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1. Introduction

Apologies for failing to produce a September issue of the newsletter, and for the tardiness of this October issue. As you know, my essential priority is to respond to enquiries, and they have been exceptionally heavy at the start of the new academic year. I will try to do better.

I’m devoting some of this issue to the current controversy around Dame Carol Black’s 2008 *tour-de-force* recommendation to change the nature of the medical certificate issued by GP’s and other medical practitioners to people who become ill; and for reasons associated with that illness are deemed by their medical practitioner to be unfit for work.

Colloquially known as the “sick note” (some of you may remember a character in a TV soap opera carried that nickname because of his regular absences from work) Dame Carol’s one good idea was to change the medical certificate to include a section where a medical practitioner could indicate that someone who was ill may be able to undertake some elements of their work by recommending that adjustments be made to their workplace or their job. Dame Carol herself called this new-style certificate the ‘fit note’, and was Recommendation 6 in her ‘Working for a Healthier Tomorrow’ report. That recommendation was eagerly snapped-up and implemented by the then Brown government as a part of its obsession for getting people who are ill back to work at, seemingly, any cost to themselves and with little apparent regard for their state of health.

Black’s recommendation called for the new fit note to be electronic to improve communications between employers, employees and GPs – electronic media being a particular fetish of policymakers and others in relation to health issues. Sadly, despite taking over two years to plan the implementation of a paper “fit note” and write

appropriate guidance for workers, medical practitioners and employers, all has not gone well with this wonderful new approach. To continue the soap opera analogy, "Confused? You will be."

2. Fit notes – unfit for purpose?

a) GPs question effectiveness of fit note for return to work

GPs remain sceptical about the effectiveness of the fit note, a major poll of family doctors by insurer Legal & General reported in Occupational Health magazine in July has concluded. More than a year after its launch, half of the more than 1,000 GPs surveyed said that the fit note had not enhanced their ability to help people keep their job during an illness. However, a sizeable minority (41%) disagreed.

On the role of GPs in helping people to keep their jobs during an illness, the doctors were also fairly evenly split, with 47% disagreeing that the new system gave them a clearer role, against 46% who agreed and 7% who did not know.

The effectiveness of the fit note is likely to be a key element of the review into workplace absence launched by the Government in February, which is being led by national director for work and health Dame Carol Black and David Frost, director-general of the British Chambers of Commerce, and is expected to report in November.

<http://www.dwp.gov.uk/newsroom/press-releases/2011/feb-2011/dwp022-11.shtml>

One senior executive from Legal & General made it clear that there is still some way to go in helping people to get the right support in place at work when they are ill. Experience suggests that many employers lack the specialist expertise to interpret the implications of a fit note for an employee's return to work.

Legal & General's consulting medical officer who is a practicing GP is reported to have commented that "The GP statement is advisory only and if not accepted by the employer reverts back to a sick note. This has led to ambiguity and confusion. It has highlighted the need for closer cooperation between the medical profession and employers. The availability of appropriate support for employers will significantly enhance this evolving process."

They called for employers, doctors and employees to work together to make sure that tailored, individual support is delivered quickly.

b) Fit notes causing headaches for employers

One of the main findings of the latest XpertHR survey on the fit note system is that employers have little confidence in the fit note and do not feel that GPs effectively communicate what needs to be done in order for employees to return to work after illness.

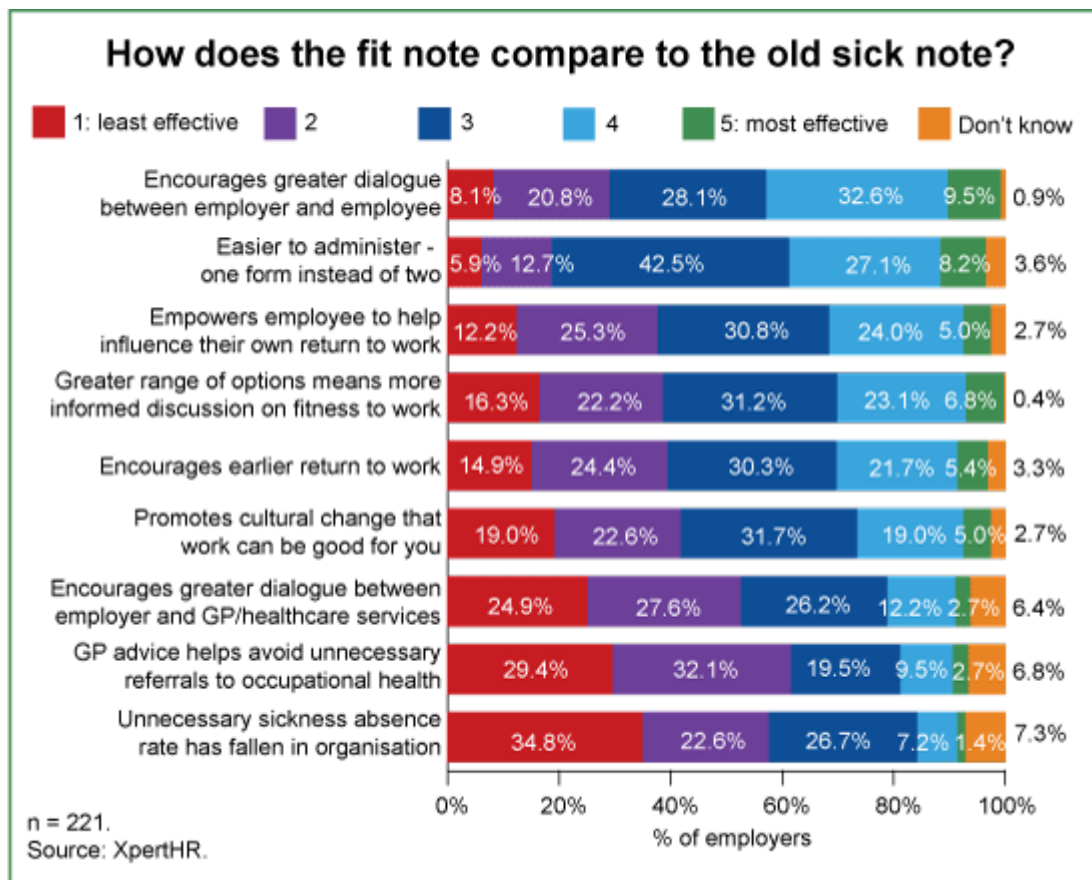
Over three-quarters of respondents (77.7%) said that HR was responsible for dealing with fit notes, but a further 62.2% said responsibility also lies with line managers, and 19.7% said it lies with occupational health, a situation that can only lead to confusion.

Fit notes were introduced in April 2010 and replaced the old sick note system, under which GPs advised on whether a patient should or should not work. Under the fit note system, doctors can place an employee in a category that states they "may be fit for work taking account of the following advice".

Another element of fit notes is a section in which a GP can provide additional comments on an employee's condition where they may be fit for work. Despite this being a valuable tool for employers, almost one-third of respondents (31.7%) said that section is left blank. A further 44.4% said the section is completed "infrequently".

The survey also found that almost half of respondents said it is either quite difficult or very difficult to interpret GPs' suggestions for employees who may be fit for work.

For more information, <http://www.xperthr.co.uk/article/109928/.aspx> . You'll need to register and log-in.



c) The view from an Occupational Physician.

This advice was recently given by an occupational health physician in response to three questions from the "wellbeing" manager of a UK university. This whole area really is uncharted waters – his opening statement refers to advice given by an employment law barrister.....for goodness sake!

My understanding is as follows (based on my interpretation of advice on these specific points from an employment law barrister specialising in occupational health)

1) The purpose of a Statement of Fitness for Work?

The only legal standing of a 'Fit note' is for the purposes of Statutory Sick Pay and Social Security benefits.

It has strong advisory value to the employer on fitness for work but is not an absolute statement of unfitness.

The advice on potential adjustments (under '...may be fit for work...') is advisory, not absolute and is addressed to the employee only, not the employer. There is plenty of guidance on this subject matter on Department of Work and Pensions website, they have leaflets you can refer to.

2) *Guidance on whose advice upon which an employer may seek to rely with specific reference to any distinction between statements/recommendations by an individual's General Practitioner and Occupational Health?*

Before the introduction of the Equality Act it was generally considered reasonable for an employer to prefer the advice of an OH Physician over that of a GP (in relation to fitness for work) – provided that the OHP's advice was not obviously perverse. The Equality Act (EA), however requires that employment decisions (on disability or any other protected characteristic) are a 'reasonable means of achieving a legitimate aim'. A consequence of this has been that employers should not rely on any one source of information and ignore other sources. Instead they should consider all the information available and reach a reasoned (and, therefore reasonable) conclusion after critically assessing all opinions. Interpretation by an OH professional may be of considerable value.*

(This OH physician was not aware of any case law relating to contrary opinions between an OH Advisor (Nurse) and a GP.)*

3) *In cases where there may be conflicting advice whose advice takes primacy?*

For the reasons above no one source now takes primacy. If management feel that the case is evenly balanced, however they may wish to ask for more information from the OH professional or GP or may ask for advice from another OH Physician – perhaps backed by reports from any clinical specialists involved.

Some conclusions

So what kind of mess is this? Has the large amount of money spent on Dame Carol, her investigations and recommendations resulted in any real improvement. So far, it seems that:

- GP's are split and many are unenthusiastic;
- Employers don't like it either;
- Workers are confused when their GP makes recommendations their employer refuses to accept;
- Some GP's are stepping seriously out of line by making recommendations about the way employers run their business and manage their staff – Dame Carol herself now tells the story of the GP whose adjustment recommendation to an employer was to sack the bullying supervisor whose behaviour had caused his patient's stress-related illness in the first place, so perhaps she's catching-up with the real world at last, and
- Occupational health physicians are seeking legal opinion, which doesn't come cheap, and which seems little more than a pointless waste of money.

None of this appears to have made any real progress towards resolving the conflict that often arises between what a patient's GP or consultant says, and the advice given by the employer's occupational health department. UCU H&S advice is often asked about this; can an occupational health advisor over-ride the opinion and advice of the GP or consultant who have a much deeper knowledge of their patient, their history and their condition. Recommendations to reduce that conflict would have been really beneficial by helping to reduce additional stress on sick workers.

Now the Dark Dame and her employer-focussed partner are reviewing all this, spending more of our money, and will presumably come up with even more recommendations soon. We await that outcome with interest, if only to see what extra costs they will incur for workers. <http://www.dwp.gov.uk/policy/welfare-reform/sickness-absence-review/>

Meanwhile, UCU health and safety advice remains sceptical that this fiddling about at the margins will have any real benefit to those injured or made ill by their work, other than to force sick workers back into the workplace, often to find that the conditions that caused their illness haven't changed. Black studiously refused to consider this aspect of ill-health seriously when conducting her original investigation – instead her focus was on the role of the employers and workplace in improving and maintaining the general health of workers; replacing chips with salad in the few remaining staff canteens, and encouraging lunchtime yoga and jogging. Those ideas appear to have been eagerly taken on board by employers under the ubiquitous heading of “wellbeing”, rather than addressing some of the more serious work-related practices and conditions that cause injury, illness and distress for staff and for which the law imposes legal duties on employers to control and prevent.

Her report has little to say about employer practices that create injury and ill-health – I'm sure she believes that employers don't do such things. We know different, as they say. Meanwhile, the constant battle to get employers generally to behave with a degree of reasonableness, to treat with UCU safety reps and local officers seriously and commit themselves to working with us to overcome the problems, continues.

3. Hazards conference 2011 report

15 UCU members came to Hazards this year. Apart from our 4 sponsored delegates, we had 4 activists who came independently, and 7 workshop facilitators and speakers.

Hazards 2011 theme was the need to develop our workplace organisation to meet the challenges of the reduced HSE inspection and enforcement regime. Workshops focussed on improving our performance in conducting inspections, improving employers risk assessments, recruiting members and giving reps the confidence that comes from knowing their functions are supported by the SRSC Regulations. We also ran workshops on dealing with specific issues like bullying, sickness absence, musculo-skeletal injury, cancer, mental health, excessive workloads and violence.

Conference opened on the Friday evening with an update on FACK, followed by a brief historical review of “Where the Hazards Conference and Campaign came from” and a discussion around the need to re-awaken the enthusiasm that helped reps create self-organised hazards groups and networks following the introduction of the Safety Reps Regulations in the mid-1970's.

UCU member, rep and activist Graham Petersen, one of those original activists in the Hazards movement was awarded a Campaign silver badge. The ‘Alan’ was awarded to Simon Pickvance of the Sheffield Occupational Health Advisory Service, for his work in educating GP's and health professionals on how work can damage health, and his almost 40 year involvement in the Hazards movement.

Speakers at the opening plenary were Sanjiv Pandita from the Asia Monitor Resource Centre; Hugh Robertson, TUC Senior Policy Officer and employee rep on the HSE board; and Simon Hester from Prospect. Keynote meetings focussed on the effects of cuts to HSE funding and the increasing amount of political interference in HSE and local authority work, the move away from pro-active enforcement, the designation of many workplaces as “low risk”, and the refocusing on public and general health issues rather

than targeting the real work-related causes of illness, especially stress and related factors.

Sunday meetings discussed suggestions and ideas about improving workplace organisation that could be put to Branches, while the final plenary session focussed on the need to organise the workplace fight back, and promote the wider campaign against a government that is determined to continue to undermine the health, safety and welfare of UK workers, putting us all at risk.

4. Health & wellbeing at work: employees & employers surveys.

a) Employees: The results of a survey published by the Department of Work & Pensions in August follows-up from the Government's response to Dame Carol Black's recommendations. The key aim of the survey was to provide baseline data so that progress on health and well-being at work could be measured and monitored over time.

This survey has provided evidence of activity across organisations of all sizes. There are some clear patterns in the data that show that provision is better in large organisations, especially those in the public sector, and those with a trade union presence. Given the "Public Sector as an Exemplar Initiative", (see Item 4 below for more information about this) the report says that these are positive findings.

<http://research.dwp.gov.uk/asd/asd5/rports2011-2012/rrep751.pdf>

Only 38% of respondents surveyed reported having access to occupational health services. This was more common among those working in the public sector and larger organisations.

The survey provided evidence that some steps were being taken to manage stress in the workplace, both at an organisation-wide level and at the individual level. 32% reported that stress management support or advice was provided to employees and/or managers within their organisation. At the level of individual experience, 34 per cent with a line manager or supervisor agreed that this person had talked to them about avoiding stress at work, and 45 per cent of line managers themselves reported that they had received information, help or advice on managing stress among the people they supervised.

Again, large employers, public sector organisations and those with a trade union presence performed well, with interventions regarding stress management more prevalent in these workplaces.

Almost half (48%) of respondents reported taking some sick leave in the previous 12 months and the average number of days' sickness absence was 4.5, while 42% reported they had gone to work in the previous 12 months when, in their opinion, they should have taken sick leave.

Only 10% of respondents said they were not aware of their employer's sick pay policy. 65% reported that sick pay was paid at their normal rate of pay during their first seven days of absence, mostly from larger employers. **UCU says:** Is anyone else thinking that the first seven days at full pay could be a target for employers to discourage short-term absence? That would fit nicely with the "Bradford Factor" approach. First they came for our pensions; then they came for our sick pay.....

b) Employers: Work stresses cause rise in staff absence

One in three UK businesses had experienced increased staff absence because of workplace stress in the past 12 months, according to a poll of 100 senior HR and finance

executives conducted by employee wellbeing firm Vielife and London South Bank University, reported in Occupational Health Magazine (28 July 2011)

<http://www.personneltoday.com/articles/2011/07/28/57825/work-stresses-cause-rise-in-staff-absence.html>

Nearly two-thirds (65%) of respondents indicated that long working hours and heavy workloads were their biggest cause of workplace health concern.

The study found that a majority of UK workplaces still suffered from numerous "unhealthy workplace practices", including a prevalence of unhealthy eating and junk food, drinking to excess, caffeine dependence, smoking and lack of exercise.

In one-third of organisations, staff spent lunchtime on their computers checking social networking sites rather than getting a real break.

Three in 10 of those polled still saw health benefits as an employee "perk" rather than a necessary business investment.

UCU says: Still shifting the focus from managerial failings towards an individual's weakness for pie, chips, coffee, booze and fags. At least I've given up the fags. The culture of "Blame the victim" continues to be alive and well.

And just to confirm that the problem has not, and is not going away, a recently report by CPID and Simply Health one of the key providers (and NHS predators) in the private health sector says that the impact of organisational change, increasing job insecurity and increased workloads on the stress levels of UK workers is now the number one cause of long-term employee absence.

5. Public sector as an exemplar employer

This is something promoted by the DWP under the Health, Work and Wellbeing programme. It claims the aim of this initiative is to improve and promote the public sector as an exemplar employer; which is a bit strange, as UCU health & safety has always understood this to have been one of the key principles of public sector employment – the state was and should be "a model employer". (Whoever distorted that sweet little phrase into the dreadful management-speak "exemplar"?)

Central government, local government and the National Health Service are three of the largest employers in the country with some of the highest levels of sickness absence and work-related stress. Reversing these would make a significant impact on the overall profile of health and well-being and showcase the Government as a more credible advocate of good practice to other employers and stakeholders.

In particular, the public sector should lead by example on:

- promotion of health and well-being
- prevention of illness
- early intervention for those who develop a health condition
- early rehabilitation of those off work.

Sounds good to me; I look forward to its arrival. I reckon that all UCU reps will also welcome our publicly funded employers adopting working practices and policies that improve the conditions under which our members work; just a shame the government and employers seem to be pursuing policies that seriously undermine decent and risk-free working conditions, confidence in the future and a "freedom from fear" environment.

<http://www.dwp.gov.uk/health-work-and-well-being/our-work/public-sector-exemplar/> for more information on this “initiative”.

6. HSE microsite focuses on workplace facilities

The HSE’s Health and Safety Made Simple microsite has highlighted the need for employers to provide adequate workplace facilities. <http://www.hse.gov.uk/simple-health-safety/workplace.htm>

Employers must provide welfare facilities such as toilets and hand basins, with soap and towels or a hand-dryer; drinking water; a place to store clothing and to allow wet outdoor clothes to dry, (and somewhere to change if special clothing is worn for work); and somewhere to rest and eat meals, make a hot drink and warm-up food.

To have a healthy working environment, the site reminds employers that they must also make sure there is:

- good ventilation – a supply of fresh, clean air drawn from outside or a ventilation system;
- a reasonable working temperature (usually at least 16°C, or 13°C for strenuous work, unless other laws require lower temperatures);
- lighting suitable for the work being carried out;
- enough room, space and suitable workstations and seating; and
- a clean workplace with appropriate waste containers.

UCU health & safety advice has been told of a number of colleges and universities where there are no rest facilities in new build premises, or facilities to make a hot drink or warm-up food brought from home. Staff have been told to go to the canteen or refectory to get a hot drink. The absence of anywhere to get away from students when eating lunch is an increasing problem. UCU advice is that staff should have somewhere quiet to go, but as there is no statutory requirement, then probably only the better employers will be concerned to provide such a facility. If you are trying to argue for some improvement, base your arguments on the duty on employers to ensure that the workplace is “adequate as regards facilities and arrangements for (employees) welfare at work.” (HASAWA Section 2(2)(e)) The legal standards are incredibly flexible and easily evaded, based as they are on the Factories Acts going back to the 1930’s and beyond. We should press for suitable facilities to be provided for staff that don’t mean going to the general provision for students like refectories and canteens.

7. The HSE “Classroom risk assessment”

The appallingly ‘dumbed-down’ classroom risk assessment we told you about earlier this year has been considerably amended, and re-named “Classroom checklist”. The amended document can be downloaded from the link at the bottom of this page on the HSE website <http://www.hse.gov.uk/risk/classroom-checklist.htm> Do take care to ensure your employer isn’t using this as their one-and-only risk assessment guide – if they were, it would not be ‘suitable and sufficient’.

8. University claims to save £75,000 a year by tackling stress

The Institution of Occupational Safety and Health (IOSH) is urging other organisations to realise the cost benefits of keeping staff healthy and happy, after Leeds Metropolitan University reportedly saved £75,000 a year by tackling work-related stress issues.

IOSH has called on companies to reap “not only the moral rewards of a healthier, safer workforce, but also the financial bonuses it brings”. It believes that Leeds Metropolitan University is a prime example of the positive impact a good wellbeing programme can have on staff and student productivity, health and morale.

The scheme was introduced over two years ago by the then newly-appointed Head of Safety, Health and Wellbeing in reaction to bullying and harassment issues that were exposed on the local BBC TV news. Since that expose, there have been significant managerial changes at Leeds Met. Based around a self-help website for staff and students, which attracted 6,000 hits in its first three months, Leeds Met claims the scheme now saves £75,000. Stress-related absence is down by 16% and the accident incident rate is now at just 64.7 per 100,000 employees, compared to the sector average of 325. UCU health & safety isn't quite sure what links between the reduction in stress-related absence and the reduction in “accident rate” have been clearly established. Are they just co-incidental?

One report says that “The university also held a staff development event which supported the scheme, with over 60 events including exercise classes, health assessments, stress management techniques, and self-help sessions.” These are all, as our readers know only too well, secondary interventions.

So while there may be obvious benefits for UCU members at Leeds Met, if the staff development event indicates the main focus, there is still work to do to ensure that the employer adopts primary interventions – i.e. starts to change the practices that cause our members stress in the first place; this initiative still focuses too much on secondary and tertiary interventions – coping with the effects after the event. Let's hope some primary action isn't too far away; that is, after all, what Regulation 4 of the Management Regulations requires. That applies to all employers.

Can you believe there is an “Employee Wellness Magazine”. Is “Wellness” a word that is part of the English language I ask myself? Perhaps one of our English language expert members could advise. <http://www.employeehealthmagazine.com/> will let you check the merit of this publication; it includes an interview with John Hamilton, the Leeds Met H&S person. Can I suggest you begin by following the link to the related article “How to Reduce Stress Levels and Increase Productivity in the Workplace” to get a real flavour of their focus. This article is by the director of an organisation named “The Tonic”, described as “a corporate wellness company specialising in helping people achieve optimum energy and performance, every day.”

9. RIDDOR reporting changes

Following the recent “consultation” on changing RIDDOR reporting, the requirement to report any absence due to workplace injury has now moved from ‘more that 3 days’ to ‘more than 7 days’. This strikes me as a good example of how consultation by Government works. Lord Young said the period of absence before a RIDDOR report was made should be increased from over 3 days to over 7 days, but it was clear that, despite the results of the consultation, that change would be made, and that's what happened. They intended to do it all along. The changes will come into effect in 2012 – we'll let you know.

You can no longer make a telephone report for anything other than a workplace death. The HSE will accept reports by e-mail, on-line form and letter for everything else. You may remember that, I circulated information about contacting HSE RIDDOR reporting

centre to find out if your, or a member's accident had been reported. I'm still trying to find out if that is still possible, and if so, what you need to do.

If I'm successful I'll let you all know in the next newsletter.

10. ConDems and 'protected conversations' – a bullying opportunity?

Deputy PM Clegg has pledged the introductions of 'protected conversations' as part of Government's so-called 'red-tape reform', where the employer believes an employee is 'under performing' or is defined as 'unproductive'. He claims that employers will be able to challenge unproductive staff or advise them to consider retirement without worrying about the threat of legal action.

These protected conversations will not be able to be used by applicants in tribunal hearings.

Clegg claims that "Employers tell us they're afraid to have frank discussions with staff for fear of those exchanges being used against them unfairly, should a dispute end up at tribunal. We want to give them the confidence to be open about performance, about retirement with their employees."

The move was welcomed by the CBI, which has long called for the introduction of protected conversations as a means of resolving disputes informally.

Clegg said that the Government would introduce a major package of employment law including reform to the tribunal system this autumn.

More radically, a venture capitalist, Adrian Beecroft, in a report leaked to the Daily Telegraph suggests the abolition of the concept of unfair dismissal altogether and the introduction of "compensated, no-fault dismissals".

According to the newspaper, the report reads: "The rules both make it difficult to prove that someone deserves to be dismissed, and demand a process for doing so which is so lengthy and complex that it is hard to implement. This makes it too easy for employees to claim they have been unfairly treated and to gain significant compensation."

<http://www.telegraph.co.uk/finance/jobs/8849420/Give-firms-freedom-to-sack-unproductive-workers-leaked-Downing-Street-report-advises.html>

These suggestions were backed by the British Chambers of Commerce (BCC), which said that the fear of tribunals was stopping employers from taking on staff and preventing businesses from growing. The BCC welcomed Beecroft's report and demanded that the Government bring forward Adrian Beecroft's recommendation of compensated, no-fault dismissal without delay, at the autumn statement."

Last week, reports suggested that the Beecroft review might also propose scaling back other employee rights such as maternity and paternity leave and the right to request flexible working.

The Government is currently considering the findings of the Beecroft report, but the indication is that it was "unlikely it would go further" on unfair dismissal than the plans outlined by Clegg.

So; a potential bully's charter to be used to drive out anyone the employer wants to be rid of. More pressure on workers who are sick – many as a result of stress-related factors imposed on them at work. It is reminiscent of those advocates of bullying managerial styles who hide behind definitions like "robust" or "challenging."

11. Final reminder; UCU Stress and bullying week

Don't forget to do something next week, if you haven't already got plans. If you miss next week, you can always do something in the following weeks. Both Aberdeen and Stirling Universities have plans to follow-up the formal week with activities, for example. This is intended as a pump priming activity – so we expect there to be some significant collective bargaining initiatives to improve working conditions following-on from anti-stress and bullying week.

UCU National 'Anti-stress and Bullying Week', 7-13 November: NEW posters and leaflets available - download materials here: <http://www.ucu.org.uk/index.cfm?articleid=5799>

Contact UCU Health & Safety Advice

UCU Health & Safety Advice is provided by the Greater Manchester Hazards Centre, and is available for 3 days each week during extended term times.

**The contact person is John Bamford: (e) jbamford@ucu.org.uk
(t) 0161 636 7558**

**Visit the [UCU Health and Safety web page:](http://www.ucu.org.uk/index.cfm?articleid=2132)
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