



XpertHR Podcast

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Laura Merrylees:

Hello and welcome to this XpertHR Podcast with me, Laura Merrylees.

Following the Government's announcement that Fit for Work referrals are to come to an end, we will today be exploring what this means for employers and how they can plug the gap that's been left behind.

Joining me on the phone to discuss these issues is Naeema Choudry, a partner from Eversheds Sutherland, who has followed the Fit for Work service closely from its inception to its demise and is a contributing author to XpertHR. So, thanks very much for joining us, Naeema. If we could kick off please by just reminding our listeners of what the Fit for Work assessment referral service is, or was at least, and what's now happened to it? [0:00:51]

Naeema Choudry:

Of course. So, Laura, we had a situation whereby where an employee was off sick for four weeks or more or was likely to be off sick for four weeks or more, they could be referred to a free and impartial assessment through the Fit for Work service. The referral could be done by the employee's GP, the employee could self-refer or the employer could refer the individual. What the process entailed was an initial assessment to be done by a firm within two days of the referral, with the possibility of a face-to-face assessment if one was required.

Following the assessment a return to work plan was put in place and would be sent to the employer, the employee and the GP and a case manager would be appointed to assess the individual's progress around this return to work plan really to help employees get back into work, because studies were showing that in the UK we take in excess of 130 million days sickness absence annually and it costs the economy something like £100 billion each year. So it was thought that that the Fit for Work assessment would really help reduce those figures.

So the assessment was a holistic one, really covering all the barriers affecting someone's ability to come into work, rather than just looking at it from a purely medical perspective. So, for example, if individuals had issues in their personal lives, such as debt or family worries that were upsetting them and causing sickness absence, it would be considered within the confines of the Fit for Work referral.

Now the service is confidential and as such the employee could refuse their consent to disclose any information in the return to work plan that they did not want the employer to know.

What the Government anticipated at the time of setting up the Fit for Work referral service in 2015 was that some 310,000 to 450,000 referrals would be made each year. But a debate in the House of Lords revealed that actually less than 10,000 referrals were made in the first full year of operation.

So on 30th November 2017 the Government issued a Press Release which announced that following the low referral rates the Fit for Work service would be coming to an end, in England and Wales on 31st March 2018 and in Scotland on 31st May 2018. However, if you actually go onto the Fit for Work website for England and Wales, that actually states that referrals for assessment ceased with effect from 15th December 2017. So they are already not taking any further referrals.

Now it is also worth remembering that the Fit for Work service had the referral, but there was also an advice element and that advice element will remain, both online and by phone if employers wish to avail themselves of it.

Laura Merrylees:

So you're mentioning there that the service was free, confidential and impartial. What you were saying in terms of those figures on long-term sickness absence remains a perennial issue for so many employers. Why do you think referrals have been so low then? What do you think brought the service to an end? [0:04:00]

Naeema Choudry:

I think really it's a problem that we've had with the service from the beginning which was a lack of awareness. I don't think the publicity was great; I remember speaking to people not long after the service had come into place and people were unaware that this service was available. I think that was a major issue, the lack of awareness.

I also think there was a lack of training for GPs. There was a study by *GP Magazine* last year which showed that 65% of GPs had not made a single referral under the Fit for Work scheme. There seemed to be a bit of scepticism, I think, because those that did partake in referring people 40% of them said that no one they have referred had made a successful return to work. So I think there is that issue as well.

I think also the fact that you needed the employee's consent to the assessment meant that there was no compulsion. The employee could easily say that they didn't want to speak to a third party.

I think another barrier to it was that an employee could only be referred once in twelve months and there was an automatic discharge after three months, which meant that some of the more complex cases that employers often have, where people may have been absent for a long time with complex medical conditions really weren't treatable or referable under the Fit for Work scheme.

I think also for many employers it replicated the role of their own occupational health department. Many employers did wonder what role this service actually had. So there was a multitude of factors I would say.

Laura Merrylees: As you said the helpline and the website is still going to continue to operate. Do you think there is still support that employers can gain from those services that could be useful? [0:5:35]

Naeema Choudry: I think so. I mean this advice is clearly going to be more generic, but I think it would be of assistance to organisations that don't have their own occupational health and it has answers to very standard questions and conditions that you may face on a regular basis in the workplace. It also has the latest views in relation to sickness absence and studies. So there is a big piece at the moment on mental health issues, which is a big issue of the workplace.

And it also has online guidance, as well as giving you the opportunity to ask questions via a webchat or online. So it is available, but I think it's going to be more generic rather than being able to deal with matters on a case-by-case basis.

Laura Merrylees: Okay. So maybe a first port of call for some sort of high level advice or information in the first instance and possibly something just to have up your sleeve as one resource that's out there. [0:06:25]

Naeema Choudry: Oh, definitely. I mean there is a wealth of resources on there and it's quite useful because they have a number of the common conditions that you may find in the workplace, such as musculoskeletal issues or other common medical conditions that an employer will come across and they will have basic information about those conditions – how it affects them.

It sets out what an employee can do to speak to the employer, what the employer should be doing to assist the employee and then also has links to other sources of information. So I think it's a good starting point. It also has good case studies and other reference materials. I would urge people to have a look at it, particularly if they don't have their own occupational health service or if occupational health are very busy.

Also sometimes if you're referring to a third party website then an employee may be more willing to hear what you have to say about what you can and can't do rather than being suspicious of occupational health and thinking, 'Well occupational health are just going to say what the managers want them to say.' So it is there and there is a possibility of asking your own questions via a webchat. How far they would be willing to advise you via the webchat I don't know, I haven't tried it, but I certainly would recommend it as a first port of call if you're not quite sure where to start.

Laura Merrylees: So when employers are trying to get the best information that they can to make their decisions based on somebody who's long-term sick, have you got any advice, Naeema, or top tips in terms of what employers should be doing to get the best quality advice and perhaps where some employers go wrong? [0:07:58]

Naeema Choudry: I think you need to be very specific with your questions and the information you give occupational health. You need to be very clear that this is a job that the individual is doing, this is what it entails, what are the barriers that are preventing the individual from doing their job, long-term, short-term and how can we assist the individual and

enable them to carry out their duties? So simply asking occupational health to put everyone down on paper without really guiding them as to what you need them to do is very important and I think it's always helpful where occupational health are prepared to be open and not really sit on the fence as to what the issues are.

The other thing that I see quite regularly is that employers have a tendency to want occupational health or the employee's GP to confirm whether or not an individual is disabled for the purposes of the Equality Act, and that is not really a medical question. That is a legal question. There have been a number of cases where the employer has blindly followed what the GP or occupational health have said and the court has said, 'Well, no they should have applied their own mind to it.'

So what an employer needs to be doing is getting the information from the GP or occupational health and then assessing whether they think the individual fulfils the definition of disability under the Equality Act. And what I would say is if in doubt then you can't go wrong if you treat the individual as if they are disabled and comply with any duty to carry out reasonable adjustments. Because if they're not disabled, at least you will have tried to assist them and you will have put the adjustments in place.

Laura Merrylees:

That's sound advice. Well thanks very much, Naeema. And to support you in managing long-term sickness absence we have a wealth of documents on the site, including How To guides, line manager briefings and model policies and documents.

Well thanks very much for listening and we look forward to you joining us next time.