Mental illness and the workplace: conceal or reveal?

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Introduction

Doctors are frequently asked by patients whether they should disclose a mental illness when applying for work. Recognizing the potential for discrimination on the part of employers, many doctors advise concealment. However, concealment is attended by legal and psychological disadvantages. In this paper we discuss the pros and cons of disclosure and concealment that underlie this dilemma, and conclude that the current legal safeguards are unsatisfactory. We call for clarification of the law to support people with mental illness who wish to work, in the form of a specific amendment to the current Equality Bill.

Mental illness, stigma and exclusion from the workplace

Employment rates among people with mental illness are strikingly low. The UK National Labour Force Survey found that in recent years the proportion of the whole adult population who were employed was about 75%; for people with physical health problems the figure was about 65% while, for people with severe mental health problems, only about 20% were employed.[1] This despite having the highest 'want to work' rate of any unemployed group: one British survey found that as many as 90% of people with mental illness wanted to return to the workplace.[2]

This low employment rate reflects widespread discrimination. In England, one-third of people with mental health problems say that they have been dismissed or forced to resign from their jobs,[3] 40% say that they were denied a job because of their history of psychiatric treatment,[3] and about 60% say that they avoid applying for a job as they expect to be dealt with unfairly.

Studies of employers support these reported difficulties. In one vignette study, employers were seven times more likely to recommend hiring an applicant with a physical disability (wheelchair user) than a mental illness (currently taking medication for anxiety and depression).[4] Further, some employers and colleagues exhibit stigmatizing behaviours towards employees known to have a mental illness, including restricting opportunities for promotion, micro-management, over-attribution of mistakes to illness, malicious gossip, and subtle forms of social exclusion.[5] Working environments with these characteristics will discourage disclosure;[6] conversely, feeling appreciated by one's boss and colleagues and having a supportive working environment are key factors in disclosure decisions.[7,8]

Psychological aspects of concealment and disclosure

The relationship between concealment of a hidden stigma and psychological distress is not clear-cut. Concealment or secrecy can be a major stressor for stigmatized individuals.[9] The preoccupation model of secrecy,[10] for example, describes how secrecy activates cognitive processes which may lead to obsessive preoccupation and intrusive thoughts about the 'secret'. Such distressing reactions can be particularly salient in situations where it is perceived as important to conceal, e.g. a job interview.[11,12]

However, there is also evidence to suggest that it is not the process of keeping a secret but rather the personality variable of 'predisposition to self-conceal' which is associated with psychological

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distress.[13] Motivational orientation, i.e. whether motivation is directed towards the self or towards others, has also been linked with level of self-concealment,[14] and perceived social support has been found to mediate the association between disclosure and wellbeing.[15]

Disability discrimination – the legal context

To reap the psychological benefits of disclosure requires legal protection from discrimination. However, to make use of the law it is necessary for a person to bring themselves within a protected category. At present, there is no specific category related to mental illness; the only applicable (albeit in limited circumstances) legal category is 'disability', although the association of mental illness with disability brings its own difficulties, as discussed below.

The main legal protection, therefore, is the Disability Discrimination Act 1995 (DDA), which applies to employees (or other workers such as agency workers) and job applicants. Under Section 1 of the DDA a person has a disability if 'he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities'. At present an 'impairment' is taken to affect the normal day-to-day activities of the person concerned *only* if it affects one of the following: mobility; manual dexterity; physical co-ordination; continence; ability to lift, carry or otherwise move everyday objects; speech, hearing or eyesight; memory or ability to concentrate, learn or understand; or perception of the risk of physical danger. Notably the current Equality Bill (Clause 6 and Schedule 1) seeks to remove such an explicit definition of impairment. Within the DDA 'long-term' means that it has either lasted at least 12 months, or that the period for which it is likely to last will be at least 12 months, or for the lifetime of the person affected. Particularly relevant to mental illness is the criterion that when an impairment ceases to have a substantial effect on a person's ability to carry out normal day-to-day activities, then it is to be treated as continuing to have that effect if that effect is likely to *recur* (Schedule 1).

The DDA (Section 3A) states that it is unlawful to directly discriminate, i.e. to treat someone less favourably on the ground of disability. However, it is possible for an employer to discriminate against a worker, or a potential worker, *for a reason related to the disability* as long as the employer can show that the reason 'is both material to the circumstances of the particular case and substantial' (Sections 3A(3) and 5(1)(b)). Discrimination requires that there be a comparison with another person; currently the case of *London Borough of Lewisham v Malcolm* (2008) establishes that the correct comparator is someone who is not disabled, but to whom the same reason applies, e.g. if the disabled person has been dismissed because of the amount of sickness leave taken, then if someone without the disability would have been dismissed for taking the same amount of sickness leave there is no discrimination. Clause 15 of the Equality Bill, presently before Parliament, removes this restriction and requires the employer to defend the treatment of the disabled person in the light of the detriment caused.

Obligation to make 'reasonable adjustments'

Additional protection for disabled individuals is provided by the DDA (Section 4A) as there is an obligation on the employer to make 'reasonable adjustments' to accommodate disabled workers. This obligation only arises if the disabled person would otherwise be at a 'substantial disadvantage', where the latter means 'worthy of consideration for the purposes of the Act' (*A v London Borough of Hounslow* [2001]).

It is important to note that disability and ill-health differ both in law and in practice, indeed the association of disability with illness could be seen as an aspect of stigmatization. One practical implication is that employers do not, as a matter of course, have to make adjustments to the amount of time off someone can take, particularly if there is any suggestion that the terms of a sick pay scheme should be modified (see *O'Hanlon v Commissioners for HM Revenue & Customs* [2007]).

Disclosure of disability under the DDA

The House of Lords has decided that there can only be liability for discrimination *if* the employer knows that the individual concerned is disabled

(*London Borough of Lewisham v Malcolm* [2008]). It is not unlawful for employers to ask job applicants whether they have a disability, but this should only be done for the purpose of incorporating reasonable adjustments into the interview process, or for confidential anonymous monitoring, and it cannot be used for discriminatory purposes.[16] Further, in December 2009 a new clause (60) was added to the Equality Bill to discourage employers from asking about the health of job applicants.

The Employment Rights Act and non-disclosure

A person with a disability may be dismissed for misconduct under the ERA (Section 98) if the employee did not disclose their 'disability', or 'medical condition' or 'medical history'. This is illustrated by the case of *O'Brien v Prudential Assurance Co* [1979] where a tribunal held that it was fair to dismiss an employee after an excellent work record of one year, when it was discovered that he had given false answers to mental health questions prior to appointment. In the case of *Cheltenham Borough Council v Christine Susan Laird* [2009] the council sued its former employee for failure to disclose mental problems in a pre-employment questionnaire. Although the Council was not successful because the questions were deemed to be ambiguous and the answers given reflected this, the case has confirmed that such questions can be asked and false or misleading answers can result in serious consequences for the employee.

Conclusions

So what advice can doctors give when asked by patients with mental illness whether to disclose? Disclosure provides the opportunity to request reasonable adjustments and may be psychologically advantageous. However, it appears that two-thirds of people with schizophrenia, for example, prefer not to disclose when applying for work.[17] Given this preference, doctors should know that in relation to written job applications the information that must be disclosed varies according to the nature of the job, the nature and recency of the illness, and the specificity of the question asked. Nevertheless there is a risk of dismissal if relevant information is concealed. In relation to job interviews, no information needs to be volunteered if not directly asked at interview, but if there is a direct question then the same terms as for a written application apply. In terms of an Occupation Health assessment, it is important to recognize those carrying out the assessment are staff of the employer, that the disclosure forms are the property of the employer, and therefore information is available to the employer.

A criticism of the DDA is that it adopts a 'medical', rather than a 'social' model of disability. By its use of the concept of 'impairment', the DDA reflects the view that there is a medical problem located *within* the individual, whereas a social model considers the way in which society disadvantages certain people who do not conform to a 'norm'. Using a social model would deal more effectively with stigma and remove the irony that persons with mental health problems often fear the stigma of being regarded as disabled, with its associations (in their case) of mental incapacity. Adoption of a model that acknowledges mental illness as a stigmatized condition could locate mental illness more comfortably within the legislative framework and provide more specific protection. Further, it might be appropriate to adopt the US model whereby pre-employment enquiries are confined to the ability of an applicant to perform job-related functions.[18] This is not to say that the US legislation has been wholly successful in this regard, as there have been problems with regard to restriced definitions of 'mental illness',[19] but such a development would be a welcome starting point and lessons could be learned from the US experience. In consequence, it is timely now to call for an amendment to the Equality Bill to include specific provision for people with mental illness as a stigmatized group (as has already been included in relation to severe disfigurement, cancer and HIV), so as to provide much stronger legal support to people with mental illness who wish to work.

References

1 Social Exclusion Unit. *Mental Health and Social Exclusion*. London: Office of the Deputy Prime Minister; 2004
2 Grove B. Mental health and employment. Shaping a new agenda. *J Ment Health* 1999;**8**:131–40
3 Read J, Baker S. *Not Just Sticks and Stones. A Survey of the Stigma, Taboos, and Discrimination Experienced by People with Mental Health Problems*. London: MIND; 1996

4 Koser DA, Matsuyama M, Kopelman RE. Comparison of a physical and a mental disability in employee selection: An experimental examination of direct and moderated effects. *N Am J Psychol* 1999;**1**:213–22
5 Corrigan P, Lundin R. *Don't Call Me Nuts*. Tinley Par, IL: Recovery Press; 2001
6 Stanley N, Ridley J, Manthorpe J, Harris J, Hurst A. *Disclosing disability. Disabled students and practitioners in social work, nursing and teaching. A research study to inform the disability rights comission's formal investigation into fitness standards*. London: King's College London, Social Care Workforce Research Unit; 2007
7 Dalgin RS, Gilbride D. Perspectives of people with psychiatric disabilities on employment disclosure. *Psychiatr Rehabil J* 2003;**26**:306–10
8 Ellison ML, Russinova Z, Donald-Wilson KL, Lyass A. Patterns and correlates of workplace disclosure among professionals and managers with psychiatric conditions. *J Vocat Rehabil* 2003;**18**:3–13
9 Pachankis JE. The psychological implications of concealing a stigma: A cognitive-affective-behavioral model. *Psychol Bull* 2007;**133**:328–45
10 Lane JD, Wegner DM. The cognitive consequences of secrecy. *J Pers Soc Psychol* 1995;**69**:1–17
11 Beals KP, Peplau LA, Gable SL. Stigma management and well-being: the role of perceived social support, emotional processing, and suppression. *Pers Soc Psychol Bull* 2009;**35**:867–79
12 Garcia JA, Crocker J. Reasons for disclosing depression matter: The consequences of having egosystem and ecosystem goals. *Soc Sci Med* 2008;**67**:453–62
13 Kelly AE, Yip JJ. Is keeping a secret or being a secretive person linked to psychological symptoms? *J Pers* 2006;**74**:1349–69
14 Garcia JA, Crocker J. Reasons for disclosing depression matter: The consequences of having egosystem and ecosystem goals. *Soc Sci Med* 2008;**67**:453–62
15 Beals KP, Peplau LA, Gable SL. Stigma management and well-being: the role of perceived social support, emotional processing, and suppression. *Pers Soc Psychol Bull* 2009;**35**:867–79
16 Disability Rights Commission. *The duty to promote disability equality: statutory code of practice England and Wales*. London: TSO; 2005
17 Thornicroft G, Brohan E, Rose D, Sartorius N, Leese M. Global pattern of experienced and anticipated discrimination against people with schizophrenia: a cross-sectional survey. *Lancet* 2009;**373**:408–15
18 The Americans with Disabilities Act 1990 section 12112 see Rethink, The Terrence Higgens Trust, The National AIDS Trust. Equality bill ignores discrimination faced by job seekers with disabilities, says charities. 2009
19 O'Brien GV, Brown MS. Persons with Mental Illness and the Americans with Disabilities Act: Implications for the Social Work Profession. *Soc Work Ment Health* 2009;**7**:442–457