

## ***There may be trouble ahead***

It was John Perske who wrote about the ‘dignity of risk’ and reminded us that a good quality of life includes the right to try things out, to experiment, to fail. If every toddler who tumbled over was protected from further harm, then nobody would be walking on two legs. Many employment and education projects for people who use mental health services invite their participants to take a risk - to try out a new activity, take on a new role, learn a new skill. But how is this risk managed?

In the advanced capitalist economy of the late 1990s, a whole industry has grown up around the reality of risk. People at risk of theft or loss have property insurance. Those at risk of loss of earnings can take out cover. There is injury and sickness protection, and finally financial protection against the devastation of premature death. Empowerment is about having the same rights as every other citizen, about having the same insurance policy in your pocket as the next person. Where do people who participate in mental health workschemes fit in? Do they hold this key to power?

### ***“There may be trouble ahead”***

Statutory mental health services have become increasingly concerned about risk over recent years. The following examples show how risk has become ubiquitous, and yet each change has had the effect of increasing the power of the establishment, rather than empowering the service user.

- It was following the death of Jonathan Zito that the last Government demanded that people at risk of harming themselves or others through violence or severe self neglect should be monitored via a Supervision Register.
- Health and Safety regulations require authorities to assess risks of fire, injury or accident and then take action to remove or control the hazards wherever possible.
- Recent guidance to health authorities - HSG(97)17 - strengthens this obligation by requiring health bodies to assess and control every kind of risk to which they are subject.
- The cost of clinical negligence lawsuits has been skyrocketing year by year, and agencies are making arrangements to manage these risks.

Do service users hold proper insurance as a *key to power* in this risky world, or are they imprisoned by uncertainty and unknown hazards? Where people attend a

programme of activity arranged by a NHS Trust or Social Services Department it can be difficult to establish the exact nature of the protection which is provided by the organisation, whilst voluntary sector projects can be clearer. Some activities are deemed uninsurable, whilst in others the premium is prohibitive and so organisations choose to make no provision through the insurance companies. In yet other circumstances, the agency is insured for some things, but the 'excess' amount which the agency must pay in each claim before the insurer makes an award, is set at a very high level, leading to most claims being met from the agency's own funds.

If service users attend a workscheme building or belong to a mobile workcrew, then I would suggest that they could reasonably expect to have access to a copy of their insurance cover. After all, employers are obliged to post a copy of their certificate of insurance in a place where all employees can see it, so why should things be different for service users? It is especially important if a service user is developing a small business and wishes to reassure potential clients that s/he is responsible and prepared for every eventuality.

One mental health workscheme found there were a number of service users with very marketable skills who could work fairly independently on a part time or occasional basis. One person was a housepainter. He could go out alone and decorate a room in the home of a member of the public. But who pays if he spills some paint on a customer's carpet? This real-life example focuses the debate on insurance and helps us to consider the varied issues involved. Spilt paint and a ruined carpet would normally be answered by public liability insurance. I had some discussions with representatives from various insurance companies and found that there are a number of areas of concern.

Firstly, a person with a mental health problem may be written off as a 'non-standard' risk. Since Lloyds the underwriters fell on hard times in the early 1990s, insurance companies have, by and large, preferred to stick with safe business. In this way a thousand individual cautious responses have closed down any prospect of cover for people with a psychiatric entry on their medical form. But it is interesting to surmise whether this is based on any factual evidence. Insurance companies employ actuaries who pore over statistics to show that young drivers, for example, have a greater risk of crashing their car than those of mature years. Do these actuaries have any statistics on mental health service users? The Disability Discrimination Act 1995 made it unlawful for insurance companies to discriminate without such actuarial data. One might argue that people who attend a supportive and friendly workscheme might do better than other citizens under pressure but with nowhere to turn for help. Users have much better access to advice and support, and may have more insight into signs of their own deterioration, and be able to stop before something goes wrong.

Secondly, the mental health workscheme is viewed as a high risk activity. The combination of dangerous tools and equipment, unpredictable behaviour and poor social relationships looks like an explosive brew, simply waiting to boil over into

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damaging and expensive claims. Some of this assumption can be countered by an examination of the level of support available to participants. There are often occupational therapists or skilled technicians who get to know each participant well and who tailor the activities to the person on a daily basis. Then there is the track record of incidents in the workscheme. I am unaware of any national profile on this issue, but my sense is that the high levels of trust and mutual respect in most employment projects leads to a safe environment with few incidents or accidents. Lastly there is the possibility of throwing the workscheme in with a much larger bundle of insurance requirements, large and small, and seeking bids from insurance companies for the whole portfolio.

Thirdly, there is the question of liability. Consider the owner of the spoilt carpet who is seeking redress. If the housepainter is uninsured, or is inadequately covered, then the complainant may take the matter to the civil court. Who would be considered to share some liability?

- Whilst the housepainter may not be on the payroll of the workscheme, he may be considered to be an agent of the scheme.
- A psychiatric nurse knew the painting job was under way and so may share some liability
- An Occupational Therapist helped Joe regain his confidence as a painter and so promoted the activity.
- The workscheme manager took the 'phone call about the painting job and so was enabling and supporting the arrangement.

So a civil court might consider that the housepainter, the NHS Trust and the workscheme share some liability for the accident and be obliged to make redress. How is this situation to be managed? Clearly, agencies could shut down any activity that included risk, but this is a counsel of despair. Much more sensibly, the agency could negotiate with insurance companies for realistic and sensible cover for the housepainter and every other participant in the project.

After many disappointing discussions with brokers, I was cheered to receive the following statement from Gary Faulkner of the Royal Sun Alliance Broker Division who commented, "We insure a number of NHS Trusts throughout the country. The operation of a rehabilitation unit would be just one of a number of features we would take into account when assessing the Trust. Provided that adequate controls and supervision are in place the normal scope of public liability cover would be available."

Finally, there is the question of precedent. I believe that some employment projects and their participants have been adequately insured for a number of years, and their insurers consider it to be a standard piece of business. The shroud-wavers who warn of disaster around every corner have been silenced, and the projects have continued as safe, creative and respectful places. Participants in mental health employment projects have a right to the ordinary protection and peace of mind that decent insurance arrangements can bring. Each person has a right to a copy of their policy in their pocket every time they go out on a job. Surely this is one of the keys to empowerment?