

THE ATTACHED TRANSCRIPT WAS TYPED FROM A RECORDING AND NOT COPIED FROM AN ORIGINAL SCRIPT. BECAUSE OF THE RISK OF MISHEARING AND THE DIFFICULTY IN SOME CASES OF IDENTIFYING INDIVIDUAL SPEAKERS, THE BBC CANNOT VOUCH FOR ITS COMPLETE ACCURACY.

TX: 16.05.03 – PEOPLE WITH MENTAL ILLNESS ARE NOT GETTING ENOUGH PROTECTION FROM DISCRIMINATION SAYS THE DISABILITY RIGHTS COMMISSION

PRESENTER: DIANA MADILL

MADILL

The Disability Discrimination Act is meant to protect all disabled people but if you have a mental illness, rather than a physical disability, it's much harder for you to win a discrimination case against your employer. So says the latest report from the Disability Rights Commission. Well why? Because the law requires your condition to be clinically well recognised, in other words, it needs to be given a label - like schizophrenia for example. Something which doesn't apply if you have a physical disability. And the law also requires that you should have been disabled for a continual period of 12 months, which is not often the case with mental illness, like depression. So the Disability Rights Commission wants the law to be changed but employers' organisations aren't that keen. Susan Anderson is from the CBI, Bert Massie is the chair of the DRC and I asked him how many people have fallen foul of these loopholes.

MASSIE

We don't have the figure of the numbers because the people who come to the DRC are the people who are experiencing a problem and know about the DRC. And of course one of the effects of some mental illnesses is that people do lose awareness and motivation and may not even be able to contact the DRC. What we do have is real people who have come to us and we've had to try and fight their cases through tribunals. And when we wrote our report it wasn't a report written in the comfort of an ivory tower, it was a report which is drawn from the experiences of a quarter of a million who've been in touch with our helpline and we've analysed where the pressures were and in our recommendations to change the law we've concentrated on where change will help people and we also believe will help employers.

MADILL

Do you think, Susan Anderson, that the CBI should go along with the changes that are being proposed here?

ANDERSON

Well I think we do have problems with the proposals that the DRC has made and that Bert has identified. I think we do accept it's a very difficult area but I think we've got a body of case law and guidance now that has helped clarify the situation. So, for example, if we look at this issue around clinically well recognised illness I think we have to recognise that a mental illness or a mental impairment has to be acknowledged by some sort of respected body of medical opinion - whether that's the WHO or psychiatric association or whatever.

MADILL

And you feel a name has to be able to be put on the particular illness that the person has?

ANDERSON

Well let's give some examples, let's look at some of the problem areas. I mean obviously when we're talking about mental impairment schizophrenia isn't a problem but when we're looking at issues like stress or depression or post traumatic stress for example we will find that there will be individuals, for example, who've been depressed for a certain period, perhaps six or seven months, but then they've gone on to find another job. They've had a period of time off work perhaps with one employer and then they've left and they've found another job, perfectly acceptable, with another employer. So I think we have got to consider those difficult areas.

MASSIE

Can I just come in with a real example on this because this just doesn't - it's not quite that comfortable in the real world unfortunately. Take the case which we've put in our report of Miss Gittens [phon.], a woman who worked in a university, had depression over time, GP reports, panic attacks etc. but because they couldn't find a medical label she didn't qualify for the protection under the Act.

MADILL

But how do you classify a mental illness when it's stress, anybody could say that they're stressed couldn't they?

MASSIE

Well how do you classify back pain? We'd give you an analogy and there are people with very profound back pain, which is totally debilitating, and others where it's a slight twinge which happens intercurrently. And certain people with back pain because of the extent of their employment and some wouldn't.

MADILL

Can you put those on a parallel Susan Anderson?

ANDERSON

Well [indistinct words], obviously if a case comes to tribunal there has got to be a sense that this is a condition that is respectable and that's why the present definitions talk about clinically well recognised, it doesn't give a list, although there is a list in the WHO's classification. But I think we have to have some bar really over which people have got to be able to show that what they are suffering from is recognised.

MADILL

One final question Bert Massie - where do you go from here, if the CBI isn't willing to ease particularly - in these particular areas what happens next?

MASSIE

We have put our recommendations to the Government and we will be pressing the Government to change the Act in the way that we want. The CBI will no doubt put forward their own point of view. I've been fighting for rights for disabled people for 30 years and every time I've started on a particular issue I've been told it was unnecessary, it was over the top and eventually people come round and it becomes common sense.

MADILL

A final word Susan Anderson?

ANDERSON

Employers very much value the work that the DRC undertakes, we do want to work with them but I'm afraid on this area we do disagree and we don't see why people with mental impairment should be treated better than those with physical impairments and the proposals to reduce it to six months

would actually create an unlevel playing field and benefit those who have a mental illness over those people who have a physical impairment where they have to wait for 12 months.

MADILL

I was talking to Susan Anderson from the CBI and Bert Massie from the DRC.