

# Equality impact assessment – Response to the Work Capability Assessment Independent Review

23 November 2010

# Equality impact assessment for the DWP Response to the Work Capability Assessment Independent Review

## Introduction

The Department for Work and Pensions has carried out an equality impact assessment on the proposed measures in the response to the Work Capability Assessment Independent Review to meet the requirements of the Equality Act 2010.

This process will help to ensure that:

- the Department's strategies, policies and services are free from discrimination;
- due regard is given to equality in decision making and subsequent processes; and
- opportunities for promoting equality are identified.

This equality impact assessment considers the potential impact of the proposed policies in terms of disability, race, age, gender, gender reassignment, religion or belief and sexual orientation. These are referred to in this paper collectively as 'protected characteristics'.

## Proposed policy changes

### **The WCA Independent Review**

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 Work Capability Assessment (WCA). The review looked at ways to improve the effectiveness and fairness of the WCA.

The review was published on 23 November 2010 and made a number of recommendations for improvements to the WCA. The Department for Work and Pensions (DWP) responded to the review on the same day, describing how the recommendations would be taken forward.

The Department welcomes these recommendations and has responded with how these will be implemented.

## DWP's Proposed Changes

DWP has accepted all of the recommendations of the independent review and has announced how these will be implemented. The changes that DWP has announced are:

**Customer Experience:** Jobcentre Plus to introduce contacts to individuals claiming ESA to explain the process and to explain the outcome of the WCA. Changes to the ESA50 form and written communications are also to be introduced.

**Atos assessment:** Mental, cognitive and intellectual champions to be introduced. Atos are also to introduce a customer charter and to pilot the audio recording of assessments. A personalised summary of the assessment to be included in the Atos report, and the feasibility of sending this justification to individuals who claim ESA is to be explored.

**The decision making process:** Improved training to be provided to decision makers to enable them to play a more significant role in assessing ESA entitlement and to use all available evidence effectively. The reconsiderations process to be used more effectively and more frequent communication between the decision maker and healthcare professionals to be carried out, to ensure the decisions made are based on the best available evidence.

**The appeals process:** Improved communications between DWP, Atos and the First-tier Tribunal to be carried out, to help improve the quality of decision making in the ESA process. DWP also supports the recommendations made, around improved feedback from the First-tier Tribunal and an additional training module for its members, although this is outside the remit of the Department.

**Descriptors and programme of work for year two:** Work on the mental, intellectual and cognitive descriptors has been commissioned, with further work on descriptors for fluctuating conditions and accounting for generalised pain to be looked at in year two. Further work on monitoring the outcomes of people undergoing the WCA and how the assessment is carried out is also recommended in year two.

## Consultation and involvement

The independent review of the WCA assessed the fairness of the WCA. The Call for Evidence of the review asked specifically for evidence of there being particular problems with the WCA for different groups of people. There were over 400 responses to the Call for Evidence but, of the relatively few respondents to this question, most felt that the assessment was unfair to people with certain health conditions. Evidence showed that mental health conditions were often more difficult to assess due to their subjective nature, so special considerations of the assessment of mental, intellectual and cognitive functions was given in the review.

Anecdotal evidence was provided, which showed some cases where people from some of the protected groups had problems with the WCA. The groups that were

mentioned in this regard included both younger and older people, and people with English as a second language.

## Impact of the DWP Response to the WCA Independent Review

### Overview

The main changes that DWP are proposing relate to improving customers' understanding of the assessment process and giving them the best opportunity to explain how their health conditions affect their capability for work. Specific changes are also proposed for the way Atos Healthcare undertake the face-to-face element of the assessment and in the communication between DWP, Atos and the First Tier Tribunal.

The aim of these proposals is to ensure people are allocated to the appropriate support and understand why. Customers' experiences of the claim and assessment process should also be improved by explaining the process and making it easier for them to navigate the system.

The main effect of these proposals is expected to be in reducing the numbers of people who appeal their decision. The Harrington review sets out the current proportions assigned to the different groups at the WCA, and the subsequent proportions after appeal (see Table 1). The expected effect of implementing the recommendations of the Harrington review is to reduce the gap between the initial proportions and the proportions after appeal. This should reduce the cost of administering the system, as fewer appeals need to be heard, and should reduce the stress associated with appealing the decision.

**Table 1 - 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
Support Group	13,200	11	14,600	12
WRAG	29,100	23	40,300	32

Source: Harrington Review

Another likely effect is that there would be a slight increase in the total numbers of people placed on the main phase of Employment and Support Allowance, as people who wouldn't currently appeal have their decisions made differently first time. There could also be a small impact on the number of people undergoing the WCA, as fewer people withdraw their claim because they find the process stressful.

## **Disability Impact**

The WCA is designed to assess the work capability of people who are out of work as a result of disability or ill-health. It plays a significant role in determining the levels of support offered to customers, many of whom will have disabilities.

The main effects of the proposals are to increase the numbers of decisions made that are not appealed. The effect of this will be to increase the numbers of people getting onto the higher rates of benefit, from the main phase of ESA, rather than remaining on the assessment rate for up to 12 months while waiting for an appeal to be processed. This should have a positive effect on the immediate financial well-being of the disabled people affected, as well as reducing the stress from undertaking the appeals process.

For people with a primary diagnosis of mental and behavioural disorders undergoing the WCA, 7 per cent are placed in the Support Group, 25 per cent in the WRAG and 68 per cent are found fit for work. The proportions for other health conditions are 12 per cent, 25 per cent and 63 per cent respectively. The review has proposed the introduction of mental, cognitive and intellectual champions by Atos Healthcare which should help to improve the assessment of individuals with mental health conditions. Additionally, a group to make proposals of changes to the mental, cognitive and intellectual functions and descriptors in the WCA has been set up. This group will report back to the independent reviewer, who will then make recommendations of changes to DWP. These actions are likely to have a larger effect on people with mental and behavioural disorders.

## **Gender Impact**

Currently 42 per cent of people undertaking the WCA are female, so ESA customers are more likely to be male. Females also make up 42 per cent of the incapacity benefits caseload, which means that males will make up the majority of people coming through the WCA in future when re-assessment takes place.

Females who are assessed through the WCA are slightly less likely than males to be found fit for work (63 per cent for females vs 66 per cent for males) so they are slightly more likely to move onto the main phase of ESA.

There are no particular measures that are likely to differently affect people of different genders, but the impact is likely to be greater for men, given the higher proportion of men going through the WCA.

## **Age Impact**

Around one-third of customers who go through the WCA are aged 50 or above, so the people affected by the changes are older, on average, than the working age population as a whole. Evidence shows that the youngest customers are more likely to be placed on the main phase of Employment and Support Allowance at the WCA, e.g., only one-third of those aged under 18 are found fit for work, compared to an

overall average of almost two-thirds. There are differences in the types of health conditions for people of different ages but no evidence has been found which shows systemic problems for different age groups. There are no particular measures that are likely to affect differently people of different ages, but the impact is likely to be greater for older people, given the higher proportion of these people going through the WCA.

## **Race Impact**

Currently 11 per cent of people going through the WCA, who have their ethnicity recorded, are recorded as being from ethnic minority groups<sup>1</sup>. 76 per cent of these people are found fit for work, compared to 68 per cent of people from white backgrounds. The gap slightly increases further through appeals, where greater proportions of people from white backgrounds take their cases to appeal and have these successfully overturned.

For some people from ethnic minority backgrounds, problems with the WCA may be caused by their inability to explain the effects of their health conditions, especially when English is not their first language. Improving the clarity of communications with customers and improved use of additional evidence from the customer's chosen healthcare adviser in the decision making process is likely to have an impact on reducing the gap in the outcomes for people from white and ethnic minority backgrounds, by making it easier for customers to explain their circumstances.

## **Impact on other Protected Characteristics**

There are no data on gender reassignment, religion or belief, or sexual orientation within the WCA. It is expected that the recommended changes will affect all customers equally, regardless of these characteristics.

## **Monitoring and evaluation**

DWP will monitor the outcomes of the WCA for different groups of customers to identify the impact of the changes on equality. There is an ongoing series of research into ESA and the experiences of individuals claiming the benefit, and these will continue to explore differences for the protected groups.

The current independent review is the first of five annual reviews, so there are further opportunities to explore equality issues and for recommendations to be made to address any identified issues.

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<sup>1</sup> One-fifth of people assessed do not have their ethnicity recorded. Caution is needed in interpreting ethnicity results, as people with recorded ethnicity are likely to be different from the ESA population as a whole, e.g., they are more likely to have contact with Jobcentre Plus advisers so are less likely to be in the Support Group.

# Contact details

For further information about this Equality Impact Assessment, contact:

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