

**“Coercion as Cure?”**

**Authors’ response to allegations of defamation made by Royal Free Hampstead NHS Trust concerning the Fatigue Clinic**

**Eileen Marshall   Margaret Williams   30<sup>th</sup> November 2007**

1. It is noted that in all her references to our article, Katina Shand (Claims Manager, Risk and Safety Department, The Royal Free Hampstead NHS Trust) has converted the title of our document from a question to a statement by the omission of the question mark that was an integral part of the title. In law, the asking of a question does not constitute defamation.
2. In her email of 30<sup>th</sup> November 2007 (sent at 10.41am), Katina Shand stated: *“I have contacted Dr Gabrielle Murphy to ask for her comments regarding the contact of the article ‘Coercion as Cure’ and I have attached her response”*. Does Ms Shand mean to say *“content of the article”*?
3. We note that it was only following her original email of 26<sup>th</sup> November 2007 (sent at 2.27pm) that Katina Shand sought comments upon our article from Dr Gabrielle Murphy. We had understood from Ms Shand’s original email that prior to contacting us, Royal Free Hampstead NHS Trust staff had already alleged that *“several statements”* in our article were *“defamatory towards both the trust and it’s (sic) staff”*.
4. It is noted that in her Statement, which was undated and unsigned, Dr Gabrielle Murphy categorically asserts that it is not, and never has been, the policy of the Fatigue Service at the Royal Free Hospital to deny access to the specialist physician *“for assessment or re-assessment”*. That is not what we asked in our email to Ms Shand of 26<sup>th</sup> November 2007 sent at 19.04, nor what we said in our article: we specifically asked if it was, or ever had been, the policy of the Fatigue Clinic that access to a physician would not be granted (except on admission or discharge from the Fatigue Clinic) unless a patient agreed to participate in CBT/GET. The issue does not therefore relate to *“assessment or re-assessment”*: the issue relates to whether or not a patient attending the Fatigue Clinic would have access to a physician (as distinct from a physiotherapist or an occupational therapist or a psychotherapist) about any aspect of their medical care unless they had agreed to participate in CBT/GET.
5. However, in her paragraph 5, Dr Gabrielle Murphy herself concedes that (quote): *“patients who are not having one of the therapies in the Fatigue Service are discharged to the care of their GP”*. How does this differ from what we said in our article (*“patients will have access to a physician for medical advice at the Centre only if they agree to participate in CBT and graded exercise therapy*

*regimes; if patients decline to enter into a contract to participate in such regimes, they will have no access to a physician at the Centre”)? As Dr Murphy has conceded that patients who are not having one of the therapies offered by the Fatigue Service will be discharged from the Fatigue Service, we fail to see how our statement can be deemed by either Dr Murphy or by the Royal Free Hampstead NHS Trust to be defamatory.*

6. Since Dr Murphy has conceded that what we wrote is true, we maintain that our subsequent statement likewise cannot be considered defamatory because it is accurate: (*“Less than one month after publication of the NICE Guideline on “CFS/ME” on 22<sup>nd</sup> August 2007, the Royal Free Fatigue Service Centre policy which refuses and denies patients access to a physician unless they agree to be coerced into taking part in a regime that is already known to be harmful in 50% of participants is in blatant breach of that national Guideline”*). Since Dr Murphy concedes that *“patients who are not having one of the therapies in the Fatigue Service are discharged”*, this effectively means that patients attending the Royal Free Hampstead NHS Trust Fatigue Service who do not agree to take part in CBT/GET have no access to a physician at the Fatigue Service, which is what we said in our article.
7. In this respect, we draw attention to what we said in our article, namely that the Parliamentary Under Secretary of State, Lord McKenzie of Luton, said on 28<sup>th</sup> February 2007 (reported in Hansard: GC198): *“There is no requirement for individuals to carry out any specific type of activity or treatment. That cannot be sanctioned”*.
8. Our article pointed out that the NICE Guideline on “CFS/ME” specifically states in ten different places that access to a physician must not be dependent upon patients agreeing to participate in a CBT/GET regime and that refusal to take part in such a regime should not end treatment contact with the doctor. Indeed, the Guideline stipulates that such patients **may not be discharged from medical care** (see the Full Guideline pp 28, 31, 116, 130, 158, 178, 214, 259, 283 and 298). As Dr Gabrielle Murphy herself states, patients attending the Royal Free Hampstead NHS Trust Fatigue Service who decline to take part in a CBT/GET regime are being discharged from medical care, which is contrary to the NICE Guideline. We do not see how, by stating that *“patients who are not having one of the therapies in the Fatigue Service are discharged”* (as confirmed by Dr Murphy herself), our article was defamatory in this respect.
9. It is noted that Dr Murphy states that the RFH has been recruiting patients for the PACE trial since October 2006, and that of some 750 patients seen since then, 68 have been recruited. We note that this represents 9.1% of patients seen. From the information provided by Dr Murphy, it is unclear what *“different therapies”* are being offered to 334 patients out of the 750 attending the Fatigue Service.
10. The evidence that 50% of patients with ME/CFS are known to have been harmed by CBT/GET comes from four major surveys: (i) Action for ME; (ii) a combined

- report for the ME Association and AfME carried out by Dr Lesley Cooper; (iii) the report of the 25% ME Group for the Severely Affected and (iv) the report of DM Jones MSc. All are in the public domain.
11. In relation to the DLA forms, it is within our knowledge and belief that not all patients attending the Royal Free Hampstead NHS Trust Fatigue Service were made aware that (quoting Dr Murphy): *“this is indeed a proforma paragraph but it is always followed up by details specific to the patient”*. It is within our knowledge and belief that some patients understood only that the Fatigue Service no longer signs individual applications for DLA, which is what we said in our article (*“It has also been established that this same Centre is no longer prepared to support individual patients’ applications for Disabled Living Allowance but simply hands patients a pro-forma letter”*). It is noted that Dr Murphy concedes that a pro-forma does exist. It is our understanding that the fact that such a pro-forma is *“always followed by details specific to the patient”* has not been made clear to some patients, who we understand were told that: *“We don’t do individual reports for DLA any more”*.
  12. In her original communication of 26<sup>th</sup> November 2007 at 2.27pm, Katina Shand alleged that: *“there are several statements that are defamatory towards both the trust and it’s (sic) staff”*. In relation to Dr Gabrielle Murphy, we made no mention of her by name apart from pointing out what is already in the public domain, namely that she is part-time Clinical Lead at the Fatigue Services Centre. In relation to other members of staff, we point out that what we said about Nathan Butler (a graded exercise therapist) and about Karen Levy (an occupational therapist) were taken from the Royal Free Hampstead NHS Trust’s own website. This was posted on 16<sup>th</sup> October 2006 (see: [http://www.royalfree.org.uk/default.aspx?top\\_nav\\_id=2&tab\\_id=15&news\\_id=326](http://www.royalfree.org.uk/default.aspx?top_nav_id=2&tab_id=15&news_id=326) ).
  13. We also point out that what we said about Professor Peter White in relation to the Royal Free Hampstead NHS Trust Fatigue Service (*“In the absence of the part-time Clinical Lead at the Royal Free Fatigue Service Centre, Dr Gabrielle Murphy, the person in overall charge is Professor Peter White”*) also comes from the Royal Free Hampstead NHS Trust website. It comes from a job advertisement that was created and modified by Rachel Buchanan on 30<sup>th</sup> August 2007 (at 15.46 hours). We note that whilst other job advertisements dating back to 2004 are still on the Trust’s website, that particular one seems to have been removed. We confirm that not only do we ourselves have both electronic and hard copies, but that numerous other people also have copies and are aware of Professor White’s involvement with the Trust’s Fatigue Service.

We wish to make plain that if it can be unequivocally demonstrated that we have made defamatory statements about the Royal Free Hampstead NHS Trust or any of its staff members in our article, then the relevant sentences will be removed from the article on

the website <http://www.meactionuk.org.uk> and an explanation, full retraction and public apology will be posted on that same website. In this event, in the interests of transparency, this correspondence will also be posted on the same website.