Black Triangle Campaign submission to the Scottish Parliament Health Committee open evidence session on the role of GPs and the DWP-Atos Work Capability Assessment regime

Introduction

Black Triangle Campaign is a grassroots disabled people's organisation run by and for disabled people that has been at the forefront of the struggle against unjust welfare reforms and cuts which disproportionately affect disabled people.

Although a Scottish-based campaigning organisation we are recognised throughout the UK and work together in solidarity with our sister organisation Disabled People Against Cuts (DPAC), the trade union movement as well as other campaigns and professional groups fighting back against what we believe are neoliberal, ideologically-driven cuts that seek to destroy and ultimately privatise the welfare state in our country. [1] [2]

The aim of this submission is to enjoin The Scottish Parliament and Government's aid in raising awareness among GPs throughout Scotland of two little known regulations[3] that could mean the difference between life and death to some of Scotland's weakest and most vulnerable citizens.

As the noose of Westminster's irrefutably cruel, barbaric and unethical welfare reforms is pulled ever tighter around our necks, it is now time to unite and take action in defence of all our sick and/or disabled people. The consequences of any failure to act now are too horrible and shameful to contemplate. History will not be kind to us here in Scotland if we do not fulfil our historic task of building a wall of steel solidarity around our most needy citizens when we were provided with the tools to do so. We are therefore confident that we will not fail in our duty to our citizens and our country and that we can rely on the full support of The Scottish Government and Medical Profession in this endeavour.

1. The Context: Cuts to welfare provision presents us with a public health emergency

On Wednesday 22nd May 2013 The Upper Tribunal sitting as a High Court (1) in judicial review proceedings held that the current assessment regime's procedure for seeking and supplying Further Medical Evidence (FME) actively discriminates against disabled people with Mental Health Problems by placing

[1] http://blacktrianglecampaign.org/2011/09/07/new-labour-the-market-state-and-the-end-of-welfare/

[2] http://blacktrianglecampaign.org/2012/09/14/private-firms-role-in-creation-of-disability-assessment-regime-black-triangles-letter-published-in-the-guardian/

[3] http://disabilitynewsservice.com/2012/11/two-regulations-could-hold-the-key-to-winning-esa-appeals/

them at a substantial disadvantage with the comparator group of people who are not disabled or not 'so' disabled ('disabled in this manner').[4]

The judgment held that the solution must be for DWP-Atos to seek evidence directly from the claimant's GP and others, such as social workers, at the very outset of the assessment process before the patient is summoned for a WCA.

Paul Jenkins CEO of Rethink Mental Illness said[5] that expecting people with severe and enduring mental health problems to gather their own evidence was "like asking someone in a wheelchair to walk to the assessment centre". Rethink point out that this discriminatory process irrefutably places patients' lives at risk. A poll of over 1,000 GPs commissioned by the charity last year found that 20% of patients have felt suicidal due to the WCA.

There has been no government cumulative impact assessment on the impact of welfare reform on disabled people. The consequences of an adverse decision on entitlement to benefits on patients are severe. The mandatory revision period is not time-limited. People are deprived of money to which they are entitled pending the outcome of Tribunal hearings that take up to a year to be scheduled. Legal aid has been cut. Disabled people are being directly discriminated against and cannot receive a fair hearing in terms of ECHR Article 6 and the principle of 'equality of arms'.

Disabled people are being sanctioned and having their benefits withdrawn for failure to comply with Work-Related Activity Group stipulations or compulsory workfare schemes that also present very real risks to health and safety.

Our colleagues, Inclusion Scotland, have referred in abundant detail to the catastrophic effects of the Bedroom Tax on disabled people in a separate submission to the committee which we fully endorse.

On 30th May 2013 Chris Jones, UK Poverty Director at Oxfam when commenting on the fact that 500,000 people in the UK are dependent of food banks[6] told The Guardian that:

"We also think that there are changes to the benefit system coming in which may have unforeseen circumstances, particularly in terms of

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[4] http://blacktrianglecampaign.org/2013/05/28/mm-dm-v-secretary-of-state-for-work-and-pensions-2013-ukut-0260-aac-judgment-mental-health-resistance-network-successful-judicial-review-challenge-of-the-dwp-atos-wca/

[5] http://blacktrianglecampaign.org/2013/05/22/victory-mental-health-resistance-networks-judicial-review-of-the-wca-finally-legal-proof-that-disability-benefits-test-is-unfair-for-people-with-mental-illness/

[6] Walking the Breadline: The scandal of food poverty in 21st-century Britain by Niall Cooper and Sarah Dumpleton, Published 30 May 2013 Publisher Oxfam GB and Church Action on Poverty ISBN 978-1-78077-334-6 available to download at: http://policy-practice.oxfam.org.uk/publications/walking-the-breadline-the-scandal-of-food-poverty-in-21st-century-britain-292978

delaying payments and as that is already shown by the research as being the single greatest problem - we're really concerned that this will make things worse and we're asking the House of Commons committee that oversees the DWP to conduct an inquiry into how the benefit system and its workings are actually impacting on the number of people using foodbanks."[7]

The rise in food banks in the UK has now attracted the attention of the UN. Talking to the Huffington Post, the UN Special Rapporteur on the Right of Food, Mr Olivier de Schutter[8] said:

"It is not OK for governments to clear their conscience by these food banks taking over when it should be their responsibility. It should not become a permanent feature. And yet food banks are increasing, very strikingly so in the last five years."

In our evidence[9] [10]to the Scottish Parliament's Welfare Reform Committee last year we highlighted the knock-on effect of the welfare 'reforms' on NHS Scotland's resources through increased acute admissions to Accident and Emergency Departments, Psychiatric Units, General Hospitals and attendant bed blocking before discharge as a direct result of the adverse consequences of welfare reform.

Also last year, the internationally renowned public health epidemiologist and former BMA president Professor Sir Michael Marmot, author of the 'Fair Society, Healthy Lives' report, told a symposium on social and health inequalities[11] that for every 1 per cent rise in unemployment in Europe there was a 0.8 per cent rise in suicides.

In a speech entitled 'Social Determinants and Health Inequalities: What Can Doctors Do?' Sir Michael, who is also director of the University College London Institute of Health Equity highlighted the impact of economic insecurity on mental health calling it a 'Public health emergency'**.**

Sir Michael said:

"This is a public health emergency and I would say doctors have a very

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[7] http://www.guardian.co.uk/society/video/2013/may/30/food-bank-use-increase-benefit-video

[8] http://www.huffingtonpost.co.uk/2013/02/19/food-poverty-un-special-rapporteur-olivier-de-schutter-banks-austerity_n_2714969.html

[9]http://www.scottish.parliament.uk/S4_Welfare_Reform_Committee/Inquiries/BLACK_TRIANGLE_CAMPAIGN.pdf

[10] Dr Stephen Carty, Black Triangle Campaign, Official Report, Welfare Reform Committee, 1 May 2012 http://www.scottish.parliament.uk/S4_Welfare_Reform_Committee/Reports/wrr-12-01w.pdf

[11] http://blacktrianglecampaign.org/2012/06/27/bma-armlive-europes-unemployment-rate-linked-to-rise-in-suicides-this-is-a-public-health-emergency-and-i-would-say-doctors-have-a-very-important-role-sir-michael-marmot-tells-symposium/

important role. If you look across Europe at unemployment rates a 1 per cent rise in unemployment in a country is associated with a 0.8 per cent rise in suicides … As a result of economic policy, people are killing themselves."

Already vulnerable sick and/or disabled people will be all the more impacted by this crisis.

Academics David Stuckler and Sanjay Basu in their book 'The Body Economic: Why Austerity Kills' [12]state that:

"Austerity is having a devastating effect on health in Europe and North America. The harms we have found include HIV and malaria outbreaks, shortages of essential medicines, lost healthcare access, and an avoidable epidemic of alcohol abuse, depression and suicide, among others.

"Our politicians need to take into account the serious, and in some cases profound, health consequences of economic choices. But so far, Europe's leaders have been in denial of the evidence that austerity is costing lives."

The evidence Stuckler and Basu have used from the UK includes a drop in National Health Service satisfaction rates coinciding with cuts and a jump in the number of families pushed into homelessness since the austerity drive started.

Basu said:

"Ultimately, what we show is that worsening health is not an inevitable consequence of economic recessions; it's a political choice. Austerity is bad for your health. But there is another way."

The cumulative impact upon chronically sick and/or disabled people's health and well-being continues to be catastrophic.

It is within this context that we implore our medical profession and the Scottish Government to unite in taking the practical steps which we will set out in this submission to mitigate and alleviate the enormous suffering being visited upon our sick and/or disabled people here in Scotland on a daily basis through the operation of Westminster's so-called welfare 'reforms'.

2. **The contractual relationship between GPs and DWP-Atos**

[12] The Body Economic: Why Austerity Kills by Sanjay Basu and David Stuckler 21 May 2013, Allen Lane Publishers, ISBN: 9781846147838

We submit that the current contractual arrangement between GPs and DWP-Atos is not fit for purpose.
It is almost impossible for GPs to fully discharge their duty of care to their patients under the current DWP-Atos Work Capability Assessment regime.

For some months now our campaign has been encouraging GPs and patients to avail themselves of ESA Exceptional Circumstances (Substantial Risk) Regulations 29 and 35[13] as a means to protect sick and/or disabled people who are placed at risk of avoidable harm by being inappropriately found 'fit-for-work' or capable of work-related activity and thus placed in the Work Related Activity Group (WRAG).

We have lobbied hard at UK level for the BMA's leadership to publicise these regulations but our efforts have not yet been successful. We have identified a number of issues, some of which may explain any perceived reluctance on the part of the union's leadership to act.

(i)

GPs are in a contractual relationship whereby they are obliged to provide information to the DWP but only when asked to do so. The ESA 113 form utilised is wholly inadequate and gives less than one side of A4 for the GP to state significant diagnoses, investigations and treatment. The position of the Local Medical Committees (local GPs' associations) is that there must be charges for any additional appeal letters. They have a duty to protect their members from being forced to carry out unpaid work and a corresponding increase in GPs' workloads.

(ii)

The position of claimants is that they are being forced into abject poverty on the basis of erroneous judgments as to their fitness for work by the operation of the DWP-Atos Work Capability Assessments. The BMA's membership voted overwhelmingly in June for its leadership to demand that the WCA 'end with immediate effect to be replaced by a rigorous and safe system that does not cause avoidable harm to the weakest and most vulnerable in society'[14].

(iii)

The General Medical Council (GMC) maintains that it has no say in how the WCA operates and is not their regulator, yet it has granted DWP-Atos Assessment Centres 'Approved Medical Status' in full cognisance of the fact that the 'systems and policies' which underpin the WCA's operation have

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[13] http://blacktrianglecampaign.org/2012/11/21/important-black-triangle-dpac-regs-29-35-campaign-failed-your-dwpatos-wca-intend-to-appeal-download-these-documents-for-your-gp/

[14] http://bma.org.uk/news-views-analysis/news/2013/january/mps-voice-benefits-test-concerns

irrefutably been shown to be gravely harmful to tens, perhaps hundreds of thousands of patients. The GMC's own publication 'Good Medical Practice'[15] (which outlines the ethical principles upon which doctors must conduct themselves) [16]states that:

'… a doctor must (overriding duty or principle) take prompt action if he or she feels that patient safety is or may be seriously compromised by inadequate… policies or systems.'

(iv)

ESA Regulations 29 & 35 deal with flagging up a substantial risk of harm to patients if they were to be found 'fit for work' or to have 'limited capability for work' and placed in the Work-Related Activity Group (WRAG). However, only the DWP is aware that these regulations can be applied. The vast majority of GPs remain ignorant of them, at grave cost to their patients and indeed, risk to their very lives.

(v)

The BMA represents the views of all doctors, including decision makers such as DWP Chief Medical Officer Dr. Bill Gunnyeon and includes doctors working for Atos. They are not immune from these duties placed upon doctors.

(vi)

GPs are still required by the DWP to complete 'Fit Notes' and provide Sick Notes. Does this not make a mockery of the BMA's statement that a GP must not be involved in the decision as to whether someone is fit for work?

(vii)

DWP-Atos consistently get it wrong. Additional medical information is rarely requested from the GP at the time of assessment or afterwards. They admit as much in their statement after the death of Mr. Brian McArdle when the DWP said in a statement that:

"A decision on whether someone is well enough to work is taken following a thorough face-to-face assessment, and after consideration of all the supporting medical evidence from the claimant's GP or medical specialist.

This claim is factually untrue. It is not considered. Not all of the supporting medical evidence is either requested or supplied upon request as the High Court recognised - that fact was one of the substantive issues in the case.

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[15] http://www.gmc-uk.org/guidance/good_medical_practice/respond_to_risks.asp
[16] http://www.gmc-uk.org/guidance/ethical_guidance/raising_concerns.asp

"We encourage people to provide as much medical evidence as possible when they apply for ESA. Often, people found fit for work only provide the necessary evidence when they ask for a reconsideration or an appeal."

The judgment held that the responsibility for seeking 'the necessary medical evidence' in these cases must now fall upon DWP-Atos.

In their statement[17] Atos Healthcare said:

"Although we cannot comment on individual cases, our trained doctors, nurses and physio-therapists strictly follow the guidelines given to them by the Government when conducting assessments, which form a single, although important, part of the process."

(viii)

In this maelstrom of conflicting interests between the ethical versus contractual considerations confronting the BMA and the medical profession and those of us as sick and/or disabled people being systematically abused and deprived of our fundamental human rights by the Coalition Government at Westminster and the DWP-Atos regime:

The Black Triangle Campaign asserts and demands that it is imperative that this conundrum be resolved in a manner that reconciles all of the above issues with the most ethical solution being the one that causes the least harm to patients.

(ix)

Evidence must be provided. Risk must be flagged up from the very outset of the process. We advocate that our ESA Regulations 29 and 35 template serve as the mechanism by which this should be achieved:

'The BMA calls on the government to end the WCA with immediate effect, and replace it with a rigorous and safe system that does not cause avoidable harm to the weakest and most vulnerable in society.'

Until such time as the WCA fulfils all these criteria doctors must act now to protect their patients and apply the regulations in all cases of doubt on the balance of probabilities. It is also incumbent upon the medical establishment to take a moral and ethical lead in publicising these regulations and their adoption. Patients have died and are continuing to perish in a state of shameful neglect and abject penury. [18]

This is the indisputable reality of welfare 'reform' in Britain today. According to

[17] http://www.dailyrecord.co.uk/news/scottish-news/atos-killed-my-dad-says-boy-1411100
[18] http://calumslist.org/

the DWP's own figures, in total between January 2011 and November 2011 some 10,600 claims ended and a date of death was recorded within six weeks of the claim end.[19]

3. **Further Medical Information (FME) - The current position is untenable**

(i)

The current contractual arrangement between the DWP and GPs are not fit for purpose and directly discriminates against sick and/or disable people.

(ii)

We submit that no claimant should be sent for a WCA until the DWP has received all the appropriate information needed with which to prevent avoidable harm and manage complex risk.

(iii)

The contractual obligation to provide FME to DWP-Atos within 14 days is simply unachievable in most cases and the failure of the DWP to request it from the GP in the vast majority of cases, or for the GP to fulfil the request within the timescale leads to patients themselves requesting FME usually after they have been told they are fit-for-work and are seeking to appeal.

(iv)

The result has been patients left in limbo facing the fatally flawed DWP-Atos Work Capability Assessment (WCA) without FME as GPs are overwhelmed with increased workloads owing to Westminster's welfare reforms.

(v)

In (rare) cases where evidence is sought by the DWP the GPs response is required to be received by the department within 14 days in order for it to definitely be considered.

(vi)

Where no information is sought or received (the majority of cases) the DWP decision maker will send the claimant for a WCA.

(vii)

This 14 day timescale also applies to further requests for FME.

(viii)

[19] http://statistics.dwp.gov.uk/asd/asd1/adhoc_analysis/2012/incap_decd_recips_0712.pdf

In order to fulfil a request, the practice manager that receives it has to allocate the task - preferably to the GP that knows the patient the best. Electronic and paper records will then have to be obtained.

(ix)

Relevant up-to-date information from hospital specialists may be included at this point but this requires the GP to obtain explicit consent from both the patient and from any hospital (or other) specialist(s) whose opinion may be of material importance in deciding whether to summon the patient for a WCA.

(x)

Having obtained consent from all these parties, the GP is then required to check all the information and exclude any third party information, in keeping the requirements of the Data Protection Act.

(xi)

If the claimant is ill they may not be in a position to grant consent, for example where they are detained under the Mental Health Act or are otherwise seriously ill.

(xii)

If the hospital specialist is on annual or study leave this will hinder the process of obtaining consent.

(xiii)

If the claimant has moved practice recently, the transfer of paper and/or electronic notes is often delayed – sometimes for several months.

(xiv)

From October to December 2011 just 37% of FME requests were returned within the 14 day period. Only 71% of requests were eventually returned overall but it is at the discretion of the decision maker whether or not to admit late returns into consideration.

(xv)

These are lifelong enduring conditions, why is the limit just 14 days? It sets up the patient to fail and is entirely unreasonable.

(xvi)

The number of hours it currently takes an average GP to complete WCA related DWP paperwork amounts to a very significant amount of time that ought to be spent on clinical care.

(xvii)

GPs in some areas have been charging up to £50 - £70 a letter, when ESA benefit amounts to just £71 per week.

(xviii)

GPs are now so inundated with requests for FME from patents that many have been refusing to fulfil their ethical obligation to patients by providing them while blaming the DWP.

We agree that the DWP is to blame but that the profession's response has been neither appropriate nor proportionate and serves to both exacerbate harm while making the profession complicit in disability discrimination.

It is ethically, morally, legally and professionally untenable. The solution is clear.

4. **The BMA and LMC's current position**

On Friday 25th May at this year's British Medical Association's U.K. Local Medical Committees conference the following motion was carried unanimously:

From the Scottish Conference of Local Medical Committees (Motion 70)[20]:

(i) deplores the patient stress and additional GP workload that has resulted from the recent changes to the benefits system

(ii) believes that the Appeals Service, Department of Work and Pensions and other organisations should stop advising patients to ask GPs for letters of support when they are appealing against decisions made by the benefits system, and instead these organisations should seek this information directly from GPs

(iii) calls on the government to fund any medical reports required by a patient for an appeal against a decision made by the Department of Work and Pensions.

Accordingly, in the interim, we submit that until all three matters have been satisfactorily addressed doctors must apply the substantial risk regulations to

[20] bma.org.uk/-/media/Files/PDFs/Events/.../lmcconf2013_agenda_final.pdf

prevent avoidable harm to their patients.

5. **The position of patients at risk**

(i)

The current contractual impasse between General Practice and the DWP is part of the reason for the avoidable harm to that is now occurring owing to GP refusals to provide FME.

(ii)

The major reason for avoidable harm is that the DWP almost never requests information from GPs and this situation has left patients at risk and in Limbo.

(iii)

Patients are being effectively abandoned to a catastrophic fate while nobody in medical authority takes responsibility and all concerned participants in the system abdicate their responsibility for patients' welfare.

6. **The duty of our doctors to act in their patients' best interests must be discharged in full**

(i)

However understandable the LMC and BMA's position appears to be given the unacceptable pressures doctors have been placed under, the jeopardy that patients have now been placed in must not be permitted to endure a moment longer. The risk to patients' health and lives is too great. Our Scottish Government and Doctors must act now.

The GMC's own publication 'Good Medical Practice' states that:

'… a doctor must (overriding duty or principle) take prompt action if he feels that "patient safety is or may be seriously compromised by inadequate… policies or systems.'

(ii)

This precludes the course of action taken by the LMCs in issuing blanket refusals[21] to[22] provide patients with FME and it is, we submit, a contributory factor placing patients' lives at risk.

[21] http://www.glasgow-lmc.co.uk/downloads/benefitletter0313.doc
[22] http://www.glasgow-lmc.co.uk/downloads/benefitsposterA4.pdf

Contrary to what Glasgow LMC asserts the provision of FME or a declaration by the GP in terms of our ESA Substantial Risk Regulations 29 and 35 is emphatically not about GPs policing the benefits system: Their provision is about doctors fully discharging their moral, legal, ethical and professional duties to patients to prevent avoidable harm. The LMCs current position is untenable in every respect.

(iii)

Refusal to provide FME makes GPs complicit in what is *a system of unlawful direct discrimination* against patients - as the High Court has held.

(iv)

The DWP's Chief Medical Officer Bill Gunnyeon *himself* recently told Iain Gray (East Lothian) (Lab) during a meeting of the Scottish Parliament's Welfare Reform Committee[23] that the assessment regime is a major factor in rendering claimants 'unfit' through the ordeal of the WCA process.

A report on this extraordinary admission has now been submitted to the GMC for a full investigation.

The GMC code of practice applies to Dr Gunnyeon as much as it does to any doctor. There is no special immunity granted to any doctor under this code of practice.

(v)

It has been said that doing things repeatedly in the same way and expecting different results is one definition of insanity. Reassessing patients with severe and enduring conditions time and time again is not just pointless and barbaric: It also costs the taxpayer a fortune. In addition to the annual £110 million contract awarded to Atos the bill for Tribunal Service appeals is set to rise to £70 million this year. The system has descended into chaos.

(vi)

There is a fiduciary responsibility to get assessments right the first time. In the words of Dr Greg Wood who recently resigned from Atos[24] after two and a half years calling the assessment regime 'cruel' and 'unethical':

"It's very unfair on the people making claims, they deserve a fair assessment and as a taxpayer I'm pretty cheesed off about the £100m plus that's being sprayed away on this dog's breakfast."

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[23] Welfare Reform Committee 9th Meeting 2013, Session 4 at 735
http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=8151&mode=pdf
[24] http://www.bbc.co.uk/news/uk-22546036

7. **What doctors must do now: Apply ESA Regulations 29 and 35 Substantial Risk Regulations**

GPs must, as a matter of the utmost urgency be provided with the knowledge and ability to flag up substantial risk to their patients at the very outset of the WCA process. Our templates provide a short, simple and efficacious way for GPs to achieve this.

(i)

Many claimants have now been through the WCA several times already and have been awarded zero points only to be awarded 15 or more points at appeal with no objective change in their medical condition.

When this has occurred, in our evidence up to five successive times, then the GP who has witnessed the catastrophic effect on his patients will have no difficulty in making a declaration that it is 'more likely than not' that being put through this corrupt assessment regime, yet again, presents a substantial risk of a deterioration to their patient's physical and/or mental health.

(ii)

Until the current system is entirely revised and replaced with (in the words of the BMA motion demanding that the WCA end with immediate effect):

"… a rigorous and safe system that does not cause avoidable harm to some of the weakest and most vulnerable people in society,"

GPs have an overriding moral, ethical and professional duty to use their clinical judgment and apply ESA Exceptional Circumstances ‘Substantial Risk’ regulations in all cases where there is doubt as to the effect on a patients’ health should they be found to have limited capability for work.

(iii)

We fully accept that a GPs decision as to whether or not to invoke these regulations involves a judgment of complex clinical risk management and it will be entirely up to the GP to exercise their professional discretion.

(vi)

However, we believe that in a very substantial number of cases it will likely be a clear-cut decision owing to the nature of the particular illness(es) and impairment(s) presented by the individual patient in question.

(v)

From the practitioner's point of view, the use of our template has proven to be of supreme assistance in reducing time spent filling out forms, digging out medical records and writing additional letters of support.

(vi)

The templates have proven to be extremely efficacious - in almost every case the costly and stressful need for a Tribunal hearing to take place at all has been avoided as the DWP Decision Makers have re-instated benefits upon receipt of the GPs declaration.

Similarly, they have been received and applied by judges at Tribunal. Indeed, we believe that the declaration has been of assistance in addressing some of the grave concerns that have been expressed by the First-Tier Tribunal President[25] relating to the sharing of information and evidence gathering.

(vi)

If the need for a tribunal could be avoided savings could and must be redirected to remunerate GP practices for the rise in demands for DWP reports, where appropriate.

8. **Conclusion**

Please find below two letters for the consideration of the Scottish Parliament's Welfare Reform Committee and also the Health Committee in advance of their meeting scheduled for the 11th June 2013 on the role of GPs and the DWP-Atos WCA

We believe that the mass up-take and dissemination of the regulations provides the solution to the current disastrous and dangerous situation as described to the Scottish Parliament's Welfare Reform Committee below.

We place ourselves at the disposal of the The Scottish Government to provide any further information and assistance as may be required.

We urge that our request be acted upon as a matter of the utmost urgency, ever mindful as we are of the fact of the terrible avoidable suffering that continues to occur on a daily basis to Scots and the wider population of these islands alike.

The Scottish Government and medical profession must act now without any further delay or prevarication. Not to do so will make us complicit in avoidable harm and suffering to some of the weakest and most vulnerable members of our society.

[25] http://www.official-documents.gov.uk/document/other/9780108511103/9780108511103.pdf

The first letter has been signed by some of the country's most influential doctors at the coalface of General Practice and public health, including specialists in various fields.

The supporting letter has been signed by leading campaigning organisations, six general secretaries representing millions of workers in many of Britain's major trade unions and by leaders of some of Britain's medically-allied professional associations.

We hereby appeal to the committees to call upon The Scottish Government to intervene do all it can to assist us in ensuring that this vital information regarding the existence and appropriate application of ESA Regulations 29 and 35 is made available to every GP in Scotland and that they are encouraged to apply them wherever appropriate in defence of all our sick and/or disabled people who are unjustly being forced to suffer under the current Westminster regime.

The sick and/or disabled people of Scotland call upon all our people to unite in our defence and for our Scottish Government and medical profession to act now on these most reasonable, justified and timely recommendations. It is our sincere hope that this initiative be taken forward not just here first in Scotland but throughout all four corners of the British Isles quickly, wherever our sick and/or disabled sisters and brothers reside.

IMPORTANT NOTE: *The signatories of the following two letters do not necessarily endorse all of the points in the above submission and the two letters should be read and taken on their own merits.*

DOCTORS' LETTER TO THE BMA LEADERSHIP

On 24th June last year at the BMA's Annual Representative Meeting (ARM) doctors from every discipline voted overwhelmingly to demand that the DWP-Atos Work Capability Assessment end 'with immediate effect'.

Through their Medical Adviser, the patient-led Black Triangle disability rights campaign originated the motion which became BMA national policy. Part (iii) of the ARM motion called upon the BMA to engage with disability groups to change public policy. To date, the only "official" communication their campaign has received has been a short statement via Facebook.

As doctors on the front line witnessing daily the enormous avoidable suffering of many of our most vulnerable patients caught up in this Kafkaesque system of 'disability assessment', we find this failure to meaningfully engage unacceptable. More critically, we fully share in the dismay with which sick and/or disabled people have greeted the failure of the BMA's leadership to give any meaningful effect to the unanimous wishes of its members: that this dreadful assessment regime should be immediately terminated.

The GMC's own publication 'Good Medical Practice' states that:

'… a doctor must (overriding duty or principle) take prompt action if he feels that "patient safety is or may be seriously compromised by inadequate… policies or systems.'

ESA Regulations 29 & 35 deal with flagging up a substantial risk of harm to patients if they were to be found 'fit for work' or to have 'limited capability for work' and placed in the Work-Related Activity Group (WRAG) where:

'the claimant suffers from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work.'

Regrettably, it remains the case that only DWP and ATOS staff are aware of these regulations whilst GPs remain ignorant of their existence and those performing the WCA and DWP Decision Makers continue to make complex risk assessments based on grossly inadequate patient information.

Until the current system is entirely revised, there remains no safety protocol for the assessment of risk and the avoidance of harm to patients. There are no formal reporting mechanisms for GPs to report significant adverse events such as self-harm and suicides which many of us have witnessed.

Black Triangle have led the way in campaigning for the uptake of Regulations 29 and 35 and their legal Counsel has advised that they should be applied in every case where harm would be more likely than not to occur as a result of erroneous DWP decisions regarding patients' fitness for work.

We are also fully aware of the fact that numerous conflicts of interest exist between the ethical versus contractual duties placed upon GPs arising out of the DWP-Atos contract. In balancing a doctor's duty of care to provide supporting information for Tribunal appeals and contractual conflicts with the DWP over the issue of fees and workloads, we submit that the only ethical solution must be the one that causes the least harm to patients.

Black Triangle's simple campaign for the appropriate application of these regulations utilising one side of A4 has proved highly efficacious in this respect. It has saved General Practitioners a substantial amount of time and expense and has meant that unnecessary, costly and stressful tribunal appeal hearings have been rightly avoided.

We now call upon the BMA leadership to urgently publicise and make known to every GP in the country the existence and lawful application of these regulations without any further delay in order to prevent further avoidable harm to our patients. Any failure to do so would in our opinion amount to

negligence.

Dr Stephen M. Carty, GP and Medical Advisor, Black Triangle Campaign.
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Dr Roy Robertson, GP Muirhouse, Honorary Clinical Reader
Dr Ian McKay, GP Rose Garden Medical Practice, Leith
Dr Oliver Aldridge, Edinburgh
Dr Guy Johnson, GP Sighthill Health Centre, Edinburgh
Dr Helga Rhein GP, Sighthill Health Centre, Edinburgh
Dr Elizabeth Morton, GP Challenging Behaviour Practice, Edinburgh
Dr Kate Burton, Public Health Practitioner
Dr Margaret Craig, GP, Allander Surgery, Possilpark, Glasgow
Dr Nick Treadgold, GP, Pollok Health Centre, Glasgow
Dr Christine Grieve, GP Drumchapel Health Centre Glasgow
Dr Chris Johnstone, GP Paisley
Dr Donald MacIntyre Consultant Psychiatrist Edinburgh
Dr Sarah Houston GP
Dr Ros Wight GP
Dr Robert Young, Glasgow
Dr Nora Murray-Cavanagh GP Medical Education Fellow
Dr David Nicholl, Consultant Neurologist, Birmingham
Dr Jonathon Tomlinson, GP The Lawson Practice N1 5HZ
Dr Anita Roy, GP, Yorkshire
Dr George Farrelly, GP, London
Dr Peter English, Consultant, London
Dr Robert Cheeseman, Ophthalmology Registrar, Liverpool
Dr Ray Noble, Medical Ethicist, UCL Institute for Women’s Health
Dr Margaret McCartney, GP , Glasgow

SUPPORTING LETTER FROM CIVIL SOCIETY AND BRITAINS TRADE UNIONS

As trade unionists, organisations and campaigners from across civil society who collectively represent millions of citizens we write in support of the letter by doctors in the British Medical Association about work capability assessments.

We firmly believe the current assessment régime is unfit for purpose and poses a real risk to the health and lives of disabled people and those with life threatening conditions. This is because the government's regulations, which ask whether substantial risk or harm would be caused if the claimants are found 'fit for work' or with limited capacity for work, are not being applied consistently.

Information obtained through freedom of information requests shows that between January and August 2011, 1,100 claimants died after they were put

in the work-related activity group - the equivalent of 30 deaths a week.

We are hopeful for a successful outcome to discussions between disabled people's organisations and the BMA, following its conference decision last year to call for the current assessment régime to be scrapped.

We send our solidarity to these groups and the BMA and hope you will join us in a united campaign to bring an end to the disgraceful treatment of ill and disabled people.

John McArdle, David Churchley and Dr. Stephen M. Carty Black Triangle Campaign
Linda Burnip Disabled People Against Cuts DPAC
Mark Serwotka General Secretary Public and Commercial Services Union PCS
Len McCluskey General Secretary Unite the Union
Christine Blower, General Secretary National Union of Teachers NUT
Bob Monks, General Secretary of United Road Transport Union URTU
Sally Hunt, General Secretary of University and College Union UCU
Michelle Stanistreet, General Secretary National Union of Journalists
Phil Gray, Chief Executive, Chartered Society of Physiotherapy
Richard Evans, Chief Executive Officer Society of Radiographers
Bill Scott, Manager, Inclusion Scotland
Gordon McFadden, Policy Director, Limbcare
Dr Simon Duffy, The Centre for Welfare Reform
Dan Moreton, Social Work Action Network (SWAN) and SWAN (London)
Mary Olaniyi Coordinator/Family Adviser Lewisham Mencap
John McDonnell MP (Lab, Hayes and Harlington)
Deborah King Co-founder Disability Politics UK
Paul Smith - Founder Atos Victims Group
John Burgess Branch Secretary Barnet UNISON
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