

The Work Capability Assessment

A Call for Evidence: Year 3 Independent Review

July 2012

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1. Introduction

The Department for Work and Pensions has commissioned Professor Malcolm Harrington to undertake his third and final Independent Review of the Work Capability Assessment (WCA), as required by section 10 of the Welfare Reform Act 2007. This call for evidence will be one of several methods used to gather information during the review. Evidence submitted will be used to create his final independent report, which will be laid before Parliament before the end of 2012. Legislation requires that two further reviews will be undertaken in 2013 and 2014.

2. About this call for evidence

i) Who this call for evidence is aimed at

This call for evidence is aimed at individuals and organisations who have information that is relevant to how the WCA is operating and what further changes, if any, are needed to improve the process.

ii) Purpose of the call for evidence

This call for evidence will be used to assist Professor Harrington in forming views to help develop the review. He will then make recommendations to the Secretary of State for Work and Pensions, which will be laid before Parliament in the form of a report before the end of 2012. As an Independent Review, the Secretary of State is not required to accept any or all of the recommendations, and any recommendations may be subject to further assessment by DWP.

iii) Scope of the call for evidence

This call for evidence applies to England, Wales and Scotland

iv) Duration of the call for evidence

The call for evidence period begins on 12th July 2012 and runs until 7th September 2012

v) How to respond to this call for evidence

Please send your responses or queries to:

Email: wca.evidence@dwp.gsi.gov.uk

Post: WCA Independent Review Team, Floor 2, Section B, Caxton House, Tothill Street, London, SW1H 9NA.

Please ensure your response reaches us by 7th September 2012.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. We will acknowledge all responses.

vi) Alternative formats

This document is available in a range of formats, including large print, Braille, audio, BSL video/DVD, and Easy Read on request from:

Email: wca.evidence@dwp.gsi.gov.uk

Post: WCA Independent Review Team, Floor 2, Section B, Caxton House, Tothill Street, London, SW1H 9NA.

Please be aware that these alternative formats may take some time to prepare, so please let us know as soon as possible if they are required.

We have sent this call for evidence document to a large number of people and organisations who have previously been involved in this work or who have expressed an interest. Please do share this document with, or tell us about, anyone you think will want to be involved in this call for evidence.

vii) Queries about the content of this document

Please direct any queries about the subject matter of this call for evidence to:

Philip Cooper

WCA Independent Review Team, Floor 2, Section B, Caxton House, Tothill Street, London, SW1H 9NA

Phone: 0207 449 5119

Email: wca.evidence@dwp.gsi.gov.uk

3. How we consult

Freedom of information

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the call for evidence to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Central Freedom of Information Team
4th Floor
Caxton House
Tothill Street
London
SW1H 9DA

Freedom-of-information-request@dpw.gsi.gov.uk

The Central Fol team cannot advise on specific consultation/call for evidence exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at <http://www.dpw.gov.uk/freedom-of-information>

4. Foreword

I am pleased to have been asked by the Secretary of State for Work and Pensions to undertake what will be my third and final Independent Review of the Work Capability Assessment (WCA). Subsequent reviews in 2013 and 2014 will be taken forward by a new lead reviewer who has yet to be appointed.

During my first and second reviews, the call for evidence obtained largely anecdotal evidence from a wide range of individuals, representative groups, unions, employers, employment support providers and healthcare professionals about their experiences of the WCA. This information was important in helping to shape my recommendations to improve the system.

The first call for evidence obtained a vast amount of evidence about the fairness and effectiveness of the process; the second call for evidence was more focused, asking questions about specific conditions. This year's call for evidence has been designed with the claimant's experiences in mind and tries to establish if there have been improvements following my recommendations. I ask you to reflect back on a WCA that you may have had in the past and compare it to your most recent WCA experience.

I am particularly interested in three areas of the WCA process – communications, the face to face assessment and the decision making process. These are the areas where I think claimants will be experiencing the most change as my first year's recommendations take effect. I have therefore focused on these areas within the call for evidence and ask you to rate your experience of each. Please use the space at the end of each section to provide me with more detail about specific experiences that you may have had. There is also additional space at the end of the document should you require it. Although the questions are aimed at individuals who are familiar with the process, this does not preclude responses from organisations whose collective knowledge remain a vital part of the call for evidence, and the wider review process.

Thank you for taking the time to complete the response. Your opinions are important in our quest to improve the fairness and effectiveness of the WCA.

A handwritten signature in black ink, appearing to read 'Malcolm Harrington', with a horizontal line underneath the name.

Professor Malcolm Harrington CBE

5. Context

i) Employment and Support Allowance and the Work Capability Assessment

1. Employment and Support Allowance (ESA) was introduced in October 2008. It replaced three incapacity benefits - Incapacity Benefit, Income Support by virtue of a disability and Severe Disablement Allowance - for claimants making a new claim for financial support on the grounds of illness or incapacity. ESA is intended for people who have limited capability for work (who are placed in the Work Related Activity Group), and people who have limited capability for work related activity (who are placed in the Support Group).
2. The WCA determines whether the claimant falls into one of these groups, or is fit for work. People who are found to be fit for work may be eligible for Jobseeker's Allowance, which is the benefit paid to people who are available and actively seeking work.
3. The WCA replaced the Personal Capability Assessment that was used to assess people claiming incapacity benefits. It is intended as a functional health assessment rather than as a diagnostic medical assessment, which will already have taken place through the claimant's General Practitioner or specialist healthcare professional. The focus of the WCA is on what people can do rather than what they cannot, and is based on a growing body of evidence linking good health and well-being to work.
4. The Welfare Reform Act 2007 legislated for the introduction of the WCA. This law provides the basis for the Independent Review which this call for evidence forms a key part of. Section 10 states that:

“The Secretary of State for Work and Pensions shall lay before Parliament an independent report on the operation of the assessment annually for the first five years after those sections come into force.”

ii) Incapacity Benefit Reassessment

- 5. In April 2011, the Government began reassessing people entitled to Incapacity Benefits (IB), Severe Disablement Allowance and Income Support on incapacity grounds to determine their eligibility for ESA using the WCA.
- 6. The reassessment of old-style incapacity benefits customers is a key part of the Government’s reform agenda. The purpose of this is to help create and deliver a twenty-first century welfare system by ensuring that those people who can work are given the correct help and support to do so.
- 7. A large number of IB claimants have been on these benefits for a number of years and have had no reassessment during the lifetime of their award. As such, the characteristics of the claimants being reassessed for ESA may be very different to those of new ESA claimants. It is important that the two groups are seen as distinct even if the WCA process for both groups is the same.
- 8. The following table shows the percentage of people placed in each group for both new ESA claims and for IB reassessments. However, these figures exclude the likely effects of appeals and may underestimate the proportion of claimants who are actually awarded benefit

Decision outcome	IB Reassessment (until end July 2011)	New ESA claims (June 11 – August 11)
Work Related Activity Group	34%	19%
Support group	29%	27%
Fit for Work	37%	54%

Figure 2 – WCA decision outcomes

Source: http://research.dwp.gov.uk/asd/workingage/esa_ibr/esa_ibr_mar12.pdf
http://research.dwp.gov.uk/asd/workingage/esa_wca/esa_wca_20120424.pdf

iii) The process

- 9. Generally, after initial contact with DWP operations to make a claim for ESA claimants will be asked to fill in an initial questionnaire (the ESA50) which asks for further information about their condition or disability. Around 13 weeks after their initial claim most claimants will attend a face-to-face assessment with Atos Healthcare. The information gathered at the face-to-face assessment, along with any other additional evidence provided by the claimant, is then passed to the DWP operations Decision Maker who will score the claimant against the descriptors and decide in which group they should be placed.

iv) First and Second Independent Reviews

10. The first Independent Review of the WCA was carried out by Professor Malcolm Harrington and was published on 23 November 2010 – <http://www.dwp.gov.uk/docs/wca-review-2010.pdf>. This found that, whilst the system was not broken or beyond repair, it was not working as well as it should.
11. The review made a number of recommendations to improve the fairness and effectiveness of the system, including:
 - Improving the capability and confidence of Decision Makers in DWP operations who decide benefit entitlements.
 - Making the WCA a more compassionate process, by telephoning claimants to ensure they understand what is happening.
 - Improving the face-to-face assessment conducted by contractors Atos Healthcare by putting in place ‘champions’ with additional expertise in mental, cognitive and intellectual conditions and by ensuring every Atos assessment contains a personalised summary in plain English.
12. Professor Harrington’s second review was published on 24 November 2011 – <http://www.dwp.gov.uk/docs/wca-review-2011.pdf>. This review confirmed that the WCA remains the right process, and that the Department had adopted all of the recommendations from the first review. He stressed that positive progress had been made and that he expected this to be consolidated over the next year as the new processes were incorporated.
13. The second review also made a series of further recommendations to build on the improvements already made. The Government endorsed Professor Harrington’s Review; fully accepting the majority of its recommendations.

v) Third Independent Review

14. This year is Professor Harrington’s third and final year as the Independent Reviewer. His work plan for this year <http://www.dwp.gov.uk/docs/wca-year-three-timetable.pdf> covers a number of issues, including:
 - Working with the Department and a number of charities to build the evidence base supporting the current and proposed mental, intellectual and cognitive and fluctuating conditions descriptors.
 - Monitoring progress with implementation of his recommendations to date and ensuring, where possible, that things have positively changed by the end of his three reviews.

6. Call for evidence questions

Background

15. Professor Harrington has now completed two reviews of the WCA published in November 2010 and November 2011. The Government accepted all of the first year's recommendations and accepted in principle all of the second year's recommendations.
16. The first call for evidence asked a number of questions about the fairness and effectiveness of the WCA. The second call for evidence asked more specific questions, focussing on a small number of key issues. The responses in both years provided largely anecdotal evidence but helped Professor Harrington to make a number of recommendations.
17. DWP responded to the reviews by making a number of changes to the way in which it handles claims for ESA. The recommendations from the first year review will be more apparent to the claimant than the technical work that is currently underway in response to the second year review. This call for evidence is aiming to establish whether claimants are now experiencing any improvements since the introduction of the changes. Therefore, you are asked to compare experiences from your most recent WCA against a WCA you have had in the past.
18. You will notice that there are a series of questions that ask about your health condition, your geographical location, and whether you underwent an IB reassessment or a new claim to ESA. This is to determine if there are variations in these demographics.
19. This questionnaire is deliberately focused on people who have been through the process but are aware that advocacy groups and others will wish to contribute to the call for evidence. People responding on behalf of an organisation should answer from question 8 onwards and use the space at the end to provide additional comments

Question 1

a) Have you had more than one WCA?

YES / NO

b) Was your most recent WCA:

(Please select only one)

A reassessment of an existing Incapacity Benefit (IB) award?

A new claim for Employment and Support Allowance (ESA)?

A repeat (second or third) WCA having already been awarded Employment and Support Allowance?

If you answered YES to Question 1a), please go to Question 2

If you answered NO to Question 1a), please go to Question 9

Question 2

Please tell us where you live in Great Britain

(Please select only one)

1. South East England
2. South West England
3. North East England
4. North West England
5. Midlands
6. Scotland
7. Wales

Question 3

Were you assessed for:

(Please select only one)

1. A mental, intellectual or cognitive condition or disability
2. A physical health condition or disability
3. Both

Question 4

What was the outcome of your award?

1. Found fit for work
2. Work related activity
3. Support group

Question 5 (communications):

In response to Professor Harrington's first year recommendations, DWP made a number of changes to the 'claimant journey'. This included additional telephone calls to explain the claim process and to obtain further medical evidence as well as amendments to our written communications making them easier to understand and less threatening. The Department has also changed the initial questionnaire which claimants complete (the ESA50) which asks you to describe your condition and how it affects you. The form is now shorter and has been designed to be simpler to complete. The following questions relate to the experience that you initially had when you contacted DWP to make your claim to ESA.

a) Thinking about the start of your claim, were there any changes in the telephone contact between you and DWP between your first and your most recent WCA?

(Please select only one)

- There has been an improvement
- It was not as good
- There was no change

b) Between your first and your last WCA, did you notice any changes to the written communications which DWP sent you?

(Please select only one)

- There has been an improvement
- It was not as good
- There was no change

c) The ESA50 form has been amended; please can you tell us if you think:

(Please select only one)

- There has been an improvement
- It was not as good
- There was no change

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Please use this space to tell us anything that is relevant to communications during the WCA process

Question 6 (face to face assessment):

Professor Harrington made recommendations in his first year review to make the face to face assessment better. Atos, the company that is responsible for the face to face assessment, made changes to improve this part of the process and now publish a clear charter of claimant's rights and responsibilities in every assessment centre. They also provide a personalised summary statement at the end of every assessment and have put a network of Mental Function champions.

a) Was there a notable difference between your first and your most recent face to face assessment?

- First was better
- Last was better
- There was no difference

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Please use the space below us to tell us anything else that you think is relevant to the face to face assessment

Question 7 (decision making):

A number of changes were made to the decision making process following Professor Harrington's first year recommendations. Decision makers were put back at the heart of the process and empowered to make independent and considered decisions. They received additional training and support to ensure that they considered all of the relevant and available evidence. They were encouraged to make better use of the reconsideration process, including allowing the claimant to provide further evidence, and this should now be a routine part of the process. This should allow a decision maker to carefully explain the outcome of their decision and help claimants understand what will happen next.

a) Since your last WCA, did you notice a difference in the way in which the outcome of your WCA was communicated to you by a decision maker?

(Please select only one)

- There has been an improvement
- It was not as good
- There was no change

b) If you provided additional evidence in support of your claim (e.g. from a GP, consultant or support worker), was this evidence taken fully into account by the decision maker?

(Please select only one)

- Evidence was considered and it changed the original decision
- Evidence was considered and it did not change the original decision
- Evidence was supplied but not reconsidered
- Not applicable

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Please use the space below us to tell us anything else that you think is relevant to the decision making process

Question 8 (Organisations)

This section should only be completed if you are responding on behalf of an organisation. The call for evidence has been designed specifically with the experiences of the claimant in mind but the Department is aware that organisations may also want to contribute to the call for evidence. Please use this section to comment on the experiences that you or your clients have been experiencing since the introduction of Professor Harrington's recommendations. You are asked to describe each part of the process, using bullet points to summarise the individual parts of the process. Any further evidence should be given at question 11.

Communications

Face to face assessment

Decision Making

Fairness and Effectiveness

20. The fairness and effectiveness of the WCA is a key aspect of the Independent Review's scope. Fairness can mean different things to different people, but the first year review defined fairness and effectiveness in the context of how claimants have been treated by the system – fairness relating to just and unbiased treatment and decisions; and effectiveness relating to outcomes being as intended.
21. In answering Questions 9 and 10 you may wish to think about (but not exclusively) the following questions: Did you understand the process at the outset? Were you treated with empathy? Were you given chance to fully explain how your health condition or disability affects you? Did the Decision Maker make a decision on your claim with all of the available evidence? Was the final decision explained to you fully and clearly?

Question 9

Overall, how *fair* do you feel that the assessment was?

Question 10

Overall, how *effective* do you feel that the process was?

Looking forwards

22. The call for evidence has tried to explore the changes that have been made by asking specific questions about the way in which claimants have been assessed. However, the review is aware that respondents may wish to provide more specific detail about other parts of the process that may not be working as well as they could. The following questions provide more space to share your experiences – please continue on a separate piece of paper if necessary.

Question 11

What one thing (if any) would you change about the WCA to make the system better for people claiming ESA?

Please use the space below to give us your comments.

Question 12

Is there anything else, relevant to the WCA, that you would like to tell us about?

Please use the space below to give us your comments.

7. Next steps

23. We now invite individuals and organisations to submit evidence to help us assess how the Work Capability Assessment (WCA) is operating by answering the questions posed above.
24. The closing date for the call for evidence is 7th September 2012. A final Independent Review will be laid before Parliament and published before the end of 2012.