieved by changing the attitude of employers and insurers who often refuse to allow an employee back until they have been "signed back" by a GP. Employers will often refuse to agree to a request from a worker for an early return for fear of liability if the person's health suffers as a result.

There is also a view expressed by many employers that workers will stay off as long as possible. There is no evidence for this and all surveys show that the vast majority of workers wish to return to work as soon as they feel able. Unfortunately if the absence lasts for a long time, some workers will lose the confidence to return to work, or alternatively the physical illness may no longer be there, but the depression which often accompanies physical illness may remain. Where this is the case an employee will need support in returning to work, and initiatives such as Pathways to Work have had some success in addressing this problem in those who are no longer in work.

Often a person is able to work while "ill" and can be encouraged to do so if it is not going to harm their physical or mental health. Patients sometimes get depressed or bored being at home and may welcome the opportunity to do light duties. Unfortunately this is not as simple as it sounds and rarely on offer.

It could be argued that a broken leg is no barrier to someone with an office-based job, and being in work is preferential to being at home. In practice however the person may be in pain and could be depressed by their lack of function and restrictions on everyday activities. Also the person has to travel to work, which is likely to be much more difficult with a broken leg. A good employer would keep in contact with the worker and, when they feel able to work, provide transport for them and make sure that there are no activities that are likely to put a strain on the leg. What the appropriate time to return to work would be will vary considerably from person to person. It is not primarily a medical issue. The decision for the doctor is how best to treat the fracture and what will help the leg recover. The decision on whether the person feels able to return to work on restricted duties is one that only the patient can make after discussion with the employer.

In other cases the employee may be recovering from a stress-related illness. They have to feel confident that there will be no stressful experiences at work when they return, especially if their illness was work-related. If they come back too early they are likely to have a relapse. If the employer changes their duties considerably the employee may feel that they are making it obvious to their work-colleagues that they are suffering from a stress related illness (which they may wish not to disclose).

In addition, in all cases, if the person is receiving benefits and returns to work on reduced hours, and reduced pay, this can have an effect on their earnings. Most importantly it is important that the employee does not feel they are being forced back and instead feels that they are in control of the process.

The proposals also have not addressed the relationship between the medical statement and Statutory Sick Pay or employers sick pay schemes. What are the consequences if someone comes back part time or on considerably reduced duties and reduced pay? Will SSP be payable if a GP says a person is fit for work with adjustments but the employer refuses to make adjustments. How does it relate to other medical certification regulations such as those for fitness for employment at sea? Much more needs to be done to address these issues before the proposed changes are introduced.

Hourly-paid workers on low wages close to the minimum wage are the ones who may feel the greatest effect on earnings and the greatest financial pressure to return to full working hours as quickly as possible, even when this is not appropriate for their circumstances.

The CWU is not convinced that focussing on the Med3 form itself will assist workers who want to return to work early, and may make things worse in many cases.

The CWU does not believe that most GPs have the training, or knowledge of the workplace to determine whether a person will be able to function at work even with the recommended adjustments as outlined in the draft form. Nor will most employers have the medical knowledge or advice to be able to act on the recommendation.

Even where an employer does wish to encourage an employee back to work on a supported basis many will have concerns that if the worker is made ill again they may be liable for damages.

Were this a process involving occupational physicians, the patient and the occupational health department of an organisation then the changes being proposed could be of use, however where these exist it already does work, which indicates that the need is not for changes in the "sick note" but for greater access to occupational health support. Unfortunately there are only a few hundred occupational physicians and only 3% of employers have access to proper comprehensive occupational health advice.

In practice most employers, especially SMEs will not have the knowledge or support to implement the system in a way which will be in the interests of the worker. This will mean that in a considerable number of cases the worker will return to work for a short period of time and then go off sick again with a relapse. In particular this is likely to happen with MSDs and stress-related illnesses.

Instead it is likely that in many cases the employer will simply see the Med3 as a green light to tell the worker to get back to work and the worker will feel that they are being forced back before they are ready.

It is also possible that workers who are not permanent employees will find it impossible to get back to work if their GP indicates that they may be fit for some work now, but are not fully fit. It is likely that this could lead to considerable problems in industries such as construction.

The CWU would also wish to outline concerns over the ability of the patient to decline to have information disclosed beyond just a basic diagnosis. The more that is on the Med3 the more likely it is that some patients may feel anxious about the information being included, in particular in the section for "comments". It is unclear from the consultation document whether the Med3 is covered by the Access to Medical Reports Act, but even if it is, the only right the patient will have is to refuse to pass the form to their employer. It is a requirement that the

patient submit it to their employer if they are to claim SSP after one week's absence. The patient therefore has no control over whether to submit it to the employer or not. This is different from other medical reports.

Impact on the benefits system.

The benefits implications of the proposed reforms of forms are fairly minor. Firstly, with the introduction of form ESA113, there is no further need for form Med 4. Secondly, GPs are required to give advice to their patients on whether they can perform their own job or usual occupation, using form Med 3. Normally this must be completed on the basis of their own examination of the patient no more than one day before, otherwise form Med 5 is used. The proposed changes would allow Med 3 to be used to provide retrospective certification and to certify absence on the basis of a report from another healthcare professional. This will mean that workers' rights to claim ESA will not be threatened.

Missing?

Where advice to employers would be helpful is where an illness or injury may be work-related in some way. Although GPs have insufficient training in occupational medicine, it would be helpful if they were to indicate that a condition may be caused or made worse through work and highlight to the employer that they should look at preventative measures to ensure there is no reoccurrence in the patient, or that others in the workplace are not affected. The CWU believes that this approach would have a much greater effect in reducing sickness absence than the current proposals.

The CWU also believes that if the Med3 form is to be reviewed and kept electronically the GP should also record the person's job and the name and postcode of the employer. This will allow the information to be used in future to ascertain trends within certain industries and, again, could help inform prevention work. It will also ensure that the doctor actually asks this question of the patient, which often is not done.

Responses to specific consultation questions.

Consultation Question 1: Do you have any further information, data or analysis which would be useful for improving the quality of the analysis in the attached impact Assessment?

The Impact Assessment makes over optimistic assessments of the likely effect while failing to evaluate the costs of the health of persons as a result of coming back to work too early or into a job which makes their condition worse.

Consultation Question 2: The Government welcomes views on whether listing common types of changes is helpful; whether those listed are sufficient; and on whether 'Occupational Health assessment' should be added to the revised statement.

While it would be appropriate to add it, the CWU is not convinced that most employers are currently equipped to access such an assessment.

Consultation Question 3: Will the changes described in paragraph 40 ensure that the current functions of the special statement - form Med 5 - are accurately incorporated in the revised form Med 3?

The revision of form Med 3 will mean that it continues to be possible for evidence of incapacity for a period earlier than the previous day to be used to certify a worker's unfitness for work retrospectively. Doctors will continue to be able to rely on a report from another

doctor, provided it was issued less than a month previously. The CWU therefore has no objection to this proposal.

Consultation Question 4: The Government welcomes views on whether medical statements should only be issued when a patient is assessed as 'not fit for work' or 'may be fit for some work'.

While we recognise that the need to issue a medical statement that a person is now fit for work has no basis in law and is usually un-necessary the CWU would ask that the option remain for certain safety-critical jobs where an employer may wish an assurance that the worker does not pose a risk to themselves or others. However, in general we would not encourage the use of medical statements confirming that a person is fit for work.

Consultation Question 5: The Government welcomes views on whether the draft regulations, including the rules, achieve the intentions expressed in the commentary. In particular, bearing in mind the Government's aim of reducing sickness absence and supporting people with health conditions to return to work at the earliest opportunity, should the maximum duration of a medical statement be less than 6 months? (See Rule 13.)

The CWU shares the Government's aim of supporting people with health conditions to return to work as soon as they feel ready but it does not believe that the changes, however well-meaning, will achieve the changes desired without considerable training of GPs and the provision of occupational health advice to employers. We note the concerns over medical statements which cover a particularly long period; however there are some conditions where a statement covering 6 months may be appropriate, however they should be seen as exceptional.

Conclusions

The CWU welcomes attempts to ensure that those who are on long-term sick leave or benefits, should be given support to return to work, however that is best done through good sickness absence procedures, better training of GPs and greater access to occupational health advice for employers. However it has concerns over the introduction of the proposed changes to the Medical Statement Regulations because:

- The employee is not central to the process
- GPs do not have sufficient knowledge of the workplace
- Employers do not have sufficient independent occupational health support to implement it
- It may result in employees having a reoccurrence of their condition
- It is not a substitute for good sickness absence and rehabilitation policies
- Prevention of injury and ill-health should be reflected as central to the medical certification process.
- The consultation document incorrectly assumptions that by simply by making changes to the regulations the certification the scheme will then start "working".
- It will be necessary to ensure that GPs receive training in occupational health issues
- It will be necessary to ensure that employers are willing to co-operate.
- With current NHS cuts announced it's essential that the proposals for occupational health advisors in GPs' surgeries is delivered.
- Consideration should be given to the establishment of a national occupational health service, established in accordance with the EU Framework Directive 89/391. At present less than 20% of workers are covered by any kind of basic occupational health support and only 3% of employers provide access to a comprehensive service.
- A joint approach process needs introduction, involving the GP, the HR department/OHS, the line manager, the worker and their health and safety representative. It is crucial that

any review of the medical statement recognises this and appropriate action is taken by Government.

- There is no reference to prevention in the form and the employer is not recorded. This needs re-thinking.
- CWU believes further work on the wider issues relating to the reform of the medical certificate needs to be undertaken.

END.