

# An Independent Review of the Work Capability Assessment

Professor Malcolm Harrington

November 2010

# An Independent Review of the Work Capability Assessment

Professor Malcolm Harrington

November 2010

**© Crown Copyright 2010**

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk)

This publication can be accessed online at: [www.dwp.gov.uk/wca-review](http://www.dwp.gov.uk/wca-review)

For more information about this publication, contact:

WCA Independent Review Team  
Department for Work and Pensions  
2nd Floor  
Caxton House  
Tothill Street  
London, SW1H 9NA  
E-mail: [wca.evidence@dwp.gsi.gov.uk](mailto:wca.evidence@dwp.gsi.gov.uk)

Copies of this publication can be made available in alternative formats if required.

This publication is also available on <http://www.official-documents.gov.uk/>

ISBN: 9780108509476

Printed in the UK by The Stationery Office Limited  
on behalf of the Controller of Her Majesty's Stationery Office

ID: 2398949 11/10

Printed on paper containing 75% recycled fibre content minimum.

# Contents

Foreword .....	5
Executive Summary .....	9
Key findings .....	9
Key recommendations .....	10
A programme of work for year two.....	11
Costs and benefits.....	11
Chapter 1: The review outline .....	12
Chapter 2: The evidence for a Work Capability Assessment .....	17
Chapter 3: The Work Capability Assessment: process and numbers.....	23
Chapter 4: Experiences of the Work Capability Assessment .....	31
Chapter 5: The Atos assessment .....	36
Chapter 6: The decision making process .....	47
Chapter 7: Appeals.....	55
Chapter 8: A programme of work for year two.....	62
Conclusion .....	67
Annex A: List of recommendations.....	69
Annex B: Acknowledgements.....	71

# Foreword

Being a member of society brings with it certain responsibilities. In general, citizens of that society are expected to earn their own living and, through taxes, to pay for the infrastructure of that society. At the same time, civilised society has a responsibility to its citizens. One of those duties is the provision of financial and other support for people of working age who are unable to earn a living for themselves.

Early examples of such state aid in the UK came in the form of the Workman's Compensation Acts in the late 19<sup>th</sup> Century. The introduction of National Insurance in 1911 and subsequent modifications in social security legislation have resulted in a complex system of benefits for various sections of the population – including those who are unable to work because of health-related problems.

Incapacity benefits are a major cost to the UK economy and, as Dame Carol Black states in her review of the health of Britain's working age population "the sheer scale of the numbers of people on incapacity benefits represents an historical failure of health care and employment support to address the needs of the working age population of Britain." The Black Review can be seen as part of a broader move to reconsider welfare in all its aspects and reform of the welfare system has been mooted by all the major political parties in recent years.

The Welfare Reform Act of 2007 laid out plans to replace current procedures with new measures – in particular Employment and Support Allowance (ESA) would replace incapacity benefits. The ESA proposals included a Work Capability Assessment (WCA) which was a logical and planned development from previous assessment procedures. The WCA was designed to distinguish people who could not work due to health-related problems from people who were fit for some work or – with additional support – could eventually return to the world of work. Included in the

Welfare Reform Act was the provision for an Independent Review of the WCA for each of the first five years of operation and this Independent Review was to be laid before Parliament each year. This is the first of these reviews

My appointment as Independent Review lead did not take place until late June 2010, though the deadline to report to Parliament before the end of 2010 remained. In the past four months, I have, with tremendous help from my support team, managed to review the information submitted in the Call for Evidence and met many organisations and charities who work with ill and disabled people. I have also visited all parts of the operations involved in the WCA, from Jobcentre Plus locations, through to the Atos assessments, to the appeals process before the First-tier Tribunal.

Whilst the principles underpinning the new assessment system remain valid, I have heard of much criticism – even anger – at the way it operates. I believe there is a lot that could be done at each stage of the process to make the WCA fairer and more effective. In broad terms, the pathway for the claimant through Jobcentre Plus is impersonal, mechanistic and lacking in clarity. The assessment of work capability undertaken for the DWP by Atos Healthcare suffers from similar procedural problems. In addition, some conditions are more subjective and evidently more difficult to assess. As a result some of the descriptors may not adequately reflect the full impact of such conditions on the individual's capability for work.

The final decision on assigning the claimant to one of the three categories theoretically rests with the Decision Maker at Jobcentre Plus but, in practice, the Atos assessment dominates the whole procedure. This imbalance needs correcting and the Decision Maker, using the Atos assessment as part of the whole data gathering exercise, needs to take control. Such a shift in procedure and authority would almost certainly decrease the high number of referrals to the appeals process – itself a stressful and time consuming activity for the claimant.

The claimant needs to feel that they have been fairly treated and thoroughly assessed. They need to know that the object of the whole exercise is accurately to assign them to a work or a work-related activity group but also to ensure that those who cannot work receive the full support of the state.

Work is, by and large, good for people. The benefits of work generally outweigh the risks of work and undoubtedly outweigh the appallingly harmful effects of worklessness. If the WCA works well, it should enable many people to re-enter the world of work in which they regain their self esteem and improve their general health, whilst the money saved by the state in benefits could be more appropriately focused on those who need it most.

A handwritten signature in black ink, appearing to read 'Malcolm Harrington'. The signature is written in a cursive style and is positioned above a single horizontal line.

Professor Malcolm Harrington  
November 2010

# Executive Summary

1. We know that, for the vast majority of people, work is good for you. Similarly, we know that many disabled people or people with a health condition want to work. As a civilised society, we need to enable as many people as possible to take advantage of the positive aspects of work while at the same time providing support for people who cannot work.
2. The Work Capability Assessment (WCA) was designed to focus on a person's *capability* rather than their *incapacity*. It distinguishes between those people who could work; those people who could work at some point with the right support (the Work-Related Activity Group); and those people cannot work (the Support Group). In essence, the WCA was designed to be a first positive step towards work for most people.
3. However, I have found that the WCA is not working as well as it should. There are clear and consistent criticisms of the whole system and much negativity surrounding the process. There is strong evidence that the system can be impersonal and mechanistic, that the process lacks transparency and that a lack of communication between the various parties involved contributes to poor decision making and a high rate of appeals.
4. I do not believe that the system is broken or beyond repair. I am proposing a substantial series of recommendations to improve the fairness and effectiveness of the WCA. If adopted, I believe these recommendations can have a positive impact on the process – making it fairer and more effective, changing perceptions so the WCA is seen as a positive first step towards work, and reducing the rate of appeals. I also set out a future programme of work indicating areas that subsequent reviews should examine.

## Key findings

5. The review has considered a wide range of evidence to reach its conclusions. Over 400 responses were received to a Call for Evidence and the review met with around 100 key organisations including disability organisations, providers, representative groups, unions and employers. Data was also gathered from DWP/Jobcentre Plus, Atos and the First-tier Tribunal to assist with the review.
6. This evidence has consistently and regularly highlighted problems with each stage of the WCA process, which limit both the assessment's fairness and effectiveness. The key findings are:
  - Claimants' **interactions with both Jobcentre Plus and Atos are often impersonal, mechanistic and lack clarity**. As a consequence, many people who are found fit for work feel an injustice has been done and are more likely to appeal, rather than being receptive to other support available;

- The Jobcentre Plus **Decision Makers do not in practice make decisions**, but instead they typically ‘rubber stamp’ the advice provided through the Atos assessment. They often do not have or do not appropriately consider additional evidence submitted to support a claim for Employment and Support Allowance (ESA). This results in the Atos assessment driving the whole process, rather than being seen in its proper context as part of the process;
- **Some conditions are more difficult to assess than others**. This appears to be the case with more subjective conditions such as mental health or other fluctuating conditions. As a result, some of the descriptors used in the assessment may not adequately measure or reflect the full impact of such conditions on the individual’s capability for work; and
- **Communication and feedback between the different agencies and organisations involved is often fragmented** and in some cases non-existent. For example, if a claim goes to appeal, Jobcentre Plus and Atos are not provided with the reasons for the subsequent decision.

## Key recommendations

7. The review has set out a substantial series of recommendations to improve the fairness and effectiveness of the WCA. They are based on evidence that just procedures and processes lead to a fairer overall assessment. They aim to reposition the WCA as a positive first step towards work for most people and ensure people who cannot work are given support. To do this they will ensure that individuals going through the WCA are treated with respect, are listened to and are able to get their case across, and are able to understand and recognise the reasons behind the decision that is reached.

The review’s key recommendations include:

- **Building more empathy into the process** with Jobcentre Plus managing and supporting the claimant. This includes speaking to them to explain the process, to explain their result and to explain the support that is available after the WCA;
- **Improving transparency of the Atos assessment** by ensuring each report contains a personalised summary of the Atos healthcare professional’s recommendations; sending this summary to all claimants; and piloting the audio recording of Atos assessments;
- **Accounting for the particular difficulties in assessing mental, intellectual and cognitive impairments** by ensuring Atos employ “mental, intellectual and cognitive champions” in each Medical Examination Centre to spread best practice and build understanding of these disabilities;
- **Empowering and investing in Decision Makers** so that they are able to take the right decision, can gather and use additional information appropriately and speak to claimants to explain their decision; and

- **Better communication and feedback** between Jobcentre Plus, Atos and the First-tier Tribunal to improve the quality of decision making on all sides.

## **A programme of work for year two**

8. This review is the first of five annual Independent Reviews into the WCA. It has examined the whole WCA process from end-to-end in a short timescale. As a result, some questions have remained unanswered and some pieces of work have remained uncompleted. The review has set out a proposed programme of work to look in more detail at these issues during the second review.
9. This programme focuses on: the descriptors, particularly in assessing fluctuating conditions; what happens to people who go through the WCA; and assessing whether the WCA could also provide a more rounded picture of a person's readiness to work.
10. The review has already set up a task group to look at the mental, intellectual and cognitive descriptors and they will report back in late-November. The Independent Reviewer will assess this report and after consulting with a wide range of experts will make recommendations to Ministers.
11. In year two the review should also monitor the implementation of those recommendations in the year one report which have been adopted by the Government.

## **Costs and benefits**

12. The recommendations of this review, if adopted, will improve the fairness and effectiveness of the whole WCA process. Some will have up-front costs associated with them, for example additional training for Decision Makers to create a cadre of skilled professionals who are better equipped to weigh-up decisions independently.
13. However, seen in the wider context, these changes are likely to be cost saving in the medium-term by decreasing the rate of appeals and ensuring that the correct decision is made in the first instance.
14. This will enable the WCA to become a positive first step on the way back towards work for most people and ensure that state support is truly focused on those who cannot work.

# Chapter 1: The review outline

## The Work Capability Assessment

1. The Work Capability Assessment (WCA) was introduced in October 2008. It assesses an individual's entitlement to Employment and Support Allowance (ESA), a benefit that provides support to people due to disability or ill-health.
2. The WCA intends objectively to evaluate a persons' capability for work so that appropriate support can be provided to help them back to work or, if they cannot work, unconditional support is provided.
3. The Welfare Reform Act 2007 legislated for the introduction of the WCA. This law provides the basis for the Independent Review. 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."*
4. This is the first Independent Review of the WCA. It aims to provide a thorough examination of the system, provide recommendations for changes to the current process and set out a future programme of work indicating areas that the subsequent reports may wish to examine.

## The review

5. On 29 June 2010, the Secretary of State for Work and Pensions appointed Professor Malcolm Harrington, an occupational health specialist, to carry out the first Independent Review of the WCA.

The terms of reference for the review:

- To provide the Secretary of State for Work and Pensions with an independent report evaluating the operation of the assessments of limited capability for work and limited capability for work-related activity;
- To evaluate ESA claimants' experience of taking part in the assessments
- To evaluate the perceptions of healthcare professionals and other staff involved in carrying out the assessments;
- To evaluate the effectiveness of the limited capability for work assessment in correctly identifying those claimants who are currently unfit for work as a result of ill-health or disability; and
- To evaluate the effectiveness of the limited capability for work-related activity assessment in correctly identifying those claimants whose disability is such that they are currently unfit to undertake any form of work-related activity.

6. The Secretary of State also appointed an Independent Scrutiny Group to oversee Professor Harrington's work and to provide him with advice and challenge during the course of the review. The group included experts from the medical profession, disability groups, occupational health and employers. The group was chaired by Professor David Haslam, a GP and National Clinical Adviser to the Care Quality Commission. The three other members of the group were Paul Farmer, Chief Executive of Mind; Dr Olivia Carlton, President of Society of Occupational Medicine and Head of Occupational Health, Transport for London; and Neil Lennox, representing the CBI and Head of Health, Safety and Fire at Sainsbury's.
7. The Group met with Professor Harrington on four occasions during the course of the review. The Group used these meetings to constructively challenge Professor Harrington's findings, to ensure that the process by which the review was carried out was fair and robust, and to ensure that it remained within the terms of reference given by the Secretary of State.

The terms of reference for the independent Scrutiny Group:

- To ensure that the process for conducting the review is robust, comprehensive and fair and reflects the terms of reference for the review;
- To ensure the process for gathering evidence and relevant data is in accordance with accepted standards and best practice;
- To monitor progress of the review to ensure it remains on plan and discuss and challenge emerging issues and findings;
- To be available to the Reviewer to provide advice and support as the review progresses; and
- To provide challenge as the final report is formulated to ensure the findings are robust and are presented in a clear and appropriate format.

## **The scope**

8. As the first of five annual reviews, the review examined the whole WCA process. The review took this to begin from when an individual telephones to claim ESA, through the assessment process, the decision making process and also to include any appeals to that decision.
9. Despite being constrained by a tight timescale, the review felt it was important to gain an overview and provide recommendations on the whole WCA process. The review also sets out areas that require more in depth analysis, where it is hoped that subsequent reports will have longer to investigate and can provide further recommendations.

## Fairness and effectiveness

10. The review examined whether the WCA is fair and effective and if it is not, how it could be improved so that it becomes fairer and more effective. To do so, the review examined the evidence behind the WCA. This is detailed in Chapter 2. The review then examined if the WCA is working according to its design: whether it is accurately and fairly assessing people for benefit. This is detailed in Chapters 3 to 7.
11. Fairness can mean different things to different people, so it is important to be clear what the review is considering. The review took time to investigate other decision making processes and research around fairness or organisational justice to understand how fairness can best be applied to the WCA.
12. Literature on decision making sets out two distinct types of justice that can affect customer satisfaction and acceptance of decisions: distributive justice and procedural justice. Distributive justice relates to whether the outcome obtained is fair and procedural justice relates to the fairness of decision making procedures and the treatment individuals receive from decision making authorities. For the WCA this means it is important for the correct decision to be made (distributive justice) and the way the decision is obtained also needs to be fair (procedural justice).
13. Research has established that individuals will be more satisfied with their outcomes when the procedures used in the decision making process are deemed to be fair.<sup>1</sup>

“individuals cared as much for *how* they were treated as they did for *what* they received.”<sup>2</sup>

Interpersonal aspects are also important, including whether the reasons for the decision are clearly explained and whether those responsible for the decision treat the affected individual with dignity and respect.<sup>3</sup>
14. If people feel that they have been treated fairly during the process, have been listened to and have had their decision explained, they are more likely to accept the outcome, even if it is unfavourable. However, the opposite is also true. If procedures are not seen to be fair and individuals are not treated with respect, they are less likely to accept their outcome and more likely to perceive an injustice has been committed. Further research has shown that a lack of procedural justice can lead people to feel embittered and for some this can lead to psychological distress with affects on physical and mental health.<sup>4</sup>

---

<sup>1</sup> “Procedural justice: A psychological analysis.”, Thibaut and Walker, 1975

<sup>2</sup> “Justice in the Workplace: from theory to practice”, Byrne and Cropanzano, 2001

<sup>3</sup> “An integrative framework for explaining reactions to decision: interactive effects of outcomes and procedures”, Brockner and Wiesenfeld, 1996, *Psychological Bulletin*

<sup>4</sup> “Chronic Embitterment and Organisational Justice”, Sensky, 2010, *Psychotherapy and Psychosomatics*; “Posttraumatic Embitterment Disorder”, Linden, 2003, *Psychotherapy and Psychosomatics*

15. These ideas of fairness and justice are important influences in the review's understanding of how the WCA should work. It is clear that the process by which WCA decisions are reached is crucial to ensuring the fairness of the overall assessment. Individuals need to be treated with respect, need to be listened to and be able to get their case across, and they need to understand and recognise the reasons behind the decision that is reached.

## The process

16. The review took an open and collaborative approach to gathering information for this report. Over 400 responses were received to a Call for Evidence and the review met with around 100 key organisations. Many sources of data and evidence were interrogated to ensure that information, data and opinions expressed could be cross-checked and challenged.

- **Call for Evidence**

A considerable amount of information was gathered through a Call for Evidence. This exercise enabled anyone with an interest to submit their views and any evidence that they may have that related to the WCA.

The Call for Evidence was launched on 28<sup>th</sup> July 2010 and closed on the 10<sup>th</sup> September 2010, although considerable leeway was afforded organisations and individuals who could not meet the deadlines involved. During this time, over 400 responses were supplied from a wide cross section of individuals, representative groups, unions, employers, employment support providers and healthcare professionals (HCPs).

- **Stakeholder meetings and seminars**

Professor Harrington met with around 100 stakeholders through a series of one-to-one meetings, group meetings and seminars. At each, stakeholders and interested groups were given the opportunity to provide evidence to the review. A continuing dialogue with larger groups was opened at the beginning of the review to help guide the areas for investigation.

- **Examination of all parts of the process**

Professor Harrington visited and spent time examining all parts of the WCA process including visits to: seven Jobcentre Plus sites; four Atos Medical Examination Centres, sitting in on four Atos assessments; several First-tier Tribunals; and employment providers Ingeus and A4e. Visits to Atos included some visits that were unannounced, where the Independent Reviewer turned up without prior warning. To ensure access to all available information, Professor Harrington maintained a dialogue with senior officials from DWP and Jobcentre Plus, as well as senior managers at Atos Healthcare and senior Tribunal Judges.

- **Investigations with Jobcentre Plus and Atos staff**  
Professor Harrington undertook a range of meetings with individuals who carry out the process, including Jobcentre Plus Decision Makers and managers, Atos HCPs and Tribunal Judges. These included one-to-one meetings, group sessions and seminars.
- **Internal Data Gathering**  
The review was granted access to and made use of internal DWP and Atos management information, even where this information was not routinely in the public domain.

# Chapter 2: The evidence for a Work Capability Assessment

## Work and health

1. The relationship between work and health has long been known. It is reflected widely throughout history from ancient philosophy, to cultural expressions such as in Voltaire's *Candide*: "Work saves us from three great evils: boredom, vice and need" to more modern interpretations, such as Sigmund Freud's: "love and work are the cornerstones of our humanness."
2. More recently our understanding of the importance of work for individuals who become unemployed due to ill-health or a disability has increased. Studies of the unemployed versus the employed have dispelled the myth that you can only gain the rewards of work if you are fully fit. The harmful effects of worklessness, not least in exacerbating health inequalities, are now well understood. And it is also abundantly clear that the vast majority of people who fall out of work due to ill-health or a disability want to work or get back to work.
3. As a civilised society we should support people who can work to do so whilst providing the necessary support to those who need it most. To do this, there needs to be a clear assessment of work capability to determine who can work and who requires unconditional support. The Work Capability Assessment (WCA) has been designed as this assessment tool. In this section, the review examines the evidence that underpins this approach and the impact of previous benefit regimes on the development of the WCA.

## The importance of work

4. The evidence of the positive effects of work and the negative effects of worklessness for the individual is clear. Work gives people purpose and identity, an income and the means to move out of poverty, and provides social contacts and support. There are positive effects for an individual's family and community, by encouraging social inclusion and contribution, and for the taxpayer it reduces the benefits bill and increases the wealth of the nation.<sup>5</sup>

---

<sup>5</sup> "Is work good for your health and well being?", Waddell and Burton, 2006; "Working for a healthier tomorrow", A Review by Dame Carol Black, 2008; "Realising Ambitions, Better employment support for people with a mental health condition", A Review by Rachel Perkins, 2009; "Fair Society, Healthy Lives", A Review by Professor Sir Michael Marmot, 2010

*“I can now get out and about and meet people. I have my own money and can pay my own rent instead of being on benefits. My health has improved and I am a new person.”<sup>6</sup>*

5. Conversely, once out of work, it is likely that an individual’s health will worsen with increased risks of physical and mental health conditions, suicide and even premature death. For an individual’s family, worklessness can lead to poverty, social exclusion and have a scarring effect on their children’s employment and life chances. For the country, the costs of working-age ill-health are estimated to be over £100 billion.<sup>7</sup>

*“My job was my life, I felt my life was destroyed.”<sup>8</sup>*

*“I lost self confidence and got depressed. I wanted to work, but it seemed no one was interested and I just got worse and worse.”<sup>9</sup>*

6. It must be made clear to all sections of society that being out of work is bad for an individual’s health. Therefore, we must address the question of what constitutes ill-health or disability of sufficient severity to preclude work. Could an individual work while being unwell? Should consideration be given to job modifications, in the short or long term at that stage? If the worker has to take time off, should consideration be given to an early return to work with job modifications?
7. These are not examples of harsh or rough justice for the sick. All the evidence shows that the longer an individual is off sick, the less likely it is that they will return to work.
8. Carol Black highlighted these issues in her seminal report on the health of the working age population. There is lots of evidence that an individual does not need to be 100 per cent well to work. However, perceptions remain that this is not the case: “Too many people think that work is bad for health, that work should be avoided when they are unwell.... These misconceptions are reinforced by family and friends.”<sup>10</sup> In fact delaying a return to work until fully fit can lead an individual to move further away from the labour market, leaving them at greater risk of long-term worklessness and the negative consequences for them and their family.

---

<sup>6</sup> Adapted from Remploy case study

<sup>7</sup> Waddell and Burton, op cit; Black Review, op cit; Marmot Review, op cit

<sup>8</sup> Perkins Review, op cit

<sup>9</sup> Adapted from Remploy case study

<sup>10</sup> Black Review, op cit

9. Work can also form an integral part of an individual's recovery, over and above the positive effects described above. This is particularly true for common health conditions and for some severe conditions work is recognised by the NHS as a vital part of an individual's recovery approach. Often basic healthcare and simple workplace adjustments are all that is required to help an individual to return to work.<sup>11</sup>

### **Sarah's story**

*Sarah has depression and anxiety, but has recently been appointed a customer services assistant at Poundland.*

*"Having a job means I also have a sense of purpose," said Sarah. "It's much better than sitting at home, and it means I earn a wage rather than claiming benefits."<sup>12</sup>*

10. Coupled to this analysis is the evidence that the longer an individual is out of work, the harder it will be for them to return. This is especially true for people who receive little or no support to remain close to the labour market. Research has shown that "unemployment tends to lead to future unemployment"<sup>13</sup>, while, although just over half of Incapacity Benefit claimants left the benefit within one year, one-third of the remaining claimants spent at least eight years on the benefit.<sup>14</sup> For individuals who become unemployed due to ill-health or a disability there is a need for timely interventions to help them regain work where possible.
11. Although ill-health and disability affects a significant proportion of society, many people with a health condition or disability are in work. Around one quarter of the working age population who are in work say that they have a long-standing health condition.<sup>15</sup> Many others who are not in work express a strong desire to work. A recent RADAR publication found that around 60 per cent of people with a learning disability want paid work<sup>16</sup>, while estimates suggest up to nine in ten workless people with a mental health condition want to work.<sup>17</sup> For most disabled people or people with a health condition, work or the aspiration to work is the norm, despite disadvantages in the labour market.

---

<sup>11</sup> "Models of sickness and disability", Waddell and Aylward, 2010; Black Review, op cit

<sup>12</sup> Adapted from Remploy case study

<sup>13</sup> "Introduction: unemployment scarring", Arulampalam, Gregg and Gregory, 2001, *Economic Journal*

<sup>14</sup> DWP data, new claims to Incapacity Benefit in 2000 and 2001

<sup>15</sup> Labour Force Survey, Quarter 2, 2010

<sup>16</sup> "Supporting sustainable careers", RADAR, 2010

<sup>17</sup> "Fit for Purpose", Stanley and Maxwell, 2004, IPPR

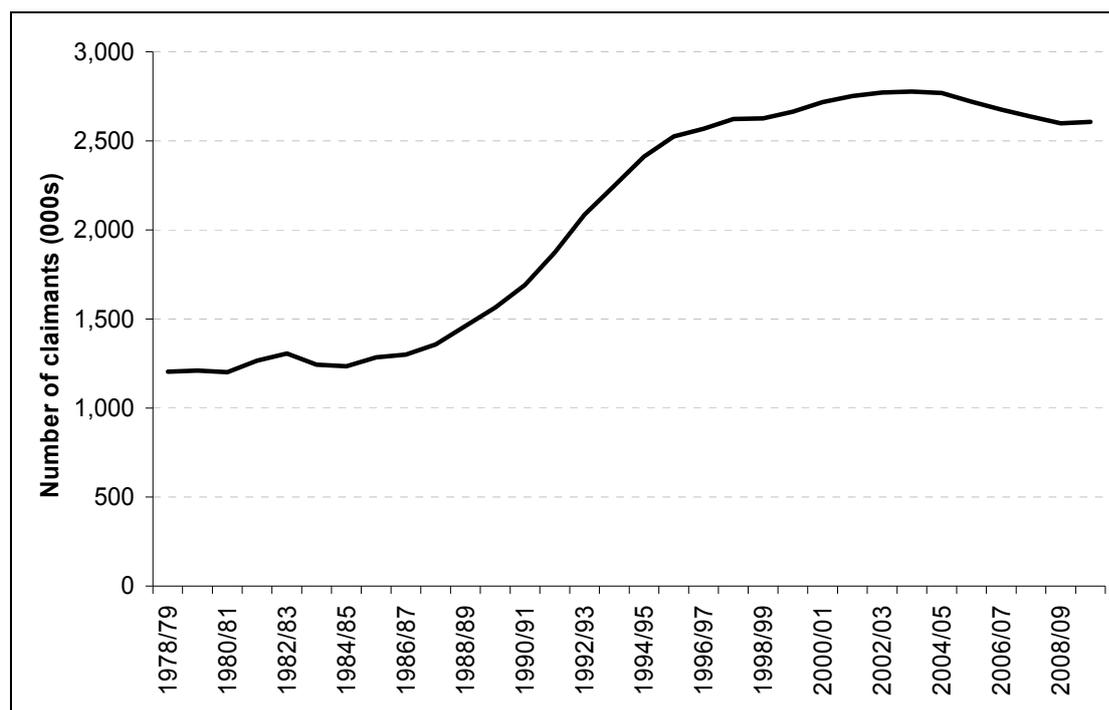
## **An evidence based assessment**

12. There is strong evidence to underpin an approach that seeks to help most people back towards work while providing support for those who cannot work.
13. Therefore there is a need for an evidenced based assessment system to help people stay close to work and get back to work. For those who go on to claim sickness benefits, it is vital that the benefit system fairly and accurately identifies those who could work, to provide back-to-work support, while providing unconditional support for those who cannot work. Doing this can prevent short term unemployment turning into long term incapacity and the negative effects this has on an individual's life chances. Such a system requires an impartial evidenced based assessment that seeks to understand an individual's capability to work.
14. Previous assessments and benefit regimes lacked a focus on the positive effects of work and the interactions between recovery and work. They relied upon a medical model that took a binary approach to incapacity, considering the curing of incapacity as the only route back towards work. This approach helped to reinforce the myth that you have to be fully fit to work.
15. Often such approaches were strengthened by the attitude of employers and societal views of sickness and disability that focused on an individual's impairment rather than them as a person. Historically, even some disability organisations held such paternalistic views, seeing impairments as "a tragedy that must be eradicated at any price."<sup>18</sup> We have come a long way, but such views persist in some sections of society, maintaining that disabled people are different and must be segregated because they can't cope.
16. As a result, many people were written off onto inactive benefits. As Figure 1 shows, there has been a significant increase in the incapacity benefits caseload, with the number more than doubling since the late 1970s.

---

<sup>18</sup> Baroness Jane Campbell in "Disability Politics", Campbell and Oliver, 1996

**Figure 1 – Incapacity benefits caseload over time**



Source: DWP Forecasting Data

17. This has led many people to become detached from the labour market with the negative spiral of consequences for them and their families, including worsening health and reducing the chance of returning to work. In some areas and for some families, worklessness has become the norm, leading to high levels of social deprivation, poverty and social exclusion.

18. However, recent evidence shows that while incapacity benefits claimants are genuinely sick or disabled, many “retain (some) capacity for (some) work”. Waddell and Aylward note that less than a quarter of incapacity benefits claimants believe that they could not do any work at all.<sup>19</sup> By failing to focus on the centrality of work to people’s lives, previous benefit regimes have seen too many individuals drift from unemployment to inactivity, leaving them unable to fulfil their potential, causing needless financial hardship, and damaging the communities in which people live.

## **Employment and Support Allowance**

19. The launch of Employment and Support Allowance (ESA) in October 2008 can be seen as an attempt to rebalance this approach and ensure that people, where possible, were not written off onto inactivity. The WCA was launched alongside ESA, intended as both an assessment for benefit entitlement and as the first, positive step back towards work for most people.

<sup>19</sup> Waddell and Aylward, op cit

20. It was based on the evidence of the positive effects of work and the increasing understanding of its therapeutic effects in aiding recovery. It was also driven by the views, needs and aspirations of disabled people and people with health conditions, changing perceptions and increasing understanding as to who it was reasonable to help to work.
21. ESA and the WCA sought to focus on what people could contribute to society, assessing what their true capability for work was, rather than writing them off onto inactivity based simply on their impairment. It was also set up to assess capability for any job, rather than an individual's previous job.
22. Early identification is also part of the design of the WCA to ensure that individuals can quickly access support to move back towards work. To do this, the WCA was designed to have mechanistic elements – currently undertaken by Atos Healthcare – to enable the Government to assess many thousands of people per month (for example during June 2010 42,000 Atos assessments were undertaken) and to ensure that the assessment is repeatable. However, such mechanistic elements were designed to be only part of the broader information that the WCA sought to analyse in coming to a decision about a person's work capability.

## **Conclusion**

23. The review supports the evidence base that underpins the WCA and the importance of work to individuals. It recognises that a lot of work has gone on in previous years to develop and pilot the building blocks of the WCA and in rolling out this capability assessment during 2008. It is important that the WCA is kept under continuous review to ensure it is assessing people accurately and one of the ways of appraising the assessment is through this Independent Review.
24. Over the last four months, the Independent Review has sought to understand claimants' experiences of the assessment and whether, in its practical application, the WCA fully measures up to its aims.

# Chapter 3: The Work Capability Assessment: process and numbers

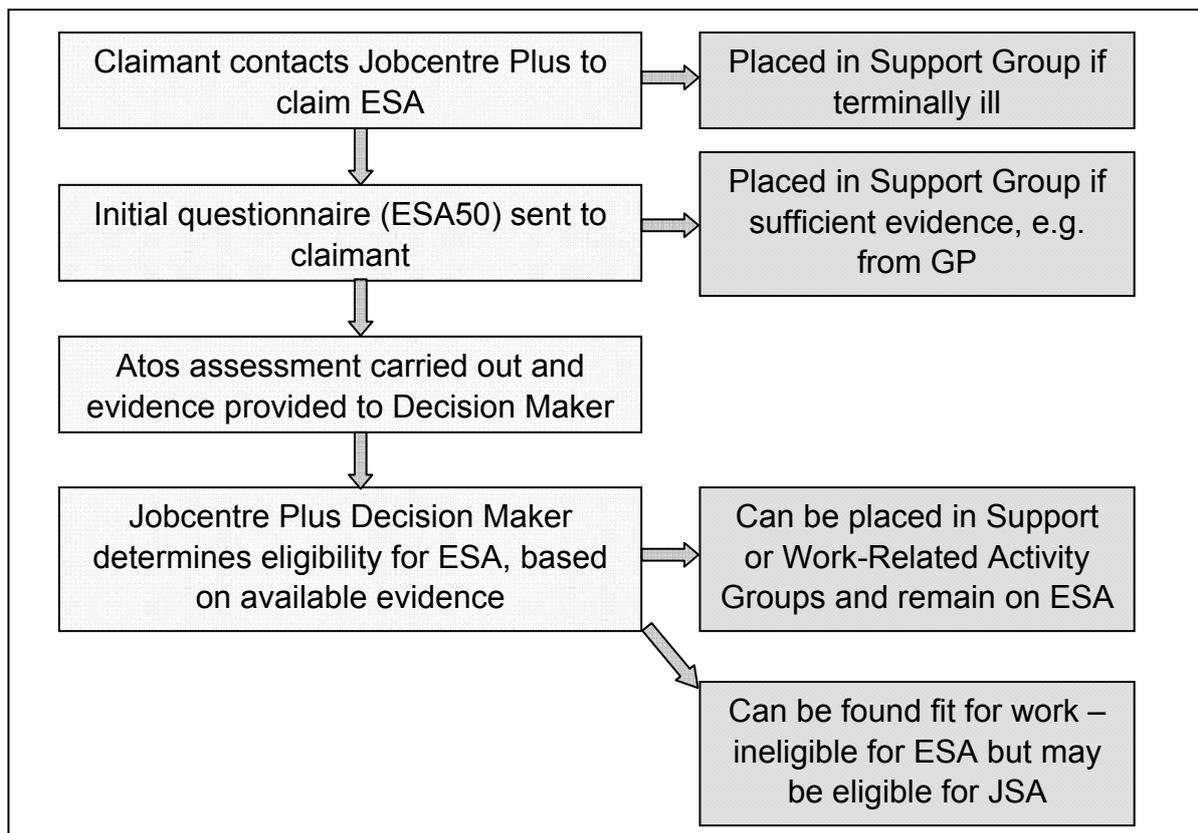
## Background

1. The Work Capability Assessment (WCA) is designed to determine eligibility for Employment and Support Allowance (ESA). People who have limited capability for work due to ill-health or disability are eligible for this benefit. If someone is eligible for the benefit, there is an additional test of limited capability for work-related activity. The majority of people who are eligible for ESA have limited capability for work and are placed in the Work-Related Activity Group, where they are required to attend a series of work focused interviews. Individuals who are severely disabled and have both limited capability for work and limited capability for work-related activity are placed in the Support Group, where participation in return to work activity is voluntary.
2. The assessment of limited capability for work and limited capability for work-related activity focuses on a claimant's functional capability and scores points against a series of functional descriptors. Claimants who have limited functional capability score points against a descriptor. For example, an individual who "Cannot see well enough to recognise a friend at a distance of a least 5 metres" will score nine points. Descriptors cover both physical and mental functions.
3. If a claimant scores more than 15 points they are found to have limited capability for work and are placed in the Work-Related Activity Group. Individuals are also automatically treated as having limited capability for work for a number of other reasons, such as if they are a hospital inpatient.
4. Individuals may be assessed as having limited capability for work-related activity in addition to limited capability for work if their functional capability is shown to meet the criteria. These individuals are likely to be severely disabled and so are placed in the Support Group. Additionally, individuals who are terminally ill or undergoing particular kinds of chemotherapy are treated as having limited capability for work-related activity and are placed in the Support Group.
5. Evidence for an individual's capability for work is in most cases gathered through a questionnaire completed by the claimant (the ESA50), an assessment carried out by Atos Healthcare, any additional evidence supplied by the claimant and in some cases through evidence requested by Atos from the claimant's relevant healthcare professional (HCP).

## The process

6. People who are ill or have a disability that prevents them from working will be advised to claim ESA. They might be directed to claim ESA by a rights organisation, Jobcentre Plus staff, on DirectGov or by a local authority welfare or support officer. The high level process involved with claiming ESA is set out in Figure 2.

**Figure 2 – High Level ESA Claim Process**



7. If the claim is being made over the telephone, then the Jobcentre Plus adviser will ask a number of questions, which will help to determine the claimant's entitlement. Claimants who are identified as terminally ill will be processed quickly so they can be placed straight in the Support Group without further assessment. Claimants who are not placed directly in the Support Group receive the 'assessment rate' of ESA while their claim is assessed. This is paid at the same rate as Jobseeker's Allowance (JSA).

**Table 1 – Main Benefit Weekly Rates 2010/11 for single claimants aged 25 and over**

<b>Employment and Support Allowance</b>	
Assessment rate	£65.45
Work-Related Activity Group	£91.40
Support Group	£96.85
<b>Incapacity Benefit</b>	
Lower rate	£68.95
Long term standard rate	£91.40
<b>Jobseeker's Allowance</b>	
Personal allowance	£65.45

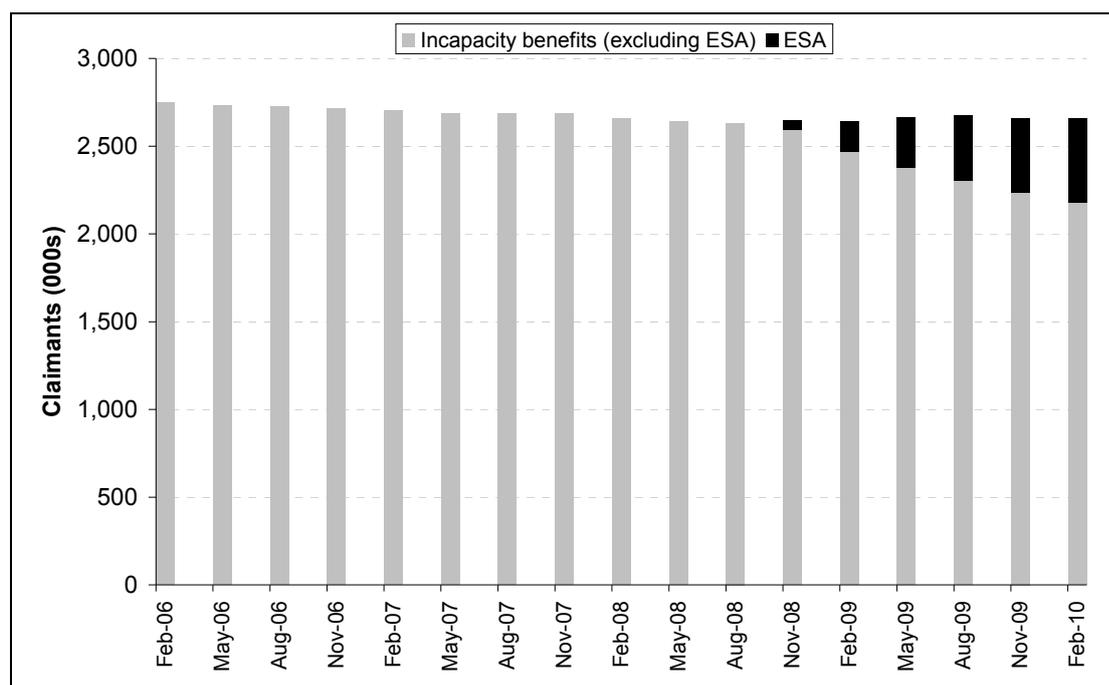
8. Claimants are then issued with a questionnaire (the ESA50), which asks for further information about the claimant's condition or disability. For a small number of claimants who more obviously may have limited capability for work-related activity, a shorter questionnaire is sent out (the ESA50A). The claimant is required to complete and return the questionnaire and will be reminded if they do not return it within two weeks. If the claimant does not return the form, then the Jobcentre Plus Decision Maker can choose to close the benefit claim.
9. Once returned to Atos, an initial sift determines whether or not the claimant may qualify for the Support Group. If they do, Atos send the claimant's GP a letter (the ESA113) to gather further evidence about their condition and to ensure people with severely limiting disabilities who should be in the Support Group do not have to attend an Atos assessment. Around six per cent of people are placed in the Support Group without having to attend the Atos assessment.
10. Around 13 weeks from the initial date of claim, the claimant will attend a face-to-face assessment at their local Atos Medical Examination Centre, carried out by an Atos HCP. Claimants are required to attend this portion of the WCA. If they do not attend and do not demonstrate good cause then the Decision Maker can close the claim.
11. The Atos HCP assesses the claimant's level of capability against a number of functional descriptors and completes a report, providing advice to the Decision Maker.
12. The Decision Maker should assess all the information provided, including additional evidence provided by the claimant, to score the claimant against the descriptors. Claimants scoring 15 points or more are classed as having limited capability for work and placed in the Work-Related Activity Group. Claimants who the Decision Maker assesses as also have limited capability for work-related activity are placed in the Support Group. Those claimants who do not satisfy the criteria are found fit for work and disallowed benefit.

13. Claimants placed in the Support Group are not required to undertake work-related activity and they receive a higher rate of benefit, as shown at Table 1. Claimants in the Work-Related Activity Group are required to attend a number of work focused interviews and are provided with support to stay in touch with the labour market by Jobcentre Plus or an employment provider.
14. If a claimant is unhappy with the decision that has been made, they have up to 30 days from the date of the decision to lodge an appeal. In the first instance, this means that the claimant must ask the Decision Maker to reconsider their original decision. If the claimant still disagrees with the decision then the claimant can appeal. The reconsideration requirement can be waived if there is insufficient time for the reconsideration prior to the appeal needing to be lodged. The claimant remains in the assessment phase of ESA while waiting for the appeal to be heard.
15. Claimants who are found fit for work through the WCA are not eligible to receive ESA. Appropriate financial and back-to-work support may be available to them via JSA, but a new claim will need to be made at this time. There is a range of back-to-work support for individuals claiming JSA, including skills training, work trials and assistance with CVs.

## **Caseloads**

16. The number people who are currently claiming ESA, together with its predecessor benefits, Incapacity Benefit, Severe Disablement Allowance and Income Support by virtue of a disability are given in Figure 3. The most recent statistics show that there were 479,000 ESA claimants at the end of February 2010 and a total of around 2.66 million incapacity benefits claimants, which includes people on ESA, Incapacity Benefit, Severe Disablement Allowance and Income Support on the grounds of incapacity.

**Figure 3 – Caseloads of incapacity benefits claimants**



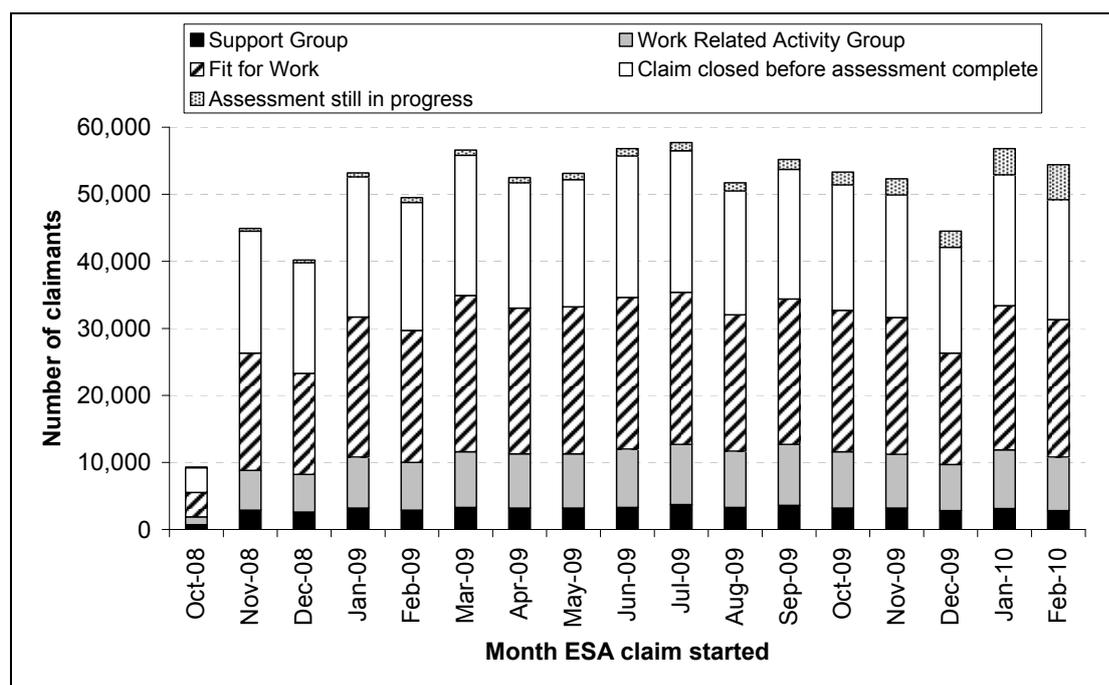
Source: DWP National Statistics

17. Although a greater proportion of new claims are being disallowed the benefit compared with previous benefits, the overall number of people claiming incapacity benefits has remained relatively steady since the introduction of ESA in October 2008.

### New Claims

18. Statistics for new claims are available up to February 2010 and are shown in Figure 4. From January 2009 to February 2010 on average 53,000 claims per month were made, with 32,000 (around 60 per cent) of these going through to complete the WCA. For claims up to February 2010, 36 per cent were closed prior to completing the WCA, and around three per cent were still to complete an assessment as of June 2010. Of the claims completing the WCA, 65 per cent of claimants were found fit for work, 25 per cent were allocated to the Work-Related Activity Group and 10 per cent were allocated to the Support Group.

**Figure 4 – Progress of ESA claim by month claim starts**



Source: ESA Statistics, October 2010, Initial Assessments only

### The Support Group

19. People can be placed in the Support Group either based on written evidence or following the Atos assessment. Some claimants can be placed straight in the Support Group on the basis of written evidence without undergoing an Atos assessment, this includes individuals who are terminally ill. Prior to an Atos assessment, if it is likely that a claimant may be placed in the Support Group, Atos send an ESA113 form to the customer’s relevant HCP, to request further medical evidence. In the quarter to September 2010, this information was requested for 13 per cent of ESA claims. Forms were only returned in two-thirds of cases, meaning that only eight per cent of cases had further medical evidence available prior to the Atos assessment.

20. The number of ESA claimants placed in the Support Group by reason is given in Table 2. This is broken down by whether the claimant was placed in the Support Group without having to attend an Atos assessment and, overall, one-third of those in the Support Group had to attend this assessment. The vast majority of people who were placed in the Support Group because they were undergoing chemotherapy or were terminally ill were not required to attend an Atos assessment. Around half of those in the Support Group for other reasons had to attend an Atos assessment. In total, two in five people in the Support Group are placed because of severe functional disability, with around one in five for each of chemotherapy and health risk.

**Table 2 – Support Group reasons – decisions to June 2010**

	Support Group with Atos assessment	Support Group without Atos assessment	% Support Group without Atos assessment
Chemotherapy	600	9,100	94
Physical or mental health risk to themselves or others	4,800	6,600	58
Pregnancy risk	300	400	52
Severe functional disability	10,400	10,100	49
Terminally ill	100	6,500	98
All	16,300	32,700	67

Source: DWP Internal Data

### **The Work-Related Activity Group**

21. The numbers of claimants allocated to the Work-Related Activity Group at the WCA, for ESA claims up to February 2010, are given in Table 3. The vast majority of claimants were placed in the Work-Related Activity Group on the basis that they scored 15 points or more against the descriptors. In six per cent of cases the claimant was placed in the Work-Related Activity Group for medical reasons, rather than based on the functionality points, and four per cent of the cases where the assessment was recorded clerically, so no further reasons for the decision are recorded.

**Table 3 – Numbers of people in the Work-Related Activity Group, decisions to June 2010**

	Number	% of WRAG
WRAG – 15 Points or more at WCA	105,700	86
WRAG – for medical reasons	7,900	6
WRAG – clerical assessment	4,800	4
WRAG – other (including reconsiderations)	4,100	3
WRAG – Total	122,400	

Source: ESA Statistics, October 2010

### **Fit for work/Claim withdrawn**

22. The majority of people who start an ESA claim are either found fit for work after the Atos assessment or withdraw their claim prior to completing the assessment. Of claims to February 2010, as of the end of June 2010, 39 per cent had been found fit for work at the WCA and 36 per cent had withdrawn their claim prior to assessment. For those people found fit for work at the WCA, the recommended points scores are given in Table 4. Three-quarters of those found fit for work received zero points, so the majority of people found fit for work are being assessed as not having sufficient functional limitation on any of the descriptors in the assessment to receive any points.

**Table 4 – Numbers of points recommended in the Atos assessment for people found fit for work at the WCA, claims to February 2010, decisions to June 2010**

Points Recommended	Number fit for work	% of fit for work
0	251,200	75
6	58,100	17
9	8,300	2
12	18,200	5
15+	200	0

Source: DWP Internal Data

## Conclusion

23. This chapter has highlighted the large numbers of people who go through the WCA process each month. The WCA has only been in operation for two years so new evidence is emerging all the time. However, one thing is clear: that this assessment represents a significant change from the previous system of incapacity benefits, with many more people being disallowed benefit.
24. The next four chapters examine the experiences of claimants, the Atos assessment, the role of the Decision Maker and the appeals process. They outline evidence for why the WCA is not working as well as it should and offer a substantial series of recommendations to improve it.

# Chapter 4: Experiences of the Work Capability Assessment

1. One of the main areas the review has looked at has been the experiences of claimants in going through the Work Capability Assessment (WCA). The review has found a number of areas for improvement in the information and guidance given to claimants in order to make the process easier to navigate. Many people are unaware of what to expect from the WCA or they have negative preconceptions, which affects their experiences.

## A lack of empathy

2. The review has found that broadly the WCA is mechanistic, impersonal and lacks empathy. The review has consistently found that individuals lack the right information about the process, do not understand the intention behind the WCA and do not understand why they achieve a particular result. As a consequence, the process can cause much angst and leave people believing they have not been treated fairly.

*“I had no idea what to expect so I became more and more anxious from the day I got the appointment.”, Customer of Mind*

*“Currently the process encourages claimants to believe they are being cheated out of something that is owed to them”, Reed in Partnership*

3. Many people making a claim to ESA will have experienced a significant trauma or change in their life that has led them to need to claim a sickness benefit. Despite this, the process does not acknowledge or seek to empathise with the individual claiming. Rather there is a general lack of communication with the claimant. As a result, it is not clear to many claimants what their obligations are and what those are of DWP and Atos.
4. The evidence the review has collected shows that claimants often do not understand the WCA and the process involved and are not well guided through the system. Recent research shows that “62 per cent of those awaiting a face-to-face WCA did not know what that would involve”<sup>20</sup>, instead most have to work it out for themselves.

*“Current up front support is insufficient for claimants prior to their assessment. Notification of assessment comes without warning and there is no support for the lengthy administration process. There is insufficient guidance post assessment, as to the next steps”, Remploy*

---

<sup>20</sup> “Employment and Support Allowance – Findings from a face-to-face survey of customers”, Barnes, Sissons and Stevens, DWP Research Report 707, 2010

5. Claimants have differing expectations about the assessment process, how they will be assessed and what will be taken into account. As a result, misconceptions and negative attitudes about the process have become common place.

*“I had my WCA and having read on the internet about the ‘tricks’ that are used by the examiners I didn’t know what to expect.”, Mr E, ESA claimant*

6. Some respondents to the Call for Evidence went so far as to state that they felt the Government was attempting to stop them claiming benefits, or worse that they were being vilified as benefit cheats.

*“In the cases I have dealt with, receiving a decision letter that says you are fit for work is very upsetting for the individuals involved, they feel their health condition and the difficulties this causes were being ignored, but they also felt that they were being judged and labelled as liars.”, Flourish House*

*“After losing the appeal I had had enough and I literally couldn’t take anymore. I felt that I had been made out to be a liar once again and a benefit cheat which I am neither.”, Mr S, found fit for work*

7. Another common misconception is the belief that DWP or Atos have targets, implicit or explicit, as to the relative ratios of people who should be found fit for work. The review has found that this is categorically not the case.
8. Such attitudes are symptomatic of the lack of information provided about the WCA, and, if they become common place, they will detract from the overall aims and intention of the WCA.

### **Little understanding of support after the WCA**

9. For many people, being found fit for work is seen in a negative light, with some claimants dismayed that they have “failed” the WCA. Claimants are not routinely told about the support that could be available to them through Jobseeker’s Allowance (JSA) or helped to claim this benefit after they are found fit for work. In a few isolated cases, the review found people who had been found fit for work were being told they could not claim JSA because they were too ill.

*“Many people, including myself, find themselves in a ‘no mans land’, where they are unable to work and unable to claim any benefits. It creates a gap between where ESA ends and JSA begins, an impassable canyon which is a major barrier to returning to work.”, Ms G, found fit for work*

10. Support is available on JSA that if explained to claimants could allay some of their fears about “failing” the WCA as well as helping claimants to use the WCA to take a first step back towards work and the positive effects that this brings. However, more information on this support is required to reassure claimants of what follows the WCA.

## Recommendations

11. The drive to make the processing of claims for ESA more efficient and quicker for the claimant is commendable, however, it should not come at the cost of basic support and information to a potentially vulnerable group.

**The review recommends that Jobcentre Plus manages and supports the claimant during the course of their benefit claim and identifies their chosen healthcare adviser.**

12. Specifically, the review recommends that Jobcentre Plus staff should contact claimants by telephone or face-to-face at least twice during the course of their claim. This should include when they first claim ESA, after they have had their Atos assessment and for those who wish to appeal their decision, on appeal.

13. The purpose of these telephone calls should be to:

- explain the process to the claimant, ensuring they know what to expect and what their responsibilities are;
- explain the need for the claimant to gather corroborative evidence about their health from the healthcare professional (HCP) who best knows their condition; this person then becomes the claimant's chosen healthcare adviser;
- promote the support that is available to a claimant, dependent on their result. Importantly this should include JSA so that people who are found fit for work know what support is available and can access it; and
- route those who need to be in the Support Group to that group as soon as possible.

## The ESA50

14. The ESA50 and ESA50A questionnaires are a visible part of the claim process, and one in which some claimants expend much effort. The ESA50 is lengthy, at 28 pages, but only demands answers from claimants on the questions relevant to their condition or function.

15. The review has found that some people find the questionnaire difficult or impossible to fill in. Some claimants perceive a need to put something in every box, even though it may have little or no bearing on their condition. There is also evidence to suggest that some advocacy groups are coaching claimants towards this approach, in the mistaken belief this could help their claim.

16. Recent research shows that 46 per cent of claimants found the questionnaire difficult or impossible to complete, with this increasing to 57 percent for people with mental health conditions. Nearly half the claimants received help in completing the questionnaire, but around three in four people with problems speaking English or literacy problems needed help with it.<sup>21</sup>

---

<sup>21</sup> Barnes, Sissons and Stevens, op cit

*“In a survey of our members, no one reported spending less than an hour filling out the ESA50 form .... One participant noted that he spent four and a half hours working on the form by himself, before then needing another three to four hours of help from a benefits adviser to complete the form”, National Aids Trust*

17. Questions have also been raised about the ESA50’s use in the process and whether it is worth the time and effort that claimants spend filling it in.

*“Many claimants give careful and detailed descriptions [in the ESA50] but this evidence is never referred to in the Atos HCP report. Nor is it drawn upon by the decision-maker. It seems to be air-brushed out of the information-gathering process.”, President, First-tier Tribunal*

## **Recommendations**

**The review recommends that the initial questionnaire (the ESA50) includes a more personalised justification so the claimant can express the issues that they face in a short paragraph.**

18. Although there is already a section that allows the claimant to state how their condition affects them on a day-to-day basis, it is underused and should be re-weighted in the process. This will be of immediate use for the Decision Maker in weighing up the evidence that they are given. It will enable them to cross reference for anomalies and inconsistencies with the summary that the Atos HCP gives in their assessment of the claimant. It will also provide context to the individual’s situation and how they view them self.

**In the longer-term, the review recommends that the Government reviews the ESA50 to ensure it is the most effective tool for capturing relevant information about the claimant.**

## **Written communications**

19. The review has examined written communications sent to the claimant. Individuals receive written communication at the beginning of their claim, as they book their Atos assessment and at the end of the process when they receive their result. The review has found that these communications lack empathy and clarity, they are at best bland and technical and at worst confusing and threatening. This is particularly true for vulnerable claimants.
20. Written communications should be an ideal opportunity for explaining the process and setting claimants’ expectations about the Atos assessment or the support options available. However, some respondents to the Call for Evidence have stated that they felt the letters focused on negative or threatening aspects of the process. Phrases such as “Your benefit may be affected“ and “we may stop your benefit” can make people anxious or confused.

21. The large volume of communications that are sent to claimants do not as a whole add up to a coherent and easily understandable explanation of the process. For example, the guidance on completing the ESA50 tends to focus on what claimants should enter but does not explain how the information that claimants provide will be used.

*“[my wife] made a claim for ESA and submitted a limited capability for work questionnaire. There was limited information on how to complete this form and more importantly what criteria Jobcentre Plus used to assess claimants’ applications. ....The letter she received was a badly set out stock letter and contained no information on why she had failed in her application.”*, Mr R, husband of claimant

### **Recommendations**

**The review recommends that written communications to the claimant are comprehensively reviewed so that they are clearer, less threatening, contain less jargon and fully explain the process.**

# Chapter 5: The Atos assessment

## Background

1. The Atos assessment is a face-to-face assessment carried out by Atos Healthcare on behalf of DWP. Most Employment and Support Allowance (ESA) claimants will undergo this assessment around three months into their claim. The aim of the assessment is to gather evidence about a claimant's capability for work and provide this to the Jobcentre Plus Decision Maker .

### **Atos Healthcare**

Atos Healthcare is a division of Atos Origin, a multinational company who specialise in information technology and outsourcing. The Healthcare division of Atos was purchased from SEMA Schlumberger in 2004.

Atos, or its previous incarnations, have been the sole provider of DWP's disability assessments since 1998. These assessments include Disability Living Allowance, Incapacity Benefit, Industrial Injuries Disablement Benefit as well as Employment and Support Allowance. In 2005, Atos extended their contract with DWP for a further seven years, at a total cost of £500 million, or around £80 million per year.

## The assessment

2. Claimants go through an Atos assessment around three months into their ESA claim. Claimants are required to attend this portion of the Work Capability Assessment (WCA); if they do not attend and do not demonstrate good cause, then the Decision Maker can decide to close the claim.
3. The assessment occurs at a Medical Examination Centre. Evidence is gathered by an Atos healthcare professional (HCP) through observation, interview and where necessary physical assessment. Claimants are encouraged to bring a friend or companion with them to the assessment. This person can assist the claimant in answering questions as appropriate.
4. The questions asked by the assessor should be active and open, and focused around the claimant's daily routine. By using a daily routine, the HCP is able to gather evidence on activities that are relevant to the descriptors, for example loading a dishwasher or washing machine can give insight into a individual's ability to bend and kneel.

### **LiMA System**

5. The HCP uses the Logic Integrated Medical Assessment (LiMA) computer system to 'build' the final report. This software is used to record the discussions at the assessment and to generate a report and advice for the Decision Maker.
6. The language and logic used in LiMA helps the assessor to focus on particular issues and obtain evidence about the individual in a relatively short space of time. The language used by the system is stock phrases, such as "Can load washing machine (front loading)" that can be quickly added to build up a picture of the individual's capability from the interview.
7. This language is not very intuitive or accessible to claimants who receive their final report. The Atos Training and Development handbook encourages their HCPs to use open questioning and not to rely on the LiMA system, but in evidence to this review, this seems to be uncommonly invoked in practice. It can, perhaps, be too easy for HCPs to use stock phrases generated by the LiMA system that do not necessary capture the whole assessment or allow nuanced responses to be reflected.
8. Time is an important issue in the assessment. The review has found that each HCP has a target to complete their assessments in an average of 46-49 minutes each. This has increased from 42-45 minutes, which was put in place at the introduction of ESA. This time starts from when they greet the claimant to when they finish typing their report. Evidence from some Atos HCPs to the review suggests that they felt constrained by these targets when interviewing complex cases.

### **Atos Healthcare Professionals**

9. Atos contracts around 650 sessional doctors, and employs around 250 employed doctors, 300 nurses and 50 physios in the delivery of services to DWP. All Atos HCPs must have the relevant professional training and at least three years experience. They must also be registered with the relevant professional body and there must be no restrictions or pending actions against that registration.
10. The review has found that Atos have a thorough recruitment process, with only around 17 per cent of applicants successfully gaining a job. Recruitment focuses on experience of areas of medicine that are relevant for the WCA, for example rehabilitation medicine, and on having strong communication and interpersonal skills.
11. Atos provide all new recruits with training. This includes an eight day course for all doctors and a 17 day course for nurses. Following these courses HCPs are required to undertake mock WCAs and supervised WCAs with actual claimants. HCPs can then work unsupervised, but every assessment is audited until they receive four consecutive A grades, meaning that their reports have reached a high standard, as discussed in the next section.

## **Audit Procedures**

12. Atos audit a significant number of assessments through sampling, where the reports produced are checked to see whether they meet required standards and they show evidence of the assessment being carried out in a thorough manner. Each audited assessment is given a grade according to its quality: A-grades are given if the assessment fully meets required standards; B-grades are where some improvements are possible; and C-grades are given where the report is deemed to be unacceptable as it does not meet required standards.
13. The auditing checks the report in terms of presentation, evidence of an appropriate medical examination, medical reasoning and professional issues. If any area of the product generates a C-grade, the whole product is regarded as C. In the three months to September 2010, 919 ESA cases were sampled, which is around 2 per cent of all WCAs. Of these, 46 (4.6 per cent) were found to be a C-grade. This meets the target set by DWP of less than five per cent.
14. Atos also audit HCPs whose recommendations are significantly higher or lower than the distribution of the local or regional average. The review understands that this can be both a practical and effective way for auditing Atos assessments. However, it also notes that such a system can give the mistaken impression that there are implicit targets for finding people fit for work.
15. Additionally, DWP undertakes a number of quality assurance visits to Medical Examination Centres, auditing the Atos audit process. During these visits a random selection of audited cases are selected and re-examined to identify any further issues.

## **Claimant satisfaction and complaints**

16. A key source of evidence on claimant perceptions of the assessment is the Atos customer satisfaction survey. This is sent out to over 1,500 people every month, before they receive the final result of their WCA. Looking at these results in detail, they show that while most people are generally satisfied with the assessment, a significant minority report problems. For example, around a quarter of people found that the HCP didn't give them enough time to explain their condition and 20 per cent were not put at ease by the HCP.
17. Overall the total customer satisfaction score is high, at around 90 per cent. However, a majority of the questions used to evaluate customer satisfaction tend to focus on the process and the environment of the assessment centre, rather than the way the WCA is carried out. Therefore it is possible that high satisfaction scores are obtained even though claimants are dissatisfied with the assessment process, with the scores not necessarily reflecting the true feelings of claimants towards the WCA.

18. Atos have detailed complaints procedures and take action against underperforming HCPs. In the quarter to August 2010 Atos received 748 complaints about ESA. The total number of ESA examinations undertaken for this period was 137,000 so the overall rate of complaints in relation to examinations was 0.55 per cent or 1 in 182 exams.
19. This is a relatively low complaint rate. Nevertheless, where serious complaints are received, Atos appear to take action against offending HCPs. This can be through remedial action plans, disapproving (not sending future work to) HCPs and in the worst cases taking formal action such as dismissal. In the last year, Atos estimate that they have disapproved around 25 HCPs, in five of these cases, formal action was taken.

### **DWP Contract**

20. Under the DWP contract, Atos are required to collect information about a variety of issues, including their HCPs, assessments, claimant satisfaction and complaints, and report these to DWP on a regular basis. Across the whole contract, Atos are required to monitor and provide data on over 150 Key Performance Indicators (KPIs), which are all monitored on a monthly basis by DWP.
21. Of the KPIs, a total of six relate specifically to ESA and the WCA, these are:
- number of C-grades at Audit;
  - cases outstanding;
  - cases cleared each month;
  - reconsiderations cleared each month;
  - waiting time for claimants; and
  - number of claimants not seen.

### **Findings**

22. The review has received a significant amount of negative comment about the Atos assessment, from a wide range of individuals, organisations and agencies. Some has focused on dislike of the mechanistic and impersonal nature of the process while some cases highlight instances of significantly poor treatment by the system or by the Atos HCP.
23. The review has sought to understand how pervasive such problems are and whether there is evidence of systemic failings with the Atos assessment.

### **Claimant expectations**

24. The review has found that many claimants expect their Atos assessment to be a medical examination that looks at their illness or impairment rather than an assessment of their functional capability. They expect a doctor to examine them physically and some are dismayed that conclusions can be drawn about them without such an examination. This reflects the lack of information and guidance given to claimants about the Atos assessment and the WCA process as discussed in Chapter 4.

*“I received no physical examination even though I have an industrial accident injury of the throat which requires a close physical examination as I have a dislocation of my thyroid cartilage.”, Mrs S, found fit for work*

25. This problem is exacerbated by the ambiguous language used in official documentation and the terminology used to talk about the assessment. Several letters sent to claimants make reference to a ‘medical assessment’, while as the First-tier Tribunal point out:

*“The law refers to a “medical examination”. The invitation to the claimant refers to a “medical assessment” at a “medical examination centre”. Criticism by the claimant of the thoroughness of the examination usually meets the official response that it is not a medical examination but a “functional assessment”.”* President, First-tier Tribunal

### **Poor experiences**

26. The review has received numerous examples from individuals and organisations of particularly poor treatment during Atos assessments. The following sections set out some of these findings, focusing on the way the system can encourage impersonal and mechanistic assessments, poor use of the descriptors, lack of knowledge by HCPs and poor behaviour by HCPs.

#### **Poor experiences: a mechanistic system**

27. Claimants see the Atos assessment as impersonal and mechanistic. In part this is because it is meant to be a repeatable assessment that thousands of people go through each month. However, this also appears to induce a mechanistic approach in the HCP. HCPs must complete a large number of assessments in a short time and can too easily rely upon the computer based questions to guide their assessment rather than focusing on the individual.

*“The assessment procedure itself was described by our clients respectively as “humiliating”, “intimidating” and “clinical and cold”. In each case the assessor was sitting behind a computer and made no eye contact. Questions “were fired at” the clients and they had no time to answer them fully”,* Mental Health Aberdeen

*“Many problems with the WCA appear to stem from LiMA. It is LiMA that results in impersonal, computer based medical assessments which are distressing to the individual and which discourages medical professionals from making an independent assessment of a person’s capability for work.”*, Leonard Cheshire

28. Many claimants feel that there isn’t sufficient time at the Atos assessment to properly assess a claimant’s capability for work, particularly in complex cases. Although around 45 minutes is available for the assessment, many respondents have suggested that this is not a long enough time to complete a detailed assessment of an individual’s functional capability. These concerns have also been expressed by the HCP themselves.

*“The HCPs are mindful of some criticisms of the standard of reports and the quality of their work that is voiced by the claimants. This, in part, can be due to the amount of time that a HCP has available to spend with the claimant. The amount of time that a HCP is given to undertake a medical examination has long been a bone of contention between Prospect and Atos Healthcare”*, Prospect Union

#### **Poor experiences: the report**

29. Reports of the Atos assessment are not routinely sent to every claimant, but only to those who request them. On receiving them too many claimants do not recognise the report as reflecting their circumstances and the discussions that had taken place in the assessment. In some cases, seeing the report has allowed the claimant to find information that had been incorrectly recorded by the HCP.

*“I received the transcript of the assessment that my son had for ESA. I found that there were at least 20 wrongly recorded answers, and misinformation on the record. For instance, it was recorded that my son drove himself to the medical, when my husband drove us to the medical.”*, Mrs T, mother of claimant

30. In a Disability Benefits Consortium survey of over 6000 respondents, around 600 of whom had been through an Atos assessment, one half had seen their report but only 15% of those thought it was an accurate reflection of their answers at the interview.<sup>22</sup> This sample is somewhat biased, as people will generally only request a copy of their report if they believe there have been problems with the assessment, but these figures do show that a sizable number of reports are produced which do not reflect a claimant’s recollection of the discussions that took place.

---

<sup>22</sup> Disability Benefits Consortium, forthcoming

### **Poor experiences: accounting for fluctuations and pain or exhaustion**

31. The review heard particular problems in identifying the effects of fluctuating conditions due to the closed questioning used by some assessors. A number of anecdotal reports presented to the review, either in writing or at the seminars, stated that individuals were not allowed or afforded the opportunity to expand their answers, or to describe good and bad days.

*“Whenever I tried to explain the fluctuating nature of ME/CFS I was cut short and the doctor did his best to force my answers to a Yes/No format”, Mr W*

32. There have also been cases mentioned by individuals and rights groups where the repeatability of a task has not been fully taken into consideration in the assessment. In some cases claimants have not scored against the appropriate descriptor because they can complete the task, even though attempting the task again would not be possible or very difficult due to pain or exhaustion.

*“Throughout my assessment I tried to explain that whilst I was able to carry out certain tasks, it did cause pain, discomfort and fatigue. I also explained that the pain and fatigue will last for hours after the assessment and would increase significantly each time the task was repeated I would very quickly reach a stage where the task could not be performed at all...I requested a copy of the doctor’s report so I may see his comments. Upon reading that report I found it made no mention at all of the fact I found the tasks difficult to perform, that they caused me pain or that to repeat the task would be near impossible”,*

Mr A, found fit for work

### **Poor experiences: HCP knowledge**

33. Concerns have been raised about the training of Atos HCPs and whether, as generalists they have sufficient insight into less common health conditions.

*“People with Parkinson’s report a very negative experience of medical assessments and say that medical assessors lack training in and understanding of the condition. Just 10% of respondents felt that the professional assessing them had a good understanding of Parkinson’s.”,* Parkinson’s Disease Society<sup>23</sup>

34. Concerns have also been raised about assessors’ knowledge and understanding of mental health conditions.

*“The short training course in mental health that Atos assessors receive is proving nowhere near adequate to allow them to accurately assess applicants. The experiences of people who have contacted us suggest that the ‘invisibility’ of mental health conditions is not being recognised by the assessors due to their lack of knowledge of this area.”,* Mind

---

<sup>23</sup> “Of little benefit and not working: People with Parkinson's experience of Employment and Support Allowance”, Parkinson’s Disease Society, 2009

35. This is of particular attention due to the large number of people undergoing an Atos assessment who have a mental health condition (37 per cent with primary diagnosis) and as DWP data on conditions show a significant number of people with other conditions also have a secondary diagnosis of a mental health condition. For example, DWP data show that 15 per cent of people with primary diagnosis other than mental health in the Work-Related Activity Group received points against the functional descriptors that would be associated with mental health conditions (such as adapting to change).<sup>24</sup> Despite this, in some assessments, an individual's mental health diagnosis is being missed altogether.

*"A bureau in the South West saw a client with both physical and mental health problems. The bureau reported that the client's mental health problems were totally ignored in the assessment, and yet it was very obvious that there was a serious problem."*, Citizens Advice<sup>25</sup>

36. In part these concerns reflect the difference between a medical examination, which focuses on diagnosis, and the Atos assessment, which looks at a person's functional capability. With thorough disability assessment training and a focus on the individual, rather than the computer, Atos HCPs should be able to undertake most assessments to a high standard. The review also recognises that some conditions are more difficult to assess due to their subjectivity and so makes recommendations to enable mental, cognitive and intellectual conditions to be assessed more accurately.

### **Poor experiences: behaviour of HCPs**

37. The review has come across a few cases where the Atos HCPs have shown unacceptable behaviour.

38. Evidence presented at a user seminar came from a woman who had expressed suicidal tendencies. At her Atos assessment, she was kept waiting for two hours before being seen. Then during the assessment she was rudely treated by the Atos HCP who at one point told her to "stop crying and hurry up because I need to go and pick up my kids from school." Other cases have included:

*"The interview was very intimidating, and I was reduced to tears of frustration by the end. When I was asked the questions, I was stopped by the assessor from being able to explain and add essential supplementary information. The assessor frequently just held his hand up to stop me from talking and then he moved directly on to the next question."*, Mrs S

---

<sup>24</sup> Adapted from DWP ESA/WCA statistics publication, October 2010

<sup>25</sup> "Not Working", Citizens Advice, March 2010

*“At the end of my assessment the doctor felt the need to inform me “ME/CFS doesn’t exist in any physical form as there’s no definitive test for it”. When the doctor saw my surprise he soon followed this comment with “there’s a big world out there you know, you should go out and see some of it””, Mr B, found fit for work*

39. A number of other examples have been submitted to the review where claimants spoken of poor experiences, particularly focusing on poor interpersonal treatment such as not being listened to, no eye contact or not being treated with respect.

*“I’ve sat in on numerous assessments and just found them a joke. Seriously, no eye contact, face buried in the laptop, and... the one that got me was, he (the assessor) said that the claimant had good eye contact, but the doctor never looked at him once. Not once. His face was buried in the laptop.”, CAB Scotland advisor*

*“Whatever the content, and outcome, of the interview, it can be conducted in a way which is human and respectful, and leaves the interviewee feeling that they have been treated as a fellow human being. I did not.”, Miss S*

## **The review’s conclusion**

40. The information that this review has gleaned from Atos Healthcare concerning claimant satisfaction and complaints contrasts with the considerable concern, worry, even anger expressed in the written evidence to this review.
41. There is no way of confirming which view is the true picture across all the thousands of assessments undertaken each month.
42. One thing is clear, however, from the complaints about the Atos assessment, from people who have given evidence to this review – including organisations such as Citizens Advice and Citizens Advice Scotland who have collated a lot of data – that is, that the complaints are consistent across a wide range of organisations, agencies and individuals. This must be taken seriously and the review seeks to address these problems and suggest how things can be improved in its recommendations.

## Recommendations

**The review recommends that every Atos assessment contains a personalised summary of the assessment in plain English.**

**The review further recommends that every claimant is sent a copy of this personalised summary and is able to discuss any inaccuracies with a Decision Maker.**

43. The HCP should complete a personalised summary of their assessment, which should not be drawn from pre-populated fields from the computer system. In all cases, the Atos personal summary should be routinely copied to the claimant. The claimant should be free to discuss any inaccuracies with a Decision Maker.
44. This will help to improve claimant understanding of their reports and could increase the overall quality of the report produced. Claimants will be better able to challenge incorrect or incomplete reports at an earlier stage. Such a summary also requires that the HCP considers the individual more holistically, helping to reduce the number of reports that are driven by the LiMA system rather than the HCP's judgement.

**The review recommends that Atos pilot the audio recording of assessments to determine whether such an approach is helpful for claimants and improves the quality of assessments.**

45. The review has heard from a number of claimants who believe that recording Atos assessments would help to drive up quality. The review suggests that such an approach could have merit in improving assessor and claimant behaviours. However there are also a number of draw backs, such as the increased burdens this may place on Tribunals and the storage of extremely sensitive and personal information. The review suggests that this approach should first be trialled to understand how it impacts on behaviours and to determine whether this approach should be rolled out to all assessments.

**The review recommends that Atos should develop and publish a clear charter of claimant rights and responsibilities, and should consider publishing the HCP guidance online for claimants and advisers.**

46. The review has found that claimants are not clear what the Atos assessment involves, what their responsibilities are and who they could complain to if they are poorly treated. A well publicised charter outlining a claimant's rights and responsibilities would help reduce negativity with the process and ensure that claimants know what to expect from their Atos assessment.
47. Atos and DWP have developed a considerable amount of information and guidance to support the Atos HCPs in their work. This guidance sets out clearly how assessments should be carried out. The review believes that if this was made available to claimants it would do much to dispel the fear and myths that have built up around the Atos assessments.

**The review recommends that Atos provide mental, intellectual and cognitive champions in each medical assessment centre. These champions should spread best practice amongst Atos healthcare professionals in mental, intellectual and cognitive disabilities.**

48. Some conditions are more difficult to assess than others, particular those that are more subjective such as mental health conditions. People with mental health conditions also make up the largest group of individuals who go through the WCA (37 per cent). Atos HCPs are mostly drawn from generalist medical professions and so are less likely to have insight into some mental health conditions, learning disabilities or autism.

49. The review believes that Atos should employ champions in mental, intellectual and cognitive disabilities. That is HCPs who have undergone further specific training in these conditions and are able to spread best practice and knowledge, help other HCPs with difficult assessment or take on some of the most difficult assessments involving mental, intellectual or cognitive disabilities.

**In year two the review should examine the Atos computer system (LiMA) and how it can drive the right behaviours**

50. The review is concerned that the use of the LiMA software may be having a detrimental effect on the way the Atos assessment is carried out. A number of concerns have been raised as to how the LiMA system can drive the overall assessment process. The review has not had time to undertake a thorough assessment of the LiMA system and recommends that next year's review looks into this in more detail.

**In year two, the review should explore the use of other healthcare professionals in the Atos assessments and to check consistency of assessments by different professions.**

51. The Atos assessment is currently carried out by doctors, nurses and physiotherapists. Future reviews should explore whether the current mix of professions is right and if there are other HCPs who could undertake the assessment.

# Chapter 6: The decision making process

## Background

1. The Jobcentre Plus Decision Maker has the most crucial role in the Work Capability Assessment (WCA). It is they who decide whether an individual has limited capability for work, limited capability for work-related activity or neither of these. The Decision Maker is an employee of Jobcentre Plus, who is empowered to take decisions on behalf of the Secretary of State. In making a decision, the Decision Maker can draw on a wide range of evidence, including the ESA50 questionnaire filled in by the claimant, the Atos assessment, and any additional evidence that they feel is relevant. If an individual does have limited capability for work, the Decision Maker will also decide whether they have limited capability for work-related activity.

### **The development of the Decision Maker role**

Previously, decisions around entitlement to benefit were made by Adjudication Officers. In the predecessor departments to DWP these roles were separated from the Department and answered to the Chief Adjudication Officer, who reported to the Secretary of State on issues of quality and accuracy. There were additional, more minor decisions, which could be taken by clerical staff. These were known as Secretary of State decisions. In the 1998 Welfare Reform Act, *all* decisions became Secretary of State decisions, and the roles of Adjudication Officer and Chief Adjudication Officer were abolished.

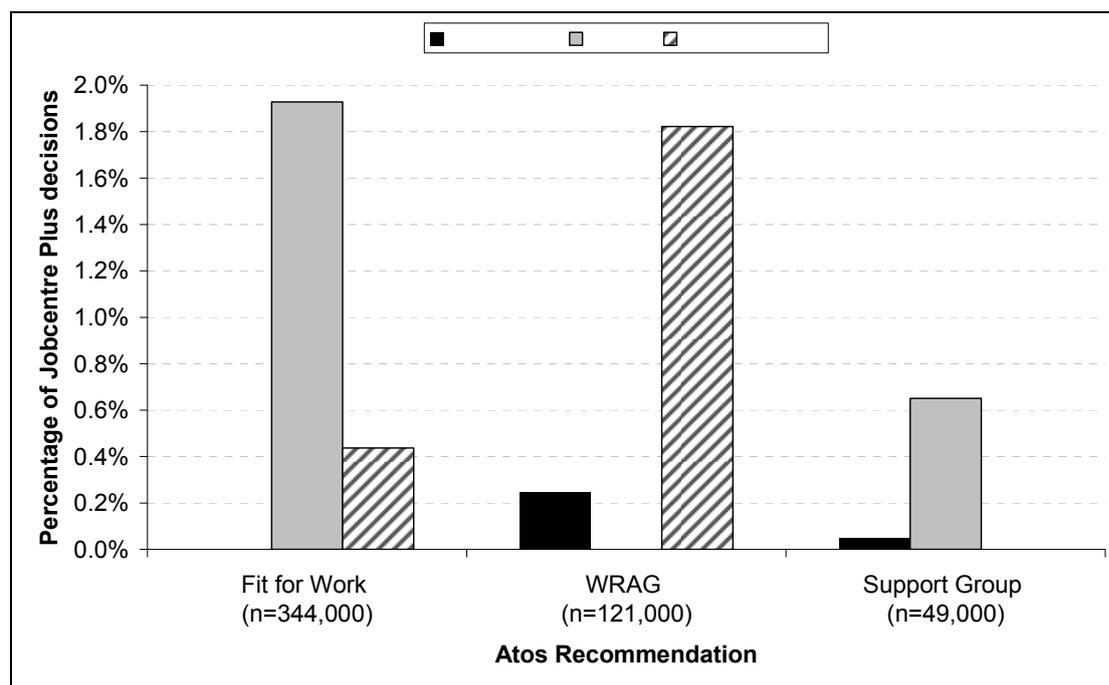
2. It is important to note that the advice from the Atos assessment to the Decision Maker is just advice. It provides evidence collected by the healthcare professional (HCP) as to whether the claimant has or has not met a particular threshold of capability for work. The Decision Maker should then use this evidence as part of a suite of information, including the original ESA50 and any other additional evidence provided by the claimant, to make an informed judgement. They should, for instance, consider whether the findings of the Atos assessment are consistent with what the claimant has stated on the ESA50, or with any particular representations or case notes from the claimant's own doctors and HCPs.

3. If the claimant disagrees with the decision made, they can ask for a reconsideration. This means that the Decision Maker re-examines the evidence available, and draws a conclusion as to whether the initial decision was appropriate. If the claimant is still unhappy with this, then the case can be referred to First-tier Tribunal for an appeal, where a Judge will consider the evidence available and either uphold or replace the original Secretary of State decision. Appeals are covered in Chapter 7.

## Findings

4. Decision Makers rarely make a decision that disagrees with the evidence provided by the Atos assessment. The statistics show that Decision Makers do not follow the Atos advice in only around two per cent of cases.
5. It is important that Decision Makers take decisions on the basis of all the evidence presented to them. The Atos assessment clearly forms an important piece of evidence in assessing an individual's benefit claim. However, from the evidence gathered, it appears that the Atos assessment is rarely questioned by the Decision Maker.
6. A breakdown of the proportion of final decisions that differ from the original advice made by Atos is given in Figure 5. This shows the small number of decisions where the Decision Maker made a decision that differed from the original Atos advice. Only 1.9 per cent of claimants advised by Atos to be fit for work were placed in the Work-Related Activity Group by the Decision Maker and 0.4 per cent were placed in the Support Group. The numbers are as small for claimants advised by Atos to be in the Work-Related Activity Group. In total, 60 per cent of the decisions changed (6,600 of 11,000 decisions changed) involve moving a person who was recommended to be fit for work and putting them instead in the Work-Related Activity Group.

**Figure 5 – Percentage of decisions where the Jobcentre Plus Decision Maker made a decision that differed from the original Atos advice (up to June 2010)**



Source: DWP Internal Data

### The decision gap

7. The review has found that many Decision Makers lack the confidence to make a decision that deviates from the Atos advice. In part this appears an issue of training and investment in the Decision Maker role, but it also reflects the lack of time Decision Makers are allowed to devote to particular cases. Several people the review spoke to referred to Decision Makers as “decision-stampers”, merely ticking through the advice from Atos.

*“The impression drawn from the cases coming before the Tribunal is that decision-makers are not discharging that responsibility in an independently minded manner, carefully weighing up all the evidence, resolving conflicts of fact and opinion, considering the applicable law and reaching a reasoned conclusion. They are simply rubber-stamping the HCP’s report.”, President, First-tier Tribunal*

*“The design of the WCA is such that Decision Makers are given discretion to place a claimant in either group where there is evidence that they have Limited Capability for Work. However, whether due to a lack of training, a lack of confidence or a lack of authority, they invariably refuse to utilise their discretion, even where there is overwhelming medical evidence from specialist consultants showing the Atos report to be clearly wrong in the circumstances. Instead, in most cases they simply prefer the Atos report without adequate reasons for doing so.”, Disability Solutions*

8. It is clear that a culture has developed amongst Decision Makers that sees the advice from Atos as forming the decision, and that they are there simply to ratify that decision. This is evident in language officials use about decisions; many talk about 'overruling' the Atos advice rather than making an evidence-based decision, while others reference the difficulty in going against the recommendation of an Atos HCP.

*"It's difficult. I mean, they're a doctor. They've assessed the person, I don't know enough about it to overrule what they're saying."*, Jobcentre Plus Decision Maker

9. Conversely, Atos HCPs see their reports from the WCA as forming solely advice and Atos guidance clearly states that this is the case. The Decision Maker is free to disregard this advice in light of other evidence; so Atos HCPs correctly see their role as offering advice, and providing information that should be considered as part of the final decision.
10. These two viewpoints mean that effectively, both parties expect that the other has responsibility for making the decisions. There is what can be termed a decision gap, which can leave no-one actually claiming responsibility for the benefit decision.

### **Additional Evidence**

11. The report from Atos is only one part of the information that can be used to assess a claimant's entitlement to Employment and Support Allowance (ESA), but as indicated above it has come to form almost all of the assessment. The limited use of additional evidence has been highlighted by a number of groups throughout the review.
12. A number of submissions to the review have recommended that greater weighting be given to the medical evidence provided by the claimant. A number of different advantages to using this evidence have been given, including the longer timescales over which this evidence has been obtained, the in-depth knowledge of the effects of the claimant's health condition that their HCP can bring and the ability to assess better particular health conditions, especially those which have fluctuating effects and where the claimant doesn't have insight into the effects of their health conditions.

*"We believe more weighting should be given to the professional opinion of those clinicians in contact with the individual making the claim. This would help not only to reduce the number of people erroneously judged to be fit for work but would assist in dealing with some of the problems of fluctuating conditions"*, Centre for Mental Health, Mind, Rethink and the Royal College of Psychiatrists

13. The appropriate use of additional evidence also allows the claimant to feel that they have been able to put across in full their side of the story, thereby increasing the fairness of the decision making process. One of the effects of this could be that claimants are more likely to accept the results of the assessment.

*“a large number of Advisers, when asked how the WCA could be improved, believed that the examinations and decision making process should place more importance on the evidence provided by health professionals. By incorporating this evidence, customers may also be less resistant and more accepting of the findings.”*, Reed in Partnership

14. A number of claimants do already submit additional evidence along with their claim, but it appears that this information is not incorporated as effectively as it might be. Part of the problem is that the way the evidence should be submitted is not explained. Some claimants have felt that their medical evidence has been ignored when they have brought it to the Atos assessment and the Atos HCPs have varying opinions of the usefulness of this evidence.

*“Although some HCPs said they would like more medical evidence, others felt that such evidence was not always necessarily applicable to the process of carrying out a functional assessment. Customers also reported that HCPs did not always read other medical evidence where this was provided.”*, DWP research<sup>26</sup>

15. It is clear that some claimants expected DWP to be their advocate and to gather available medical information to assist them in their claim. One of the issues is the lack of clarity in communications with customers as to the role of medical evidence in the claim process. The ESA50 questionnaire asks for the contact details of treating HCPs and asks for permission to contact them, which some claimants, not unreasonably, then expect that DWP will follow up. No other communications with claimants tell them that medical evidence can be provided for use by Decision Makers.

*“It was not apparent to me that supporting evidence would assist me in my claim”*, Mrs C

*“I find it difficult to understand why the benefit office/Atos have made no effort to contact my GP or my consultant psychotherapist to ascertain any further medical details”*, Mrs F

16. While the onus is and must be on the claimant to provide information to support their claim, this is not always clear to claimants. There is no doubt that collecting this information can place extra burdens on individuals. However, it is difficult to see any justification or method of operating such a system without requiring the majority of claimants to be their own advocates.

---

<sup>26</sup> “Employment and Support Allowance – Customer and Staff experiences of the Work Capability Assessment and Work-Focused Health-Related Assessment”, Barnes, Aston and Williams, forthcoming

## **Reconsideration process**

17. A key part of the process of ensuring decisions are correct is the reconsideration process. In this, the Decision Maker has the authority to reconsider a decision if a claimant disagrees with it, before a claimant goes on to appeal. In theory this should be a valuable failsafe to ensure that glaring errors or omissions are corrected quickly. However, the evidence gathered suggests that the reconsideration process is rarely used by Decision Makers and instead individuals who disagree with a decision must rely on the more lengthy appeals process. DWP does not specifically record the number of decisions changed at the reconsideration stage; the final decision even after the reconsideration stage is different from the initial Atos advice in only 2.1 per cent of cases, which suggests that the reconsideration process is having very little effect.
18. Used correctly, the reconsideration stage could reduce the number and success rate of appeals by quickly correcting some of the errors. This is desirable in terms of stress to the claimant, the length of the process, and the overall cost to the Department.

*“Our experience of appeals and requests to review a decision by the Decision Maker showed that decision-makers normally refuse to consider that an error may have been made, do not contact the claimant to discuss any discrepancy, preferring to prepare a response to the Tribunal which is often quite intimidating for the claimant.”, RSI Action*

## **Steps taken by the Department**

19. Since January 2010, the Department has been taking steps to improve the quality of decision making and build the confidence of Decision Makers. Using innovative techniques such as ‘lean’ and working closely with Atos and Tribunal Judges, Jobcentre Plus have trialled a number of new techniques aimed at improving the decision making process and reducing the number of people who appeal their decision.
20. These pilots have ranged from simple process improvements that have improved efficiency and reduced costs to wider efforts to improve Decision Maker communication with the claimant and with Atos and Tribunal Judges.
21. The effects of these pilots have been significant in two ways. Firstly, by getting Decision Makers to speak to claimants they have had a significant impact in empowering and increasing the confidence of Decision Makers. As a result, better decisions are being made. Secondly, by improving decision making they have reduced the number of people who appeal following their decision and as a consequence have shown that with a little initial investment up front, an overall saving can be achieved in the medium-term.

### **Improving the reconsideration process**

Wrexham Benefit Delivery Centre trialled a scheme to telephone customers who had lodged an appeal against their WCA decision. The original decision was explained to the individual, if they still had reasons to disagree additional information or evidence was obtained.

Following this intervention, 15 per cent of claimants who had appealed either withdrew their appeal or had their initial decision revised by the Decision Maker. This pilot was also shown to have saved significantly more than the initial investment.

Overall, this shows that simple, relatively low cost, interventions can have a significant effect on humanising the process, improving the quality of decision making and saving money for the department in reduced appeals.

22. The review has seen at first hand the impact such interventions can have on the confidence of Decision Makers and the quality of decisions. It strongly supports these steps and is impressed with the improvements that have taken place. But there is more that must be done to empower Decision Makers.

## **Recommendations**

**The review recommends that Jobcentre Plus Decision Makers are put back at the heart of the system and empowered to make an independent and considered decision.**

23. These recommendations can be achieved by expanding the lessons learnt through pilots in Wrexham and other Benefit Delivery Centres and by increased investment in Decision Makers, whether in training or confidence building. As the pilots already undertaken by the Department have proven, not only does this mean a better experience for claimants, but it also saves money in the medium-term by reducing the number of claimants who appeal and ensures more decisions are made correctly first time.

**The review recommends a better use of the reconsideration process.**

24. The reconsideration process is a chance for the Decision Maker to look again at the claimant's case and to ensure the correct decision is made, without requiring the claimant to go through the time-consuming and stressful appeals process. The review recommends the extension of the measures piloted in Wrexham to the whole of Great Britain, with Decision Makers explaining decisions to people who appeal their decisions and discussing the reasons for the appeal. The Decision Maker should then seriously reconsider the claim, with a view to changing their decision, if appropriate.

**The review recommends better communication between Decision Makers and Atos healthcare professionals to deal with borderline cases.**

25. For cases where there is doubt over the appropriate decision there should be improved communication between the Decision Maker and the Atos HCP to ensure the right decision is made first time. Greater communication with Atos will enable Decision Makers to access appropriate advice to assist in these difficult decisions

**The review recommends that Decision Makers receive training so that they can give appropriate weight to additional evidence.**

**The review further recommends Decision Makers are able to seek appropriate chosen healthcare professional advice to provide a view on the accuracy of the report if required.**

26. The Decision Maker is able to use additional medical evidence to help to assess a customer's eligibility for ESA, but in practice this doesn't appear to be taking place. Decision Makers should be better trained in interpreting medical evidence and in giving appropriate weight to the evidence provided.
27. In summary, the Decision Maker has a pivotal role in evidence gathering. They should ask the claimant to name a chosen HCP and seek a report from them (for some claimants, the Decision Maker may have to undertake that task). When the Decision Maker has received the Atos report, including a personalised, free text summary (see Chapter 5), they will offer to send it to the claimant's chosen HCP. When a report has been received, the Decision Maker reviews **all** the evidence and commissioned reports, including the ESA50 questionnaire with free text paragraph (see Chapter 4). Following liaison with the claimant and, if necessary, Atos and the claimant's HCP advisor, the Decision Maker makes a decision.

# Chapter 7: Appeals

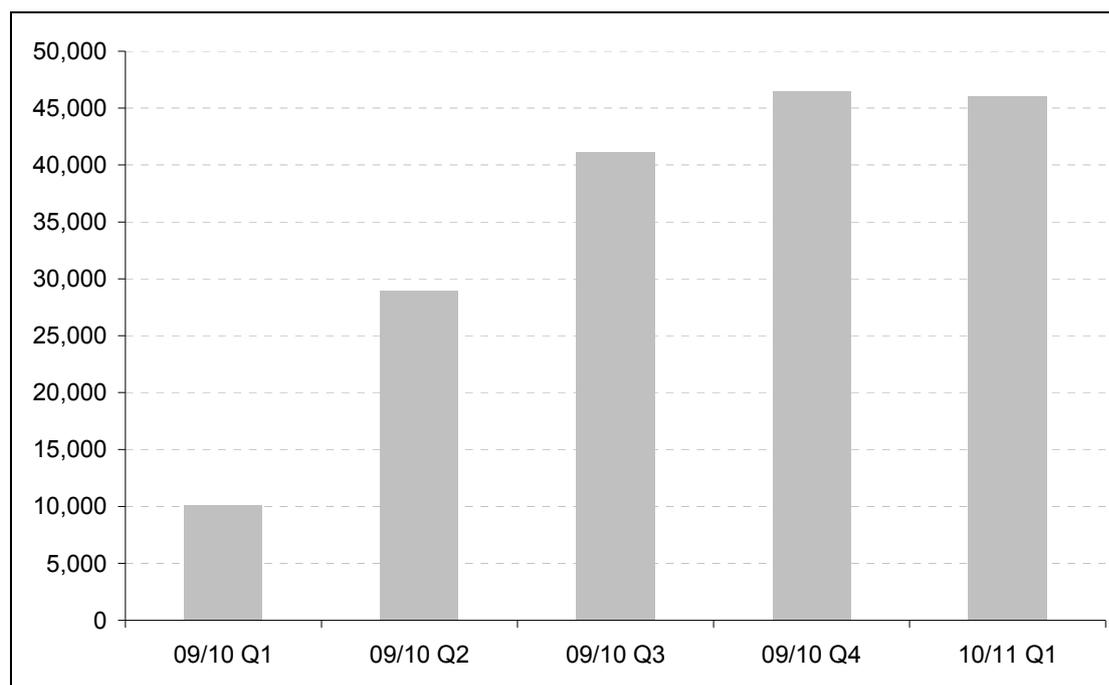
## Background

1. Individuals applying for Employment and Support Allowance (ESA) have a right of appeal against decisions taken on behalf of the Secretary of State. This means that they are entitled to have the decision examined by a body that is independent of the Department and its decision making structures. These appeals are carried out by the First-tier Tribunal of the Social Entitlement Chamber and administered by the Tribunals Service, an executive body of the Ministry of Justice.
2. A claimant has up to 30 days from the date of the decision to lodge an appeal. This generally is held after a reconsideration from the ESA Decision Maker, although this may be circumvented if there is insufficient time for the reconsideration. While waiting for the appeal to be heard a claimant remains on the assessment rate of ESA.
3. In considering an appeal, the Tribunal takes into account the facts of the case, and applies the relevant law to reach a decision on whether or not the Decision Maker in Jobcentre Plus has reached the correct conclusion. The Tribunal approaches the matter afresh and is free to consider any additional evidence that they feel is relevant, regardless of whether or not the Decision Maker or healthcare professional (HCP) deemed it relevant at the time the Work Capability Assessment (WCA) decision was being taken.

## Findings

4. The review has examined the appeals process as a way of considering the effectiveness of the WCA decision making process. Critics of the WCA have argued that if the process is effective, then there will be low numbers of appeals, and lower success rates from the appeals that are made.
5. The numbers of ESA appeals received by the First-tier Tribunal in each quarter since April 2009 are given in Figure 6. These show a large increase in appeals over this time, with around 46,000 ESA appeals received in each of the last two quarters where figures are available.

**Figure 6 – Number of ESA Appeals Received by First-tier Tribunal**



Source: *Quarterly Statistics for the Tribunals Service, 1<sup>st</sup> quarter 2010-11*

6. The increase in number of ESA appeals has led to increased pressure on the First-tier Tribunal and Tribunals Service. The total number of appeals for Social Security and Child Support increased by 35,000 (57 per cent) from Q1 2009/10 to Q1 2010/11, with almost all of the increase being in the number of ESA appeals. In this time the number of outstanding Social Security and Child Support appeals has increased by 130 per cent, from 69,000 to 158,000, which has resulted in large increases in the time taken to clear these appeals.
7. There were 26,100 ESA appeals cleared in Q1 2010/11 and, of these, 39 per cent were found in the favour of the appellant. This is, however, lower than the rate for incapacity benefits, in which 52 per cent of the 8,400 appeals in the same time period were found in the favour of the appellant.
8. The figures for the proportion of people found fit for work who have had an appeal against this decision heard by the First-tier Tribunal are given in Table 5. These show that for claimants up to early 2009, around 40 per cent of those found fit for work have appealed and had their appeal heard. The proportions drop off from early 2009 onwards, which probably reflects the long delays in appeals being heard, rather than lower numbers of appeals. The percentages of cases overturned at the First-tier Tribunal have been consistently around 40 per cent.

**Table 5 – WCA Appeals heard on ‘Fit for Work’ Decision –ESA claims to August 2009/Appeals heard by end of June 2010**

Month ESA claim started	Fit for work	Appeals heard (to date)	% Fit for work with an appeal heard (to date)	Decision in favour of appellant	% Decision in favour of appellant
Oct-08	3,600	1,400	39	600	40
Nov-08	17,500	7,000	40	2,700	39
Dec-08	15,100	6,200	41	2,500	40
Jan-09	20,900	8,500	40	3,400	40
Feb-09	19,700	7,600	38	3,100	40
Mar-09	23,300	8,700	37	3,500	40
Apr-09	21,700	7,500	35	3,100	41
May-09	21,900	6,900	32	2,700	40
Jun-09	22,600	6,300	28	2,500	40
Jul-09	22,700	5,500	24	2,100	37
Aug-09	20,300	4,100	20	1,500	37
Total	209,200	69,500	33	27,500	40

Source: DWP ESA Statistics, October 2010

9. The effects of the appeals process on the outcomes from the WCA are given in Table 6. For ESA claims to February 2009, 66 per cent of claimants were found fit for work at the WCA but this has decreased by 10 percentage points after the appeals that have been heard so far. There has been an increase of 1,400 in the number of people in the Support Group, of which 500 came from people who were originally in the Work-Related Activity Group.

**Table 6 – WCA Outcomes for ESA Claims to February 2009**

	Initial		After Appeal	
	Number	Per cent	Number	Per cent
Fit for Work	83,600	66	71,000	56
Work-Related Activity Group	29,100	23	40,300	32
Support Group	13,200	11	14,600	12

Source: DWP Internal Data

10. This data suggests that the process is not as effective as it could be. Large numbers of people are spending long periods of time appealing a decision before being placed in a different group. This adds to the levels of stress for claimants, and could move people further away from the labour market, with the negative effects this has on their health.
11. This also creates additional burdens for the First-tier Tribunal and Tribunals Service who have seen a large increase in ESA appeals over the last year. And for DWP this adds to the overall cost for the Department: in 2009/10, the Department paid £8m to the Tribunals Service.

### **Reasons behind the high appeals rate**

12. The evidence that the review has gathered suggests that people appeal because they feel their result was unfair and unjust. As discussed in Chapter 4 many individuals do not understand their result and do not understand what support is available to them if they are found fit for work. In some cases, individuals who are found fit for work are encouraged to appeal by Jobcentre Plus staff or their employment provider. In a small number of cases, individuals who attempt to claim Jobseeker's Allowance are mistakenly told that they are too ill to claim the benefit and as a consequence are unable to receive any back to work support.

*"The report made lots of assumptions and in fact made me out to be a liar by contradicting statements I had made and the report by my Clinical Psychologist. The report basically said that I had no problems and I was fit for work. I immediately decided to appeal the decision."*, Mr K, found fit for work

*"I phoned [the Jobcentre Plus adviser] up the following day, and he said, "Are you going to appeal against it?" I said, "Well, what's the point?" Basically because I can walk and talk and do all the things for myself, there's no point. He said, "I've seen people who've had no score, appealed against it, and got a great result". So I phoned up the ESA and asked how I went about appealing against it... while I'm appealing they'll still pay me until they reach a decision."*, ESA claimant quote from DWP Research<sup>27</sup>

13. This evidence supports the review's recommendations to reform the WCA process so that claimants understand what the WCA is assessing, understand the reasons behind their decision and are aware of the support that is available if they are found fit for work.
14. Another reason that could account for the high rate of appeals is that people who appeal remain on ESA and continue to be paid at the assessment rate (£65.45 per week) with no conditions attached to the benefit. The review does not believe that this is an overriding reason why many people choose to go through the appeals process; a lengthy and often stressful process. However, a very small minority, perhaps those who have a clearer understanding of the complexities of the benefits regime, may see it in their interest to appeal.

---

<sup>27</sup> Barnes, Aston and Williams, op cit

## Reasons behind the overturn rates

15. The President of the First-tier Tribunal and other contributors to the Call for Evidence note that a majority of the DWP decisions that are overturned are because the Tribunal was able to obtain additional information that wasn't available to the Decision Maker, through oral evidence elicited by the Tribunal or through additional medical evidence brought along to the appeal. In a smaller number of cases decisions are overturned because the Tribunal made a different decision on the basis of the same evidence available to the Decision Maker.

*"It is the experience of bureaux that additional evidence from GPs and healthcare professionals often plays a key factor in overturning WCA assessments in Tribunals. In some cases, this evidence was already available to the Decision Maker but was either not seen or assessed differently, while in other cases the key evidence is obtained for the Tribunal."*, CAB Scotland

16. It is clear that there are a number of cases where a more thorough decision making process would have ensured individuals received an appropriate decision earlier in the process, reducing the number of people who appealed their decision.

*"A claimant who had failed the WCA on assessment said that the opinion of the HCP was contrary to that of his GP, his Community Psychiatric Nurse, the NHS Mental Health Trust and his Consultant Psychiatrist. The Decision Maker, on reconsideration, noted that the claimant had "not provided any new evidence to affect the medical report" and refused to change the decision. The sources mentioned by the claimant were not contacted."*, President, First-tier Tribunal

*"We have heard of cases taken to appeal where evidence from doctors has been discounted because it did not explicitly and directly address one of the activities covered by the WCA descriptors.....Instead of placing the onus on the doctor to present evidence in a format which precisely mirrors the WCA, HCPs and DWP decision-makers should interpret the evidence and proactively apply it to any relevant descriptors."*, National Aids Trust

17. The review's recommendations to improve the decision making process will encourage individuals to gather additional evidence and should have an impact in increasing the overall evidence available to Decision Makers, ensuring more decisions are made correctly first time.

18. Another reason that has been put to the review to suggest why there is a high overturn rate of DWP decisions is that some Judges may apply different standards of proof that favour claimant's versions of events or overly downgrade the Atos assessment. Forthcoming research has found that:

*“An issue that came up frequently in interviews with HCPs was that reports from Tribunals contained no written rationale or justification for why points were awarded against descriptors in the appeal, of the sort that HCPs must provide for the WCA. This [also] tended to undermine HCP confidence in the validity of the [Tribunal’s] decisions.”<sup>28</sup>*

19. In part such views appear to be symptomatic of a lack of feedback and communication between Atos, Jobcentre Plus and the First-tier Tribunal. But this also highlights the need to ensure that Tribunals and DWP are making decisions based on a clear and joint understanding of the application of the law.

## Recommendations

20. The review recognises that some people will be unhappy with their decision whatever process they go through. However, the current appeals rate is high and potentially unsustainable. It impacts negatively on individuals going through the process, it increases the workload for the First-tier Tribunals and the Tribunals Service and it costs the DWP significant amounts of money.
21. Recommendations about improving the communications, the Atos assessment and the decision making process are dealt with in previous chapters. These could have a significant impact in reducing the number of people who appeal their decision and ensure that more decisions are right first time.
22. There are a number of further recommendations that the review believes would enhance the decision making process and ensure that there was greater communication and feedback between the various agencies.

**The review recommends that feedback from the First-tier Tribunal should be routinely shared with Jobcentre Plus staff and Atos healthcare professionals. As part of their professional development, Jobcentre Plus Decision Makers should be encouraged to attend Tribunals.**

23. The system for awarding ESA must deliver replicable outcomes that are based on sound judgement. Feedback is crucial to enable this to happen and to ensure that where this does not happen lessons can be learned and understanding can be updated. The review recommends a short justification be given for each decision changed at Tribunal, with this fed back to the Jobcentre Plus Decision Maker and Atos HCP, so they understand the basis for the change. The results of this feedback should be built into training for assessors and Decision Makers. Decision Makers should also be encouraged to attend Tribunals as part of their professional development.

**The review recommends that Tribunal decisions are better monitored, including monitoring of the relative or comparative performance of Tribunals.**

---

<sup>28</sup> Barnes, Aston and Williams, op cit

24. The review notes that there is a lack of robust data and management information on Tribunals which has made it difficult to understand fully the reasons behind the appeal overturn rate. Being able to differentiate between results of appeals by Judge and across regions, and cross-referencing them against the decisions, outcomes and regional variation available from Tribunals Service and DWP data would be invaluable in allowing a greater degree of understanding and transparency about this section of the process.

25. This recommendation echoes recommendations made by the Leggatt Review in 2001<sup>29</sup> that have yet to be put in place. This stated:

*“To carry authority in this exchange of views, Tribunals should themselves make consistent decisions. They have to be mindful of the need for their decisions to be replicable by departments, possibly in thousands of cases. They too need sufficient central capacity to pick up, analyse, and suggest remedies to, significant systemic problems.”*

**The review recommends that training offered by the Chamber President to Tribunal Judges and medical members should include modules on the evidence of the beneficial effects of work to an individual’s well-being.**

26. The Chamber President and Senior President already provide substantial training to Judges and medical members. However, the review believes that some training should focus on the evidence of the importance of work and to ensure that there is a clear understanding of the negative impacts of worklessness.

27. These recommendations, taken together with the improvements to the Decision Maker role should reduce the number of appeals, and reduce the appeals success rate. In other words the decision should be got right first time, leading to fewer people appealing and more confidence in the initial decision.

28. Improving feedback, communication and training between the various agencies involved will further enhance the decision making process, ensuring that it is consistent and robust on all sides.

---

<sup>29</sup> "Tribunals for Users – One System, One Service", A Review by Sir Andrew Leggatt, 2001

# Chapter 8: A programme of work for year two

## Background

1. This review has been undertaken over a relatively short timescale in the expectation that it is the first of five annual reviews of the Work Capability Assessment (WCA). There are a number of aspects of the WCA that the review has not had the time to explore in detail and these are recommended areas for future reviews to consider.

## Descriptors

2. Some conditions or their effects are more subjective and so can prove more difficult to assess. Feedback received in the course of this review has corroborated this view and in particular raised concerns regarding the assessment of people with mental, intellectual and cognitive disabilities:

*“It is clear that claimants with mental health problems are not being properly assessed under the WCA”, Child Poverty Action Group*

*“The accuracy of the WCA in assessing clients with mental health problems should be reviewed – advisers strongly felt that the WCA was especially poor in assessing clients with mental health problems. The descriptors in the WCA often fail to take account of a client’s mental condition”, CAB Scotland*

*“The Wise Group is concerned that the design of the WCA focuses too heavily on physical capability, and we feel that there is a requirement to better recognise the barriers faced by people with learning disabilities and mental health conditions.”, The Wise Group*

3. Mental and behavioural disorders make up the largest group of Employment and Support Allowance (ESA) claimants and people going through the WCA. Of ESA claimants assessed to June 2010, 37 per cent of people going through the WCA were recorded as having mental and behavioural disorders as their main health condition. Of these 68 per cent were found fit for work, compared to 63 per cent for people with other health conditions.<sup>30</sup>
4. Particular concerns have been raised regarding the way the assessment works for people with mental health conditions, who may be unable or unwilling to describe the extent of their problems.

---

<sup>30</sup> DWP internal data

5. The review believes that the descriptors that are used to account for an individual's capability may need looking at in some detail to understand if there are refinements or improvements that could be made to how they are worded and how they are put into practice.
6. As a result, the review has set up a group to look at the mental, cognitive and intellectual functions and descriptors used in the WCA. This group, comprising representatives of Mind, Mencap and the National Autistic Society, has been asked to provide recommendations for improvements to these descriptors by the end of November. This group have also been asked to advise on the process that any future descriptor reviews should adopt.
7. The Independent Reviewer will assess the recommendations of the group, consult with other experts and recommend any changes that could improve the system to Ministers in early 2011. DWP Ministers will then consider these for implementation.
8. Other areas that are worth further consideration in the next review are in the assessment of other fluctuating conditions and, possibly, the effectiveness of the WCA in dealing with generalised pain. There have been a number of submissions to the review which highlight problems in the WCA for these conditions:
 

*"The WCA did not assess the factors which actually stop me from working; Stamina, Fatigue (which consists of both cognitive and physical fatigue), Pain and Post-exertional illness",* claimant found fit for work, in Support Group after appeal

*"In practice the recognition of fluctuations; symptoms like pain, fatigue, and cognitive problems; and of the impact of multiple impairments is poor.",*  
MS Society
9. A possibility for the second review is to set up a working group, similar to that currently looking at the mental, cognitive and intellectual functions, to look at how the descriptors and the assessment process can more effectively assess other fluctuating conditions and generalised pain.

## **A work focus**

10. The WCA considers a wide range of functions, with points allocated for limitations that could be considered to affect significantly an individual's capability for work. These functions do not specifically relate to the work environment, but consider general limitations in everyday life.
11. It has been suggested to the review that the WCA could be improved by taking greater consideration of an individual's capability for work. A number of responses to the Call for Evidence have suggested that there should be a 'real world' test element to the assessment. A wide range of definitions of such a test have been suggested, including looking at the capabilities required to move into work and considering the descriptors used in an actual work environment.

*“We believe that ... there needs to be further research into the actual, real world effect of different disabilities or illnesses on different types of employment, considering the skills and qualifications necessary for that employment”, Citizens Advice*

*“The purpose of the WCA is to identify those individuals for whom it is unreasonable for them to work, consequently the descriptors should be considered in the workplace setting.”, RSI Action*

12. The review is wary of the complexities and difficulties of understanding an individual's employability, as work is a viable and positive outcome for most people. Previously, the link between functional capability and the support required to help the claimant into work was covered in the Work Focused Health Related Assessment, but with this currently suspended, there is a place for the assessment to consider the actual impacts of a claimant's health condition on their ability to move into and sustain employment.
13. There are potential models around the world that may be worth exploring to see if such experience could be incorporated into the WCA. One such model is the Australian assessment for their Disability Support Pension. To qualify for this benefit a claimant must receive a certain number of points according to their 'impairment tables' and must be considered to be unable to work for at least 15 hours per week at or above the minimum wage in the next two years. Factors considered are similar to the WCA but are perhaps more explicitly work focused, such as assessing an individual's ability to get to work or to exhibit appropriate work behaviours.<sup>31</sup>
14. Issues such as how to make an objective, reliable assessment and who should carry it out would need to be thoroughly explored before such a 'real world' best could be implemented. Therefore the review recommends that in year two, research is undertaken to understand whether the assessment could and should incorporate more work-focused or 'real world' elements.

---

<sup>31</sup> <http://www.fahcsia.gov.au/>

## Monitoring outcomes

15. ESA has been set up to provide support for people with limiting health conditions to move into work. In order to see if the benefit meets its policy aims there needs to be effective monitoring of the employment outcomes of ESA claimants.
16. There has been a degree of criticism of the Department around the lack of clarity around outcomes for ESA claimants found fit for work and those closing their claim prior to the WCA, and a degree of negative speculation around what those outcomes may have been.
17. Recent DWP research<sup>32</sup> has shown that over 40 per cent of those who closed or withdrew their claim before receiving a WCA decision were in employment when surveyed (between six and 10 months after making their initial claim). A further 30 per cent said they were unemployed and looking for work. Only one-quarter of those who closed or withdrew their claim cited health as a barrier to work, so it appears that improved health is a significant reason for people leaving ESA prior to receiving their WCA decision.
18. For people found fit for work, 13 per cent were in employment at the time the research was carried out, while over half cited health as a barrier to work. One-fifth of people found fit for work felt they would never work again, while two-fifths didn't expect to work immediately, but either hoped to work in the future or would at least consider work.
19. This research has been very helpful in identifying outcomes for a sample of customers. The results are broadly positive for customers withdrawing their claim or whose claims are closed, but there are concerns over whether the desired policy outcomes are being achieved for those found fit for work.
20. The review recommends that DWP and future reviews look in detail at the outcomes for all people making claims to ESA. This monitoring should consider the outcomes for people who withdraw from ESA prior to assessment, to ensure they aren't withdrawing as a result of the complexity of the system. For those found fit for work and those who join the Work-Related Activity Group, the monitoring should consider whether the right people are being allocated to the different groups at the WCA.
21. This will be particularly important when the reassessment of existing incapacity benefits is rolled-out nationally, and for ensuring the Work Programme can operate effectively.

## Monitoring year one recommendations

22. In year two the review should also monitor the implementation of those recommendations in the year one report which have been adopted by Ministers.

---

<sup>32</sup> Barnes, Sissons and Stevens, op cit

## Summary of recommendations for year two

23. The summarised recommendations for year 2 of the review process are:

- The review has asked Mind, Mencap and the National Autistic Society to provide recommendations on refining the mental and cognitive descriptors. The review looks forward to receiving these recommendations in late November and will make any recommendations it sees fit to Ministers during early 2011.
- In year two the review should examine the descriptors, in particular how they account for other fluctuating conditions and, possibly, generalised pain, and provide any recommendations necessary.
- In year two the review should examine what happens to people who are found fit for work, people who are placed in the Work-Related Activity Group, in the Support Group and people who do not complete their WCA.
- In year two the review should examine what happens to individuals who are found fit for work but are unable to claim Jobseekers Allowance.
- In year two the review recommends that research is undertaken to understand whether the assessment could and should incorporate more 'real world' or work-focused elements.
- In year two the review should examine the Atos computer system (LiMA) and how it can drive the right behaviours (see Chapter 5)
- In year two, the review should explore the use of other healthcare professionals in the Atos assessments and to check consistency of assessments by different professions (see Chapter 5).
- In year two the review should also monitor the implementation of those recommendations in the year one report which have been adopted by Ministers.

# Conclusion

1. The Work Capability Assessment (WCA) was designed to be an evidence based process to review an individual's capacity for work and it built on previous assessments of this kind. It is a new procedure and the relevant legislation specified the need for an Independent Review of its fairness and effectiveness in the first five years of its operation.
2. This first review has examined the whole process from the claimant's initial contact with Jobcentre Plus through to the final assessment, with or without the involvement of the First-tier Tribunal.
3. There is incontrovertible evidence that work is good for you. The benefits of work greatly outweigh the risks that some occupations carry, whilst the appalling harm that worklessness can inflict on an individual and their family is equally well documented.
4. Too many people in this country have been assigned to incapacity benefits and abandoned. There is an urgent need to review whether these individuals could work and, if so, what help they would need to be re-introduced into the world of work. For the future, we need to ensure that nobody is left unnoticed in the world of worklessness.
5. The WCA attempts to address these vital issues of modern society. The Review has found that it is not working as well as it should be but with modifications at all stages of the assessment, it would become a more humane process seen by claimants to be fair, effective, efficient and, most of all, as a positive step in bringing these claimants back as active members of society.
6. At the same time, those who cannot work through ill-health or disability must receive the full support that a caring, civilised community should provide. The end result should be a more productive, healthier and happier nation providing for its own needs, whilst ensuring support for those who cannot participate in gainful employment.

# Annex A: List of recommendations

Customer experience	
1	The review recommends that Jobcentre Plus manages and supports the claimant during the course of their benefit claim and identifies their chosen healthcare adviser.
2	The review recommends that the initial questionnaire (the ESA50) includes a more personalised justification so the claimant can express the issues that they face in a short paragraph.
3	In the longer term, the review recommends that the Government reviews the ESA50 to ensure it is the most effective tool for capturing relevant information about the claimant.
4	The review recommends that written communications to the claimant are comprehensively reviewed so that they are clearer, less threatening, contain less jargon and fully explain the process.
5	The review recommends that every Atos assessment contains a personalised summary of the assessment in plain English.
6	The review recommends that every claimant is sent a copy of the Atos personalised summary and is able to discuss any inaccuracies with a Decision Maker.
7	The review recommends that Atos provide mental, intellectual and cognitive champions in each medical assessment centre. These champions should spread best practice amongst Atos healthcare professionals in mental, intellectual and cognitive disabilities.
8	The review recommends that Atos pilot the audio recording of assessments to determine whether such an approach is helpful for claimants and improves the quality of assessments.
9	The review recommends that Atos should develop and publish a clear charter of claimant rights and responsibilities, and should consider publishing the HCP guidance online for claimants and advisers.
10	The review recommends that Jobcentre Plus Decision Makers are put back at the heart of the system and empowered to make an independent and considered decision.
11	The review recommends a better use of the reconsideration process.
12	The review recommends Decision Makers are able to seek appropriate chosen healthcare professional advice to provide a view on the accuracy of the report.

13	The review recommends better communication between Decision Makers and Atos healthcare professionals to deal with borderline cases.
14	The review recommends Decision Makers receive training so that they can give appropriate weight to additional evidence.
15	The review recommends that feedback from the First-tier Tribunal should be routinely shared with Jobcentre Plus staff and Atos healthcare professionals. As part of their professional development, Jobcentre Plus Decision Makers should be encouraged to regularly attend Tribunals.
16	The review recommends that Tribunal decisions are better monitored, including monitoring of the relative or comparative performance of Tribunals.
17	The review recommends that training offered by the Chamber President to Tribunal Judges and medical Members should include modules on the evidence of the beneficial effects of work to an individual's well-being.
18	The review has asked Mind, Mencap and the National Autistic Society to provide recommendations on refining the mental, intellectual and cognitive descriptors. The review looks forward to receiving these recommendations in late November and will make any recommendations it sees fit to Ministers.
19	In year two the review should examine the descriptors, in particular how they account for other fluctuating conditions and, possibly, generalised pain and provide any recommendations necessary.
20	In year two the review should examine what happens to people who are found Fit for Work, people who are placed in the Work-Related Activity Group, in the Support Group and people who do not complete their WCA.
21	In year two the review should examine what happens to people who are found Fit for Work but are unable to claim Jobseekers Allowance.
22	In year two the review recommends that research is undertaken to understand whether the assessment could and should incorporate more "real world" or work-focused elements.
23	In year two the review should examine the Atos computer system (LiMA) and how it can drive the right behaviours.
24	In year two, the review should explore the use of other healthcare professionals in the Atos assessments and to check consistency of assessments by different professions.
25	In year two the review should also monitor the implementation of those recommendations in the year one report which have been adopted by Ministers.

# Annex B: Acknowledgements

1. In my professional career I have never been asked to undertake an Independent Review of a piece of legislation. That, in itself, could be daunting, but the timescale of four months added to the pressure. The task proved extremely illuminating. It was a pleasure to have the help and assistance of so many excellent people within the Government and in the professional bodies, as well as the charities and support groups who truly gave their time to help me understand the issues for claimants in the Work Capability Assessment (WCA).
2. Staff at all levels in Jobcentre Plus, Atos Healthcare and the First-tier Tribunal were most willing to help me get to grips with the processes and procedures involved in the WCA. DWP staff were also most helpful and as a result of the Chief Medical Adviser's initiative I had the opportunity to discuss my progress in the review with a Scrutiny Group, expertly led by Professor David Haslam. I am most indebted to Dr Olivia Carlton, Paul Farmer and Neil Lennox for their guidance and wise counsel.
3. A review of this nature and scope could not have been completed in four months without the superb support team I had the privilege to work with in DWP. Ian Beale, Chris Campbell, Josephine Lewis and Mark Wilson did a terrific job in supporting all my work and they were led by the excellent Nick McGruer. Nick's experience of assisting in similar Independent Reviews within the remit of the DWP was of inestimable value to this novice. I thank them all.
4. I also thank the more than 400 organisations and individuals (including many people who had gone through the WCA) who responded to the Call for Evidence and the near 100 organisations and individuals I met during the course of the review. Particularly:

The Countess of Mar; Baroness Jane Campbell; Lord Richard Layard; Baroness Molly Meacher; Professor Sir Mansel Aylward; Dame Carol Black; Professor Paul Gregg; Dr David Henderson-Slater; Judge Robert Martin; Dr Gordon Parker; Rachel Perkins; Liz Sayce; Professor Tom Sensky

Action for Blind People; Action for ME; Arthritis Care; A4E; Barnardo's; BASE; BRAME; British Deaf Association; British Medical Association; Broadway London; Carers UK; CBI; Centre for Economic and Social Inclusion; Centre for Mental Health; Child Poverty Action Group; Citizens Advice; Citizens Advice Scotland; CRISIS; Depression Alliance; Disability Alliance; Disability Benefits Consortium; Disability Charities Consortium; Equality 2025; ERSA; Haemophilia UK; Hertfordshire County Council; Ingeus; Institute for Employment Studies; Leonard Cheshire; Macmillan; Mencap; Mental Health Foundation; Mind; Motor Neurone Disease Association; MS Society; Muscular Dystrophy Association; National Aids Trust; National Autistic Society; Papworth Trust; Parkinsons UK; Queen Elizabeth Foundation for Disabled People; RADAR; RBLI; Royal College of Nursing; Redbridge County Council; Reed in Partnership; Remploy; Rethink; RNIB; RNID; Royal College of Psychiatrists; RSI Action; Scope; Seetec; Sense; Serco; Shelter; Social Security Advisory Committee; St Mungos; Thalidomide Association; TUC; Vassall Centre; Vocational Rehabilitation Association



information & publishing solutions

Published by TSO (The Stationery Office)  
and available from:

**Online**

[www.tsoshop.co.uk](http://www.tsoshop.co.uk)

**Mail, telephone fax and email**

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/general enquiries

0870 600 5522

Order through the Parliamentary Hotline

Lo-Call 0845 7 023474

Fax orders: 0870 600 5533

Email: [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk)

Textphone: 0870 240 3701

**The Parliamentary Bookshop**

12 Bridge Street, Parliament Square,

London SW1A 2JX

Telephone orders/general enquiries:

020 7219 3890

Fax orders: 020 7219 3866

Email: [bookshop@parliament.uk](mailto:bookshop@parliament.uk)

Internet: <http://www.bookshop.parliament.uk>

**TSO@Blackwell and other Accredited Agents**

**Customers can also order publications from:**

TSO Ireland

16 Arthur Street, Belfast BT1 4GD

Telephone orders/general enquiries:

028 9023 8451

Fax orders: 028 9023 5401

This publication can be accessed online at:

[www.dwp.gov.uk/wca-review](http://www.dwp.gov.uk/wca-review)

For more information about this publication,  
contact:

**WCA Independent Review Team**

**Department for Work and Pensions**

**2nd Floor**

**Caxton House**

**Tothill Street**

**London, SW1H 9NA**

**E-mail: [wca.evidence@dwp.gsi.gov.uk](mailto:wca.evidence@dwp.gsi.gov.uk)**

Copies of this publication can be made  
available in alternative formats if required.

Department for Work and Pensions

November 2010

[www.dwp.gov.uk](http://www.dwp.gov.uk)

ISBN 978-0-10-850947-6

