

# An Independent Review of the Work Capability Assessment – year three

Professor Malcolm Harrington

November 2012

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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)

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# Foreword

This is my third and final Independent Review of the Work Capability Assessment (WCA). I was pleased to be asked to continue the work I had started in my first and second Reviews.

It is an adage of politics that Government Departments like to employ independent advisors: it gives credence to the work of the Department so long as the experts do not propose any changes to the system.

This sentiment is not new. Nicolo Machiavelli (1469–1527) said much the same. His writings are often maligned and frequently misquoted but he was, nonetheless, a very able administrator and a skilled diplomat. In one of his works he said:

*‘There is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things. For the reformers have enemies in all who benefit by the old order and only lukewarm support from those who profit by the new order, because of the incredulity of mankind, who do not truly believe in anything new, until they have actual experience of it’.*

My experience with the Department for Work and Pensions (DWP) is much less negative and much more encouraging. Throughout my three Reviews I have experienced nothing but support for what I was trying to achieve: that is, making the WCA a more humane and caring assessment which gives due consideration to those claimants who are least able to help themselves.

There are two main strands to the recommendations I have made throughout my Reviews: to revise the process of the WCA from the first claimant contact right through to appeal (where necessary); and to review whether the current descriptors accurately capture the true nature of the claimants’ case.

For the process part, it is clear to me that DWP Operations have made strenuous efforts to improve the so called ‘claimant journey’. The Harrington Review Implementation Team has produced regular reports for me on how they are progressing with the proposed changes. They are a small dedicated team of people who have shown great tenacity in changing the system and – where appropriate – piloting the changes before deciding on a national implementation strategy. I am most grateful to them for their hard work.

This job is not yet complete. The improvements that have been started must be carried through to the end. It is important that the momentum is not lost and, indeed, that the changes are reviewed periodically to ensure that the alterations are working. It is vital for there to be continual review, modification and monitoring of the WCA.

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A number of the major charities in this year's call for evidence say that although they have seen some change for the better, it is disappointingly incomplete in coverage and depth. I agree with them. Changing such a large and complex process and such a controversial assessment takes time – it is happening.

So far as the descriptors are concerned, progress has been positive but slow. We are close to a new and much improved set of provisions for cancer treatment. For the mental, intellectual and cognitive conditions descriptors and for the fluctuating condition descriptors, work is underway for a formal review of new proposals from a number of charities to compare them with the existing descriptors. This work will continue into 2013 and I have been asked to chair the expert independent steering group overseeing the quality and validity of the evidence-based review. It is important to wait for the results of this before rushing to conclusions about how to change the descriptors.

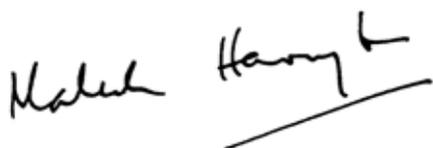
Recommendations on the training of professionals in DWP Operations, Atos Healthcare and the Tribunals have produced some limited progress. In particular, it is regrettable that the First-tier Tribunal has effectively distanced itself from the rest of the WCA. Feedback from the Judges to the Decision Makers has, at last, started in a rudimentary way. However, much, much more is needed if we are to see a real dialogue between the Judges and the Decision Makers. This must happen on cases where there is a difference of opinion on what category is appropriate for that case *based on the same set of evidence*. For the First-tier Tribunal to suggest that the WCA Independent Review has no remit to consider the appeal stage of the process is illogical and untenable in my view.

I believe that my recommendations are effecting change for the better in the WCA. There is some way to go but I am confident that significant and lasting improvements are coming and that DWP and my successor will see the job completed.

I have been grateful during my time as Independent Reviewer for all the support and encouragement that I have received from within DWP, from the wider world of the charities and patient support groups, from individuals who have shared their experiences with me, as well as from politicians in the three major political parties. I thank them all for making my work more effective and for being so willing to share their ideas with me.

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In the final analysis, all this effort should be to ensure that the claimant gets the fairest and most effective way of assessing their needs. It should encourage and help those who can to return to work, while ensuring that for those who cannot work the State support they deserve is received.

A handwritten signature in black ink, reading "Malcolm Harrington". The signature is written in a cursive style. The name "Malcolm" is on the left and "Harrington" is on the right. A horizontal line is drawn underneath the entire signature.

Professor Malcolm Harrington

November 2012

# Executive Summary

1. The Work Capability Assessment (WCA) was introduced to determine eligibility for Employment and Support Allowance (ESA), providing a functional assessment of whether someone could work; whether someone could work at some point with the right support; or whether someone cannot work and therefore needs unconditional State support. These principles remain core to the Review's thinking and working.
2. The first two Independent Reviews<sup>1</sup> concluded that although the WCA is the right concept much needed to be done to improve the working of the system. Despite many people calling for the WCA to be scrapped, the Review has seen no evidence to change this stance.
3. Recommendations in previous Reviews have broadly been divided into two main areas:
  - Improving the process to make the assessment fairer and more effective through: better communications with claimants; improving transparency; empowering Decision Makers; and ensuring quality decisions are made; and
  - Investigating whether the current descriptors are fit for purpose, and if not making suggestions for improvements.
4. This year three Review has examined the scale of change that has occurred, driven forward outstanding areas of work from previous Reviews and has proposed additional recommendations to further the scope of change.

## **Implementation of the year one and year two recommendations**

5. All the recommendations made so far have been accepted by the Government. Not all have been fully acted upon yet.
6. Real progress has been made but the pace and scope of the improvements has been slower than the Review would have hoped. The direction is the right one although the goals have not yet been reached.
7. It is imperative that the momentum for change is maintained. The Department for Work and Pensions (DWP) has worked hard to effect change and continual improvement must become the watchword for the future.

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<sup>1</sup> <http://www.dwp.gov.uk/docs/wca-review-2010.pdf> and <http://www.dwp.gov.uk/docs/wca-review-2011.pdf>

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8. I hope the years four and year five Reviewer(s) will ensure that DWP keeps on course and that the good progress made so far does not slow, let alone stall. This is not easy in a large Department, but if a fairer and more effective process is to become a reality these potential operational difficulties must be overcome.
9. The WCA continues to be portrayed in an extremely negative light, often fuelled by adverse media coverage, representative groups and political points scoring. Whilst the Review continues to hear examples of individuals who have been poorly treated by the WCA process, DWP can be reasonably pleased with what they have achieved. Some recognition of the considerable work to date would give a more balanced picture and DWP needs to be more proactive in communicating this.

### Key findings and themes from this Review

10. The main theme and feature of this Review is the need to complete the tasks that have been started.
11. As noted above, whilst progress has been made there remains more to do. The main areas here are:
  - Continuing to **improve communications with claimants**: changes so far are having a positive impact on the claimant experience, although increased contact with claimants can prove difficult for both individuals and Decision Makers.
  - Continuing to **improve communications within DWP Operations**: DWP is a large Department but effective communications between Decision Makers and Personal Advisers are vital if the whole organisation is to understand both the overarching purpose of the WCA and why decisions have been reached at an individual level. The extension of a pilot aimed at smoothing the transition between the WCA and work is welcomed. Rapid implementation is needed if this proves successful.
  - Continuing to **improve the face-to-face assessment**: DWP should monitor Atos performance more closely. Indeed the quality and depth of the relationship between DWP and Atos remains variable at a local level. The opportunity for Decision Makers and Atos healthcare professionals to discuss individual cases will help ensure quality decisions, but these relationships take time to build.
  - Establishing **quality dialogue between DWP and First-tier Tribunals**: while progress has, finally, been made here there remains much more to do if the whole assessment process is to become transparent and accountable.

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- Keeping the **Decision Maker central to the assessment process** and **providing them with all the further documentary evidence they need to get the decision ‘right first time’**: shifting the emphasis from the independent face-to-face assessment to a more holistic approach will help improve both the accuracy and the integrity of the whole process. Decision Makers are being empowered, but they need to have access to as much information as possible on which to make their decisions and to be given latitude to make these decisions ‘right first time’.
  - Continually **monitoring changes to the WCA**: the Review has seen, first hand, the changes that are beginning to take root. Considerable disquiet remains, and this cannot be ignored. Continuing to monitor the implementation of the Review’s recommendations, and their impact, is key to communicating improvements as they happen.
  - **Completing work underway on the descriptors**: momentum must be maintained to make changes to the cancer treatment provisions and to complete, evaluate and act on the findings of the evidence-based review. This is a far from straightforward process – the work to date is encouraging and must be followed through.
12. In light of the positive progress made and the need to do more to embed progress made this Review has deliberately made fewer recommendations than in previous years. Consolidation and monitoring are the vital next stages: at this stage there is no evidence for a further period of radical reform.

# 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 who are out of work and have a disability or health condition.
2. The end-to-end WCA process intends to evaluate objectively a person's 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. As such, the overall decision focuses on the claimant's functional capability rather than their diagnosis.
3. The three Groups into which a claimant can be placed and a broad outline of the WCA process were all described in more detail in the first Independent Review<sup>2</sup>.

## Independently reviewing the WCA

4. The Welfare Reform Act 2007 legislated for the introduction of the WCA. This law provides the basis for the Independent Reviews. 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."*
5. This is the third of the Independent Reviews. Professor Malcolm Harrington, an occupational physician, also led and published the first two Reviews. Both of his previous Reviews have concluded that the WCA is the right concept, but that improvements are needed at each stage of the process.
6. The previous Reviews both made a number of recommendations for improvements. The Government have accepted these and, where appropriate, moved to implement them. More details on these recommendations and their implementation are in Chapter 2.

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<sup>2</sup> Chapter 3, <http://www.dwp.gov.uk/docs/wca-review-2010.pdf>

### This review

7. In November 2011, the Secretary of State for Work and Pensions reappointed Professor Harrington to carry out the third Independent Review of the WCA.
8. The Review aims to provide:
  - A further examination of the system based on a series of recommendations made in the previous Reviews;
  - Updates on progress implementing the year one and two recommendations and, where possible, analysis of their impact; and
  - Suggestions and recommendations for areas which the year four and five Reviews may wish to consider or focus on.

#### **The terms of reference for the Review:**

- To provide the Secretary of State for Work and Pensions with an annual independent report evaluating the operation of the assessments of limited capability for work and limited capability for work-related activity;
- 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 disease or disability;
- 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;
- To take forward the programme of work identified in the year one report during years two and three;
- To monitor and report on the implementation of the recommendations in the year one report that are adopted by Ministers; and
- To provide independent advice to Ministers and the Department on any specific issues or concerns with the WCA that arise during the term of appointment, which the Government may seek your independent view.

9. The Secretary of State also re-appointed an Independent Scrutiny Group to oversee Professor Harrington's work and to provide him with advice and challenge during the course of his work. The group met three times during the Review and was chaired by Professor David Haslam, a GP, National Professional Adviser to the Care Quality Commission and past President of the British Medical Association and the Royal College of General Practitioners.

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10. The three other members of the group were:

- Simon Gillespie, Chief Executive of the MS Society (who replaced Paul Farmer, Chief Executive of Mind);
- Dr Olivia Carlton, President of the Faculty of Occupational Medicine and Head of Occupational Health, Transport for London; and
- Neil Lennox, representing the CBI and Head of Group Safety at Sainsbury's.

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;
- To provide challenge as the final report is formulated to ensure the findings are robust and are presented in a clear and appropriate format; and
- To ensure the reviewer maintains his independence, acting as a point of contact and sounding board where necessary.

### **The scope**

11. The recommendations from the first and second Reviews provided a programme of work which formed the basis of work for the third year Review. The recommendations included:

- Improving the way DWP Operations communicates with claimants;
- Improving the transparency of the face-to-face assessment;
- Empowering and improving training for DWP Decision Makers to place them at the heart of the process;
- Exploring in detail the descriptors used in the assessment, particularly through a 'gold standard' or evidence-based review of the mental, intellectual and cognitive and fluctuating conditions descriptors following work with relevant charities on these; and

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- Monitoring the implementation of previous Review's recommendations from the first year review, including unannounced visits to Benefit Delivery Centres and Atos Assessment Centres.

### **The process**

12. The Review took an open and collaborative approach to gathering information for this report. Many sources of evidence were interrogated to ensure that information, data and opinions expressed could be cross-checked and challenged.

### **The call for evidence**

13. 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 related to the WCA.
14. The call for evidence was launched on 9 July 2012 and closed on 7 September 2012. The call for evidence received over 750 responses. Responses were received from a wide range of individuals and organisations including unions, employers, employment support providers, welfare rights, General Practitioners and other healthcare specialists and professionals. Further details and analysis of these responses are contained in Chapter 6.

### **Stakeholder meetings and seminars**

15. The Review met with relevant stakeholder groups through a series of one-to-one meetings, group meetings and seminars. Throughout these meetings and seminars, stakeholders and interested groups were given the opportunity to provide evidence and opinion on the operation of the WCA.
16. These meetings have included MPs from all political parties who have expressed views on the process from both a constituency level and a policy perspective.

### **Examination of the WCA process**

17. The Review examined many parts of the WCA process during the course of the year.

### **The Department for Work and Pensions (DWP)**

18. The Review visited seven Benefit Delivery Centres/Jobcentres (Barking, Burnley, Handsworth, Leeds, Oldham, Plymouth and Stratford) and facilitated a national teleconference (DWP's Every Decision Counts) for DWP Decision Makers.

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19. The visits and teleconference proved invaluable for assessing the implementation of the Reviews' recommendations and was useful for gathering feedback on what is and is not working as intended. Further details are in Chapter 2.
20. Throughout the Review, a continual dialogue was maintained with DWP Ministers and senior officials from DWP Policy and Operations.

### **Atos Healthcare**

21. The Review visited an Atos Assessment Centre and spent time with a Mental Function Champion who explained their role and their interactions with healthcare professionals inside and outside of Atos, DWP Decision Makers and other external agencies.
22. It also had access to Atos management information (even where this information was not in the public domain) and training materials.

### **Appeals**

23. The Review has sought information about the appeals process to build on that gathered in previous Reviews.

# Chapter 2: Implementation of the year one and year two recommendations

## Background

1. The year two Review (published in November 2011) set out a further series of recommendations in addition to those contained in the year one Review (published in November 2010).
2. In essence, the recommendations can be divided into two main groups:
  - The process of the Work Capability Assessment (WCA); and
  - The descriptors against which claimants are assessed.
3. An update on work to improve the descriptors, and progress in implementing this, is contained in Chapter 4. This Chapter will, therefore, concentrate on the process of the WCA and is divided into four key areas:
  - The claimant experience;
  - The face-to-face assessment;
  - The decision making process; and
  - The appeals process.
4. Also contained in this Chapter are:
  - Details of the metrics which the year two Review recommended should be collected;
  - Information about communications supporting the WCA process, how these have changed and where further work is required; and
  - The findings of unannounced visits to Benefit Delivery Centres and an Atos Assessment Centre to discover first hand how the work to improve the WCA process was proceeding.

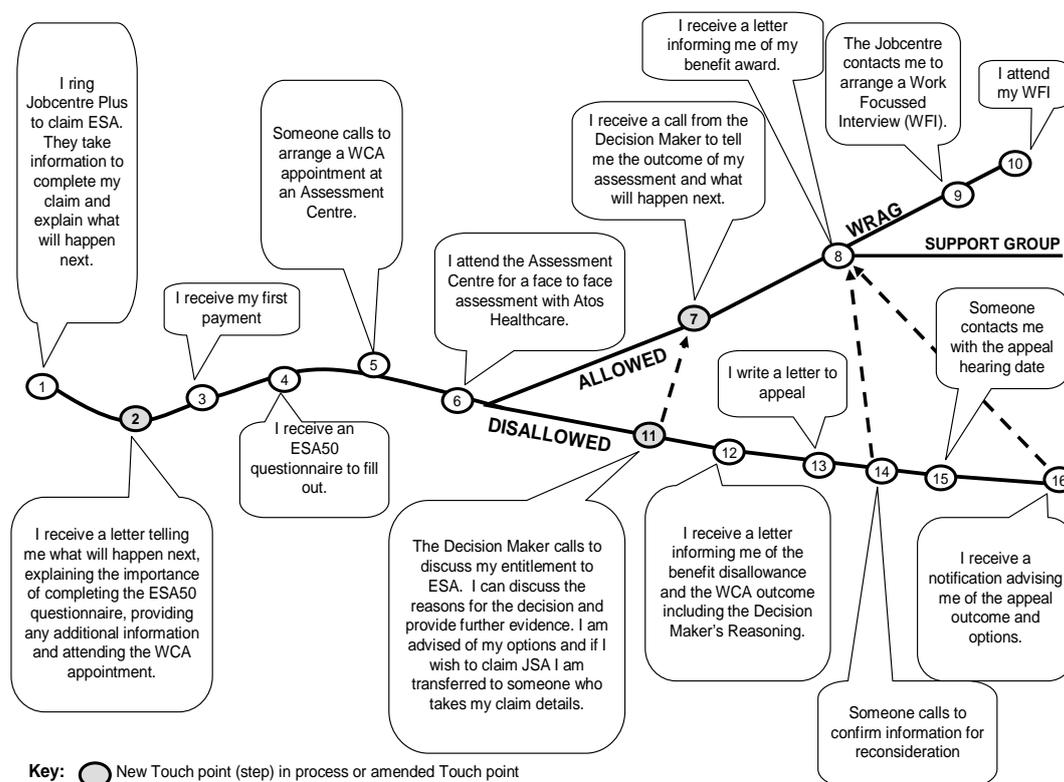
### **The claimant experience**

5. National implementation of improvements to the early sections of the 'claimant journey' was completed in late October 2011. The ESA35/35A letter was introduced for new and existing claimants, Decision Makers now contact the claimant by telephone following the outcome of the WCA and a Decision Makers Reasoning is issued to claimants found fit for work with the aim of providing a clearer explanation of the decision and all the evidence considered by the Decision Maker. All of these initiatives are designed to explain better the process and provide greater empathy and understanding.
6. The ESA35/35A provides claimants with clearer information about the WCA process and the next steps. Department for Work and Pensions (DWP) Operations have sought views from claimants in the last eleven months which appear to confirm this assumption.
7. However, there continues to be a percentage of ESA claimants who do not engage with the process initially, failing to return the ESA50 and failing to attend the face-to-face assessment.
8. A trial in Wales between April 2012 and August 2012 aimed to reduce the failure to return the ESA50 rate by sending a text message to claimants to remind them. Whilst initial results were positive, overall, the three months of data showed little if any increase in the return rate of the ESA50.
9. A new version of the ESA35 for new claimants and the ESA35A for existing claimants has been produced following stakeholder involvement. These letters are being trialled to assess whether the new format is easy to understand and whether as a result of receiving the ESA35/35A claimants are more likely to return the ESA50 and attend, if required, a face-to-face assessment. The results of the trial will be available at the end of November 2012.
10. It is likely that the failure to attend rates have also been influenced by the longer time Atos are taking to provide the claimant with a date for their face-to-face assessment. When these appointment times are speeded up, it is anticipated that the effect of the early improvements to the claimant journey through the WCA process will become more apparent.
11. Worryingly there continues to be a percentage of ESA claimants who do not engage with the process initially; and a significant percentage of those failing to comply with the requirements are claimants with a mental, intellectual or cognitive condition. Further work to ensure early engagement in the process with these claimants may be required.

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12. After the face-to-face assessment takes place and before a final decision is taken, a Decision Maker telephones the claimant to explain what will happen next. Claimant insight undertaken over the last eleven months confirms that most claimants welcome a telephone call to explain the outcome of the WCA, especially the Decision Assurance calls which provides the opportunity to discuss the proposed decision with the Decision Maker and provide further documentary evidence if appropriate.
13. Disappointingly many claimants reported that they had not received a call from the Department but would welcome such support. Nationally, approximately one in three calls get through to the claimant. This remains a concern and further efforts are needed to ensure as many claimants as possible receive the necessary help and support they need through the process.
14. The Decision Assurance call is an important opportunity to examine with the claimant the importance of further documentary evidence to help ensure that the correct decision is made from the outset. This, in turn, should help to reduce the number of reconsiderations and appeals received, and ultimately the number of decisions which are overturned at appeal.
15. In monitoring the success rate of the calls a trial to attempt to increase the success rate of the Allowance and Decision Assurance calls (by sending a text message prior to the call) was introduced. This trial has improved the success rate of the calls and these trials will be extended. Any move to increase the success rate of these calls is welcomed – they are a central part of improving the claimant experience of the WCA.
16. Lastly, the year one Review recommended that Atos healthcare should provide claimants with a short free text summary of their assessment. This took time to embed, but every face-to-face assessment report now includes such a summary from the healthcare professional. DWP Operations have, however, gone much further. They have implemented a Decision Maker Reasoning: an extended piece of prose outlining the claimant's case and the reasoning behind the DWP decision to allocate an individual to a particular Group. DWP Operations are to be commended for this excellent initiative.
17. It is important that staff appreciate the rationale for producing high quality Decision Makers Reasonings. Succinct summaries will contribute to easing the pressures on Decision Makers and should better support a reduction in appeals if the reasons for the decision are more clearly explained to the claimant. This is discussed in more detail in paragraphs 71–76 below.
18. The latest claimant journey is at Figure 1.

**Figure 1: WCA claimant journey**



## Monitoring the impact of the recommendations

19. As recommended in the year two Review, DWP have been monitoring the implementation of the recommendations over the last year.
20. Between November 2011 and September 2012 the percentage of claimants failing to return their ESA50 varied between 26 per cent and 44 per cent. In the same period, the percentage of claimants failing to attend the face-to-face assessment varied between 26 per cent and 30 per cent<sup>3</sup>.
21. Work to reduce both of these figures is discussed in more detail in paragraphs 6–11 above. However, both suggest that changes to the claimant journey have had only limited impact on both figures over an 11 month period. As noted above, further work to ensure engagement with the WCA process is required.

<sup>3</sup> This data derived from unpublished management information and has not been quality assured to National Statistics or Official Statistics publication standard. It should therefore be treated with caution. The data gather is reliant on Decision Makers manually recording the information on an internal database, and may not be reliable as human error cannot be avoided.

## **An Independent Review of the Work Capability Assessment – year three**

22. Over 90 per cent of decisions have met the criteria in the Quality Assurance Framework each month between February 2012 and September 2012. However, as noted in paragraphs 65–67 below it is important that the QAF focuses on quality and accuracy of decisions, as well as how many decisions meet the established criteria.
23. Recent data shows that around 11 per cent of all decisions are upheld following reconsideration<sup>4</sup>, with little variation in this between months. Mandatory reconsideration of decisions where the claimant is inclined to appeal is being introduced next year, and continuing to monitor the percentage of decisions changed at reconsideration will be of interest in light of this move.
24. Although the data has not been published as National Statistics there appears to have been a decrease in the percentage of new claim decisions appealed against<sup>5</sup> between June 2012 and September 2012, with the percentage of decisions upheld at appeal remaining broadly consistent<sup>6</sup>. It is difficult to read too much into this data until it is properly verified, although the initial signs are encouraging and may reflect improvements made to the WCA process.
25. Overall, the data to monitor the impact of previous Review's recommendations aligns with the overall message of this Review: that progress is being made, but there is more to achieve if universal improvements to the WCA are to be seen. DWP need to keep collecting this data to ensure that, if and where appropriate, future Reviews can continue to comment on the success – or otherwise – of changes.

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<sup>4</sup> This data derived from unpublished management information and has not been quality assured to National Statistics or Official Statistics publication standard. It should therefore be treated with caution. The data gather is reliant on Decision Makers manually recording the information on an internal database, and may not be reliable as human error cannot be avoided.

<sup>5</sup> There is a known discrepancy between DWP data submitted to the First-tier Tribunal Service and their data stating numbers received from DWP. This is because DWP data is captured from DMACR and input onto MISP. Some of the work submitted will not have arrived at the First-tier Tribunal Service before they provide their data. This time lag usually accounts for a small discrepancy of traditionally under a thousand cases.

<sup>6</sup> Please note this data is management information only and may not be reflected in the published stats.

## **Further documentary evidence<sup>7</sup>**

### **Current process**

26. Most claimants have already provided at least basic evidence about their health condition or disability by means of a doctor's 'fit note' requested at the time they make their initial claim.
27. There are also currently several opportunities in the WCA process for further medical or documentary evidence to be collected in support of an individual's claim.
28. The current ESA50 states that: 'if we are able to get enough information about you from this questionnaire, your doctor or the person treating you, we may not need to ask you to attend a face-to-face assessment', adding that: 'if you have any medical reports from your doctor, consultant or healthcare professional, or any other information you wish us to see, please send them with this questionnaire'.
29. When the ESA50 is returned to Atos, the Atos healthcare professional requests information from a claimant's chosen healthcare adviser if they believe it would help the process or avoid an unnecessary face-to-face assessment. Guidelines make clear they must request evidence in certain circumstances, including where a claimant has an appointee, or if there is reference to suicidal ideation or self-harm in the claimant's ESA50.
30. Thirdly, when a Decision Maker makes a Decision Assurance call they are in effect asking the claimant whether there is any further evidence which they would like to submit in support of their claim before a final decision is made.
31. If a Decision Maker reaches a decision that the claimant is not eligible for the benefit, claimants are notified of the decision in writing. The letter sets out the options available to the claimant, which includes asking DWP to reconsider 'if there may be some facts that you think we have overlooked or you may have more information which affects the decision'.

### **Background**

32. During the year one Review a number of groups and individuals suggested that claimants were often disadvantaged in their claims by their failure to provide further documentary evidence to support their claim.

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<sup>7</sup> 'Further documentary evidence' is used as a shorthand, generic term for any additional information supplied in support of a claim, whether it comes from a medical practitioner, professional allied to medicine, or someone else who knows the claimant and how their condition affects them.

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33. This meant that decisions about their claim were reached only on the basis of the completed ESA50 and the report from the face-to-face assessment.
34. That Review also noted the President of the First-tier Tribunal's view that the provision of further documentary evidence at the Appeals stage was responsible for the majority of upheld appeals.
35. As a result, the year one Review contained a recommendation that: 'Decision Makers are able to seek appropriate chosen healthcare professional advice to provide a view on the accuracy of the report if required' arguing that: 'they [the Decision Makers] should ask the claimant to name a chosen healthcare professional and seek a report from them (for some claimants, the Decision Maker may have to undertake this task)'.

### **Discussion**

36. The year one Review said that: 'the onus is and must be on the claimant to provide information to support their claim... 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'.
37. During the year two Review it became clear that the Decision Makers were seeking to gather increased amounts of further documentary evidence as recommended in year one. This was seen as positive progress whilst also recognising that, in an ideal world, further documentary evidence would be provided at an earlier point in the claim process. Concerns remained that further documentary evidence was often only being provided as part of the reconsideration process.
38. However, some charities have suggested that the collection of further documentary evidence should be a mandatory duty on either Atos or on the Decision Maker. They have argued that claimants cannot, for a number of reasons, collect this information themselves and therefore the Department should take responsibility for doing so.
39. This view has been widely canvassed over the course of this year and put to charities, representative and disability groups, politicians, senior officials in DWP and, most importantly, to the Decision Makers during this year's unannounced visits to Benefit Delivery Centres.
40. A consensus has clearly emerged. There should be a requirement in every claim to consider seeking further documentary evidence and, if that evidence is not sought, then the decision not to should be justified.

### **Recommendation**

Based on this, I recommend that:

**Decision Makers should actively consider the need to seek further documentary evidence in every claimant's case. The final decision must be justified where this is not sought.**

## **An Independent Review of the Work Capability Assessment – year three**

41. Given the unique circumstances of their condition, particular care should be taken when the claimant has a mental, intellectual or cognitive condition as these individuals may lack insight into the effects of their condition on their day-to-day functioning.
42. It cannot be over emphasised how important it is to collect further documentary evidence **early** in the WCA process. If collected at the start, this information would be available to Atos healthcare professionals for their comments and consideration during the face-to-face assessment and before the Decision Maker collates **all** information in advance of a decision being made.
43. As part of their independent role in the WCA, Atos are already directed to collect further documentary evidence where, in scrutiny of a claim, they believe it would provide useful supporting information to avoid a face-to-face assessment. However, respondents through the call for evidence claim that this direction is not always pursued and that if evidence is collected it is not always reviewed.
44. However, if Atos have not sought this information, and the claimant has not provided it themselves, then this recommendation provides a third opportunity to gather it, adding a need to explain why where it has not been sought in order to make this clear to both the claimant and, where necessary, a Tribunal.
45. One further solution to ensure further documentary evidence is received from claimants early in the process may be to revise further the ESA50 form to include a page to send to the claimant's chosen healthcare adviser.
46. It is clear that gaining such evidence – and particularly any revisions to the ESA50 to include specific information to send to healthcare advisers – would also place additional burdens on medical practitioners and on professionals allied to medicine who would be required to provide helpful and functional evidence to support their patient's claim.
47. When further documentary evidence is currently requested it is often either not returned or it is not returned within the necessary timescales. If this recommendation is accepted there may be a need to work with the professional bodies to improve this.
48. The British Medical Association, for example, have made it very clear that they do not want to become 'guardians of the benefit system'.

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*“Work Capability Assessments are carried out by health care professionals working directly for Atos Healthcare who are trained specifically to undertake this type of work. The claimant’s GP also has a specific role in the process, to provide a factual report based on information contained within the patient’s medical record. It is not, however, the GP’s role to provide any opinion on the patient’s capability to work as part of this process. It is vital that these two roles are kept separate and that GPs are not asked to provide opinion on their patient for the purpose of receiving Employment and Support Allowance (ESA); doing so could damage the doctor-patient relationship”, British Medical Association*

49. However, what remains clear to the Review is that there must be efficient routes for further documentary evidence to be provided if the WCA is going to be as fair and effective as it should be.

### **The face-to-face assessment**

50. The year one recommendations for Atos – including the introduction of a personalised summary statement in the report of every assessment, the introduction of Mental Function Champions, a pilot of audio recording, and the introduction of a clear customer charter – have all been implemented.
51. As reported in the year two Review, Mental Function Champions have been introduced at a regional level, rather than in each Assessment Centre as was originally recommended. Given scarce resources the Review supported this approach.
52. Some representative groups claim that awareness of the Champions is low, and that those who are aware of them believe they have little or no impact on the quality of mental function assessments. The Review asked Atos to report on the effectiveness of their Mental Health Champions. They said that their healthcare professionals found the Champions to be ‘a great resource’ and that they were of ‘great use to put any uncertainties into perspective’.
53. The pilot of audio recording of assessments has also been subject to much debate; particularly through the call for evidence responses (see Chapter 6). The Review has seen little evidence from the DWP evaluation of the audio recording pilot of 2011 that the universal audio recording of assessments would improve their quality (see the original recommendation): further monitoring and evaluation work needs to be completed before a decision can be made.
54. The year two Review also made a number of recommendations relevant to Atos which have been implemented to varying degrees over the last year.
55. Changes to the Logic Integrated Medical Assessment (LiMA) system – the IT system used by Atos healthcare professionals during the face-to-face assessment – have been made.

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56. Use of free text is now monitored each month for healthcare professionals who have completed more than 20 assessments, with healthcare professionals in the highest and lowest deciles being identified each month. There are considerable differences between the lowest and highest deciles, but the Review retains the belief that use of free text is key to an accurate report of the face-to-face assessment.
57. In terms of IT training for healthcare professionals to allow them to feel confident in using appropriate amounts of free text, e-learning has been made available to healthcare professionals for them to complete as they see appropriate. The Review hopes that uptake of this training is monitored, both to track demand and identify any changes in amounts of free text used in reports.
58. Least progress appears to have been made in tightening the target for C-grade reports for healthcare professionals under audit and in publishing data on Atos performance and quality. Whilst the Review understands that these are both being actively considered, the lack of tangible progress to date is disappointing. The Atos face-to-face assessment is often heavily criticised and so improving the transparency of this and striving to raise standards of the healthcare professionals involved would be of considerable benefit.
59. Indeed, in the National Audit Office October 2012 report on contract management of medical service in DWP<sup>8</sup> they state that: “the Department should consider tightening performance requirements linked to quality of medical [sic] assessments. The current target of no more than 5 per cent of reports being graded as ‘unsatisfactory’ is not sufficiently challenging’.

### **The decision making process**

60. Perhaps the most important development in improving the WCA process has been the move to put the Decision Maker back at the heart of the whole scheme. Empowering Decision Makers has been a major aspect of the work of the Harrington Review Implementation Team and they have done an excellent job so far. However, there is still more to do to ensure a consistent, nationwide approach.
61. The Decision Assurance call is a good example of ensuring Decision Makers are driving the process. This is the stage where further documentary evidence is often uncovered, but the call itself has proved to be stressful for the Decision Makers as claimants can be upset, aggressive or totally shocked by the proposed decision. Those who have been making these calls for the longest – such as in Oldham Benefit Delivery Centre – have come through to the other side, so to speak. They now find it valuable and it has enhanced their sense of being in charge

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<sup>8</sup> [http://www.nao.org.uk/publications/1213/dwp\\_medical\\_services\\_contract.aspx](http://www.nao.org.uk/publications/1213/dwp_medical_services_contract.aspx)

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and enriched their job role. In other locations Decision Makers are still struggling with the emotional issues of dealing with claimants. Perseverance is the order of the day, but experience does show this works for both Decision Makers and claimants.

62. The rate of successful calls greatly varies across the country. Evidence gathered from unannounced visits and from other anecdotal sources suggests that much of this variation is down to the attitude of local managers towards the increased workload on Decision Makers and the inevitable slowing in the number of claimants handled in a week.
63. Whilst local benchmarks or targets such as the number of decisions per day or the time taken per decision are an essential component of a well managed customer focused service, that has to be balanced by the need for Decision Makers to have the time to ensure that decisions are 'right first time' as this too is very important for both individual claimants and DWP.
64. Decision Makers **must** be granted latitude in this area or the whole scheme will fail. This must be recognised and acknowledged at the highest levels in DWP and at Decision Maker level as well. A DWP Operations review of benchmarks is now underway.  
  
Based on this I recommend that:  
  
**In order to build on the progress already made DWP Operations need to find an appropriate balance between better quality decisions that are carefully considered and 'right first time' and the achievement of appropriate benchmarks at a local level, otherwise there is a real risk of derailing the positive progress made to date.**
65. The Quality Assurance Framework (QAF) is now in operation and Decision Maker audit is a reality.
66. Results show that a very high proportion of decisions meet the current criteria as set out in the QAF (approximate average 90 per cent per month); however the new measure to check the **quality** of the Decision Makers Reasoning has not been incorporated into the checking regime.
67. While much has been done to ensure that DWP Operations staff are fully conversant with the standards, interpretation in individual cases may vary and therefore may affect the consistency of the outcome. It is imperative that QAF calibration exercises take place to regulate the approach and improve the **accuracy** of the related data gathered.
68. Part of this quality assurance concerns the development of the Decision Maker Reasoning. The Review has seen a number of these documents and they vary in both quality and quantity. Further training will undoubtedly improve performance and Decision Makers in Oldham Benefit Delivery Centre are again the most advanced in this area as they were the first to

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pilot the new approach. In a very small sample of cases where the claimants were asked if they could recognise themselves in the Decision Maker Reasoning, 75 per cent stated they could. This is in marked contrast to claimants' views from the call for evidence on the reports from the face-to-face assessment.

69. To retain transparency it is important that the Decision Maker Reasoning is a work of their own making. Simply cutting and pasting the free text from the Atos personalised summary statement is to be discouraged as this will not give a true reflection of the decision making process, and could suggest a slip back towards 'rubber stamping' of the recommendations from Atos. When the Decision Maker Reasoning has been fully established, it should become an important part of the appeals process, if an appeal is necessary: this is dealt with in paragraphs 71–76 below.
70. It is still too early to assess fully the impact of the Quality Assurance Framework, Decision Maker Audit and the Decision Maker Reasoning on the ultimate goal for the claimant (and DWP) of getting decisions 'right first time'. Positive progress has been made, the Review hopes that the year four and year five Reviews will assess ultimately how successful these initiatives have been.

### **The appeals process**

71. The appeals process remains an area of considerable concern for the Review. The First-tier Tribunal President opines that this is outside the remit of the Review. The Review disagrees. Appeals are a fundamental part of the overall WCA process.
72. The Review believes that two aspects need to be addressed with some urgency. Firstly, it is imperative that we get to the stage where Tribunal members are making their decisions based on the same evidence as the Decision Maker.
73. Secondly, the Decision Maker Reasoning comes into play. The Review wrote to the Minister for Employment about this in May 2012 (Annex 2) indicating that not only should the Decision Maker Reasoning become the backbone of DWP's case, but that if that detailed explanation is to be overturned by the Tribunal then they in turn must provide detailed justification for their decision. This would make the whole process more transparent and more accountable.
74. To date, the only feedback secured from First-tier Tribunals (across all health and benefits appeals) has been, at long last, Judges indicating which one reason from a drop-down menu of one-liners is the basis for the Tribunal overturning the decision.

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75. This rudimentary form of feedback has taken much time and effort to achieve and it followed a recommendation to Ministers in February 2012 (Annex 2). The list of reasons available to Judges are:

- Cogent oral evidence;
- Cogent oral evidence in relation to physical factors;
- Cogent oral evidence in relation to mental factors;
- Cogent oral evidence in relation to both physical and mental factors;
- Reached a different conclusion on substantially the same facts;
- Reached different conclusion, having a regard to physical factors, on substantially the same facts;
- Reached different conclusion, having a regard to mental factors, on substantially the same facts;
- Reached different conclusion, having a regard to physical and mental factors, on substantially the same facts;
- Cogent documentary evidence supplied at the appeal;
- Cogent documentary evidence supplied at the appeal from a Consultant;
- Cogent documentary evidence supplied at the appeal from a GP;
- Cogent documentary evidence supplied at the appeal from a Healthcare Practitioner;
- Decision Maker misapplied the law;
- Medical/ Functional assessment report, relied on by Decision Maker, contained significant error; and
- Tribunal did not provide a reason.

76. This feedback has been in place since July 2012. Whilst more detailed feedback is needed, analysis of this may at least be able to reveal trends and patterns which need addressing at both a national and individual Decision Maker level. To date the Review has not seen any analysis of the feedback, but this is something which DWP should closely monitor. Future Reviews may also wish to use this analysis, when available, to consider whether and where further reforms are needed.

However, in line with the information at Annex 2, I also recommend that:

**DWP should continue to work with the First-tier Tribunal Service, encouraging them to, where appropriate, ensure robust and helpful feedback about reasons for decisions overturned by the First-tier Tribunal.**

## **Communications**

77. Following a year two recommendation, work has begun to improve communications within DWP, and particularly between the Decision Makers and the Personal Advisors. Several different approaches are being piloted, which again reflects DWP's willingness to try different approaches to see which works best.
78. A pilot project to improve communications in this area has started in Handsworth Benefit Delivery Centre, and three linked Jobcentres in Handsworth, Perry Barr and Washwood Heath, and the Review Team visited them to discuss progress.
79. The early signs look encouraging and both Decision Makers and Personal Advisors now value a more joined-up approach to handling claimants. More work remains, especially to evaluate the results and to improve information sharing between Decision Makers and Work Programme providers, but the pilot has been extended and will continue into 2013.
80. Another good example of work to improve communications is the pilot currently being run in East London where Disability Employment Advisers have set up visits between Benefit Delivery Centres and local offices to share best practice and encourage better communication about cases. Another initiative in the South East of England is also detailed below:

Jobcentres in the London and Home Counties Group have been exploring ways in which they can work closely with their local Benefit Delivery Centres and other stakeholders, including Atos. They have identified that in London some claimants are experiencing significant delays in receiving their decisions and that at times there is a lack of communication between parties, stifling feedback and process improvement.

To address this challenge, in the summer of 2012 London and Home Counties set up a working group of senior managers from across all Jobcentre Districts and Benefit Delivery Centres to help share best practice and put in place better processes to improve communication between Jobcentres and Benefit Delivery Centres. Work is on going, but so far they have developed an innovative way of sharing details of claimants who may be experiencing delays and are piloting this approach between Essex Jobcentres and Basildon Benefit Centre. The group will also be launching a suite of training products across London sites in November.

81. This type of initiative should be centrally monitored by DWP Operations and, if successful, may provide the blueprint for future activities.

## **An Independent Review of the Work Capability Assessment – year three**

82. Communications between DWP Decision Makers and Atos healthcare professionals appear to remain variable. A common theme during unannounced visits to Benefit Delivery Centres was an apparent difficulty in persuading Atos healthcare professionals to rework assessment reports. A telephone helpline between Decision Makers and healthcare professionals exists, and was recently relaunched, in DWP. The usefulness and effectiveness of this needs to be monitored over time.
83. Progress on work between representative groups and their clinical advisers and DWP to update and improve the training and guidance notes used by healthcare professionals in the WCA has started. There appears to have been only limited success to date in getting the representative groups and their clinical advisers to engage fully in the process.
84. A rolling programme of review of the training and guidance has been put in place. However, some representative groups have specifically highlighted in their response to the call for evidence that this is not working and problems remain. On the other hand, DWP have reported problems with either the representative groups not responding to requests or failing to provide suitably clinically based comments and information. This is an important area of cooperation between the interested parties which is not working as well as it should. Further efforts should be made to ensure greater mutual cooperation.
85. Another area of concern around communication is the failure of DWP to put across the improvements in the WCA process that have occurred and are continuing to be developed over recent years.
86. Statistics published in October 2012 by DWP show that:
- For claimants making a new claim to ESA between the quarter ending November 2010 and the quarter ending August 2011 the proportion of people being placed in the Support Group doubled, from 13 per cent to 26 per cent. The proportion remained at 26 per cent through to the quarter ending February 2012.; and
  - For claimants making an appeal against a fit for work decision and who started their ESA claim in the quarter ending August 2011 the current<sup>9</sup> appeal overturn-rate was 31 per cent, compared to a total overturn-rate of 36 per cent for the same quarter in 2010.
87. These changes are likely to be the result of several factors, including the implementation of the Independent Review's recommendations. Nonetheless, they do suggest (subject to any changes to the appeals figures) that changes to the process are beginning to have an impact.

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<sup>9</sup> Note that due to the time taken for ESA appeals to be submitted, processed and heard, there will still be appeals awaiting a hearing, particularly for the most recent quarters. As a result these figures may change as more data becomes available in the future.

## **An Independent Review of the Work Capability Assessment – year three**

88. The Review has seen changes to the WCA process at first hand. Unfortunately the public perception of the WCA continues to be driven by adverse media coverage, which can be fuelled by campaigners who see no change or even wish to see no change. All they call for is a scrapping of the WCA but with no suggestion of what might replace it. Setting politics to one side to recognise that things are beginning to change positively in the best interests of the individual claimant would be helpful.

Taking all of this into account, I recommend that:

**DWP must take the initiative and highlight the improvements that have been made where they exist, as well as being open about where problems remain and their plans to address these.**

89. As an organisation they seem to be on the back foot, even where good news could be promulgated. This does nothing to change negative perceptions about and understandings of the assessment. However, greater recognition that areas which need addressing remain may help balance this picture and provide assurances to the critics.

### **Unannounced visits to Benefit Delivery Centres and an Atos Assessment Centre**

90. The year two Review recommended that unannounced visits to both Benefit Delivery Centres and Atos Assessment Centres should be carried out during year three.

91. Building on a number of visits in year two, this recognised the importance of both monitoring the implementation of the Review's recommendations and getting an insight into how things are changing for the people at the forefront of delivery.

92. As outlined in Chapter 1, seven visits were carried out to Benefit Delivery Centres and one to an Atos Assessment Centre.

#### **Benefit Delivery Centres**

93. Clear and consistent messages emerged from the visits to Benefit Delivery Centres. On the whole Decision Makers supported the overarching message of this Review: that implementation is having a positive impact but that more work is needed, particularly at a local level, to ensure success.

94. It was clear that whilst adding more personal touches into the process (through phone calls to claimants) is generally seen as positive, this can prove demanding for the Decision Makers involved, especially if they are giving difficult messages to vulnerable claimants.

## **An Independent Review of the Work Capability Assessment – year three**

95. Decision Makers believe that their confidence is key to these calls, and the visit to Oldham Benefit Delivery Centre was helpful to meet Decision Makers who had been using the new process for a while and were much more comfortable with it than some Benefit Delivery Centres who had only been working with the new system for a month or so.

96. Other messages from Decision Makers included:

- The lack of further documentary evidence they receive, particularly in Incapacity Benefit reassessment claims, and whether more could be done to ensure they have access to this;
- There remains variability in the quality and depth of the relationship between DWP and Atos at a local level. Decision Makers appreciated the chance to discuss individual cases with Atos healthcare professionals when this facility was available, but building relationships through the phone advice line was more difficult;
- Decisions on mental function claims remain complex, with training and support seen as the key elements rather than the specific wording of the legislative descriptors; and
- There remain concerns about both the rate of appeals and the rate of upheld appeals, despite improvements in the process. Decision Makers universally welcomed moves to get feedback from Tribunals as to why their decisions were 'wrong'.

97. It was apparent that managers at different sites have a different approach to the implementation of the Review's recommendations: some were still concerned about meeting the Department's benchmarks whilst others have placed a stronger emphasis on the concept of 'right first time' decisions even if this takes more time. It is important that claims are administered in a timely fashion, but the Review strongly supports the concept of 'right first time' decision making which takes into account all available information to support it.

### **Atos Assessment Centre**

98. Some charities have reported difficulties gaining access to Mental Function Champions, consequently questioning their role in the process.

99. The Review met one of the Champions during its visit to an Atos Assessment Centre. He described being able to help healthcare professionals both locally and nationally. He had also built a series of contacts with Community Mental Health Trusts to ensure greater provision of further documentary evidence.

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100. However, there was also a feeling from some charities and individuals that there can still be variability around healthcare professional performance, and that mental function cases remain the most problematic. A consistent theme from both charities and individuals remains that only healthcare professionals with relevant expertise should undertake mental function face-to-face assessments.

*“We believe that, without expertise in the causal conditions, healthcare professionals are not sufficiently equipped to understand why and how function may be impaired or to elicit the relevant information from an applicant who may have... difficulties in reporting their condition”*, joint response from the Centre for Mental Health, HAFAL, the Mental Health Foundation, Mind, Rethink Mental Illness, the Royal College of Psychiatrists and SAMH

101. There is limited evidence to support this claim, although the Department may wish to explore the outcomes of assessments undertaken by Mental Function Champions in their supportive ‘non-Champion’ role to see if there are significant differences from non-specialists undertaking mental function assessments.

### **Overall impressions**

102. Unannounced visits have confirmed one of the recurring and overarching themes of this Review: that positive progress is being made in improving the WCA, but that there remains more work to do.

103. Decision Makers in particular have seen a series of changes to their job as a result of recommendations made by previous Reviews. The vast majority of them welcome the changes. However, there are some practical and cultural difficulties associated with them which are taking time and are difficult but are being overcome as the Decision Maker’s new role becomes more familiar.

104. The visits have proved a most useful resource for gaining a ‘dipstick measurement’ of progress made and remaining items of concern; it would be helpful if these continued in the next two years.

### **Conclusions**

105. Improvements to the WCA to make it more humane, sensitive, accurate and efficient have started to be seen.

106. Nonetheless, as some of the major charities stated in the call for evidence (see Chapter 6), progress has been slower than hoped for and the scope and depth of these changes is less than desirable.

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107. These changes should continue to happen and individual claimants should start to see the benefits of their implementation. The Review is fully aware that more work remains and it is vital that the achievements to date are maintained and momentum built on into years four and five. A change of Independent Reviewer should not be seen as an excuse to rest on laurels.
108. Whilst there is firm evidence of change for the better in the way DWP has enthusiastically accepted the challenge presented by the Review's recommendations, less concrete evidence exists to show that Atos have done all they could to play their part in improving their section of the WCA.
109. Implementation of the recommendations around the face-to-face assessment appears, from anecdotal evidence, to be patchy. The variability in the quality of Atos performance was a frequent complaint received from Decision Makers during the Review's unannounced visits. In line with the National Audit Office report<sup>10</sup>, DWP needs to monitor Atos more closely to ensure performance is as strong as possible because the face-to-face part of the assessment is, disappointingly, still often seen by claimants as the only important part of the WCA.
110. The appeals part of the WCA continues to give cause for concern. The drop-down menu for feedback to the Decision Makers is a start but nowhere near enough to provide a real exchange of information and views with the Decision Makers about why they are apparently 'wrong' according to the Judges. Future Reviews may wish to focus on this area of the WCA.

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<sup>10</sup> [http://www.nao.org.uk/publications/1213/dwp\\_medical\\_services\\_contract.aspx](http://www.nao.org.uk/publications/1213/dwp_medical_services_contract.aspx)

# Chapter 3: What happens to people placed in different Employment and Support Allowance (ESA) groups, and what influences these outcomes<sup>11</sup>

## Year two recommendation

1. 'In year three, research is undertaken to examine in more detail what happens to people found Fit for Work and people placed in the Work Related Activity (including Work Programme outcomes) and Support Groups, and the factors influencing these outcomes.'

## Results

2. Analysis of employment outcomes based on the different ESA groups, and the factors influencing these outcomes, is at Annex 3.
3. This shows that 25 per cent of all ESA claimants are in employment 12–18 months after their initial claim, with differences between groups.
4. The analysis highlights a range of factors linked to employment outcomes, including:
  - The outcome of the Work Capability Assessment (WCA) – claimants found Fit for Work, or who close or withdraw their claim, are more likely to be in work 12–18 months after their claim;
  - Being in work prior to being found eligible for ESA increases the likelihood of returning to employment;
  - Recovery from the health condition(s) which led to the initial claim or self efficacy and a belief that work can improve health were linked to increased likelihood of return to work; and
  - Having qualifications is linked to job entry.

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<sup>11</sup> Adapted from Barnes *et al.* (2011), *Routes on to ESA*. DWP Research Report Series No 774.

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5. Only 9 per cent of people in the Work Related Activity Group were in employment 12–18 months after their claim. It is not possible, through this analysis, to judge distance travelled towards the labour market, or likelihood that these claimants would or would not eventually gain employment.
6. At this stage it is still too early to draw conclusions about Work Programme outcomes as the necessary data is not available.
7. Employment outcomes for ESA claimants remain considerably poorer than for those for new Jobseeker's Allowance claimants with one quarter of ESA claimants entering jobs within 12–18 months, against around three quarters leaving the jobseeker's register within six months.

### **Discussion**

8. The differences between the employment outcomes of ESA claimants and Jobseeker's Allowance claimants are substantial but not hugely surprising given the difficulties people with a disability or long-term health condition still face in the labour market<sup>12</sup> and the differing expectation for ESA claimants, particularly those in the Support Group.
9. There are likely to be a number of wider issues prevalent in the labour market affecting employment outcomes, particularly around the attitudes of the general public, employers and disabled people themselves. That work history, recovery from illness and belief that work can improve health are significant factors in return to work highlights this point.
10. The Black/Frost independent review of sickness absence made a compelling case for early intervention when an individual goes sick from work or loses their job due to ill health. This analysis supports the view that recent employment, and subsequent distance from the labour market, can have a significant impact on whether and how quickly someone will return to employment. This Review looks forward to the Government's response to the Black/Frost report.

### **Conclusions**

11. The analysis undertaken for this Review suggests that a wide range of factors influence the employment outcomes of people who have made an ESA claim.
12. That job entry rates for ESA claimants – and within ESA outcome groups – are considerably lower than those for new Jobseeker's Allowance claimants does not in itself show that the WCA is fundamentally flawed. Instead it points to a number of complex and interrelated factors beyond the direct control of the WCA process.

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<sup>12</sup> <http://odi.dwp.gov.uk/docs/fulfilling-potential/fulfilling-potential-discussion.pdf>

## Chapter 4: Descriptors

### Overview of year 3 activity

1. Further progress has been made this year on reviewing a number of sets of descriptors used in the Work Capability Assessment (WCA).
2. As recommended in the year two Review, a ‘gold standard’, or evidence-based, review of the mental, intellectual and cognitive descriptors is now underway.
3. The Department for Work and Pensions (DWP) expressed similar concerns about recommendations from representative groups and an independent Scrutiny Group in late 2011 about the fluctuating conditions<sup>13</sup> descriptors as they had about recommendations on the mental, intellectual and cognitive descriptors. This group will also be incorporated into the evidence-based review.
4. In addition, the fluctuating conditions group have produced what the Review considers to be an excellent set of proposals to improve the initial ESA50 form which the Reviewer commended to DWP. Work to update the ESA50 is progressing and should be completed early in 2013.
5. Work considering the treatment of cancer patients is nearing completion. Changes to the legislation are being drafted and should come into force in early 2013.
6. Following a year two recommendation the Review has considered whether the specific wording of the sensory descriptors should be addressed and whether an additional descriptor on pain and/or fatigue is needed.

### Mental, intellectual and cognitive descriptors and fluctuating conditions descriptors

7. Following detailed work by a number of representative groups and experts during year two a series of recommendations were presented to DWP to improve the mental, intellectual and cognitive descriptors and the approach to fluctuating conditions.
8. The Department expressed a number of reservations about the proposals, particularly around the evidence base supporting them. The year two Review, therefore, recommended a ‘gold standard’ or evidence-based review be carried out. This would provide evidence on the operation of the current descriptors and whether the proposals would lead to any

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<sup>13</sup> For ease referred to as the ‘fluctuating conditions descriptors’ although this is more an approach than having specific descriptors.

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improvements, with any changes to the descriptors being based on the results.

### **Progress to date**

9. The Terms of Reference of the project are that:
  - The evidence-based review will assess the fairness and accuracy of the existing WCA and the alternative version proposed by disability representative groups in identifying claimants as having Limited Capability for Work.
  - The alternative version of the assessment will be a single assessment that combines recommendations from both the mental, intellectual and cognitive and the fluctuating conditions reports.
  - The Department will manage the design, testing and analysis of the review with input from disability representative groups.
  - Changes to the current WCA will be considered by the Department where there is good evidence that they would significantly improve the accuracy and fairness of identifying claimants as having Limited Capability for Work.
10. Since June DWP and the representative groups have undertaken extensive work to agree a set of both mental, intellectual and cognitive and fluctuating conditions descriptors which are testable.
11. In parallel to this they have been working to agree a way of testing the two sets of descriptors, as well as an evaluation strategy for the project.
12. The methodology for the project is split into three distinct phases:
  - Phase 1 – Development of alternative descriptors for testing
  - Phase 2 – Data collection
  - Phase 3 – Analysis and evaluation
13. The aim is to complete the data collection and analytical phases by spring 2013, with the final report being published in the summer of 2013.
14. Whilst this is his final Independent Review, Professor Harrington has agreed to chair an independent steering group which will:
  - Provide independent, expert oversight of the evidence-based review project and to ensure it progresses in accordance with the agreed plan;
  - Ensure that the development process is open and transparent and considers the views of the stakeholders involved in the working group;
  - Confirm the testability of the alternative assessment and set of descriptors;

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- Review the proposed testing approach and ensure a focus on practical outputs;
- Ensure the assessment is carried out appropriately and in accordance with relevant ethical guidelines;
- Scrutinise the results of the assessment phase and the conclusions drawn from them; and
- Comment upon the draft project report before publication.

### **Conclusions**

15. The evidence-based review has unfortunately taken longer to develop than is ideal. This reflects the realities of the dedicated resources available to both DWP and the representative groups.
16. The work has also highlighted some of the innate difficulties in designing a functional, operational assessment of work capability. The Review welcomes the joint working between DWP and the representative groups and believes that, where appropriate, joint ownership of the project and its outcomes is vital to its success, whatever its outcomes.
17. The delays in the process should not detract from the positive progress that has been made over the second half of 2012. The Review continues to hear criticisms of the descriptors used in the assessment, but it remains important that if changes are made they are justified and based on the best available evidence. Accuracy, rather than speed, is the correct approach to this complex issue.
18. The evidence-based review will extend beyond the tenure of this Independent Reviewer. However, given the importance of both maintaining the momentum that has been built and ensuring a robust evaluation of the project the opportunity for this Independent Reviewer to continue to be involved via the independent steering group is welcomed.
19. It is important not to over-simplify the WCA process and place too much emphasis on the descriptors alone. The technical legislation against which claimants score points needs to be as good as it can, but this should be seen in the wider context of how the assessment is being administered and processed. Improving the guidance available to Atos healthcare professionals and DWP Decision Makers can play an equally important role here.

## **Cancer treatment**

20. In June 2011 Macmillan Cancer Support made a series of recommendations for improving the cancer treatment provisions. These concerned:
- Broadening the chemotherapy categories to include oral treatment of less than six months;
  - Including cancer patients receiving radiotherapy for specific sites; and
  - Including cancer patients undergoing radiotherapy in combination with chemotherapy.
21. Further recommendations concerned the modification of the ESA50 form so that being a cancer patient with medical evidence from, say, an oncologist would ensure a 'light touch' approach for these claimants, and an avoidance of a face-to-face assessment.
22. The Review commended the Macmillan proposals to DWP in July 2011, and at the time of the publication of the year two Review they were working through the details of these proposals.
23. DWP subsequently developed proposals to expand existing provisions, but decided to conduct an informal consultation in early 2012 to seek wider views on these.
24. In September 2012 DWP published the results of this consultation and came forward with modified proposals for changing the cancer treatment provisions.
25. The revised proposals consider the debilitating effects of cancer treatment and invoke a presumption that an individual either: awaiting, receiving or recovering from treatment by way of chemotherapy, irrespective of route; or awaiting, receiving or recovering from radiotherapy should be in the Support Group subject to confirmatory evidence. Each individual would be assessed on a paper basis and the vast majority would be placed straight into the Support Group.
26. The new DWP proposals are more generous than those originally proposed by Macmillan and commended by the Review in July 2011. The Review is pleased to endorse them, and looks forward to seeing them implemented soon.

## **Sensory descriptors**

27. Since the Independent Reviewer was appointed representative groups for people with sensory impairments have expressed reservations about the changes to the descriptors implemented by the Department-led review in March 2011<sup>14</sup>. In 2011 the fluctuating conditions group also made reference to a number of areas where specialist input from experts in sensory impairments may be valuable.
28. In February 2012 the Review invited a group led by RNIB, and also containing Action for Hearing Loss and Sense, to:
- Review the ESA50 and the guidance used by Atos healthcare professionals and DWP Decision Makers to see if and where improvements could be made; and
  - Produce analysis on the WCA outcomes for claimants since the implementation of the Department-led review in March 2011 to determine whether there was an evidence base to support further changes to the descriptors themselves.
29. A report was submitted in July 2012 based on evidence from three sources:
- A secondary analysis of the Life Opportunities Survey;
  - Reports from RNIB's delivery teams who provide welfare advice for blind and partially sighted people; and
  - An action-based research project (ENABLER).
30. Unfortunately this failed to provide any evidence on changes in outcomes for people with sensory impairments since the implementation of the Department-led review, instead focusing on anecdotal evidence, the high rate of appeals and the lack of a work focus in the assessment.
31. The Review was unable to commend the report to DWP for a number of fundamental reasons:
- The report failed to include evidence on hearing loss or dual sensory impairments;
  - There was no analysis of the impact of the descriptor changes from the Department-led review;
  - It would be wrong to assume that successful appeals are a proxy for inadequate descriptors: the application of the guidance, for example, could also have an effect; and

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<sup>14</sup> <http://www.dwp.gov.uk/docs/work-capability-assessment-review.pdf> and <http://www.dwp.gov.uk/docs/work-capability-assessment-review-addendum.pdf>

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- The purpose of the WCA is to assess capability for work and not employability – the report failed to distinguish between the two concepts.

### **Is further work needed?**

32. It remains unclear whether a fundamental review of the sensory descriptors used in the WCA is required.
33. The representative groups' report does highlight potential problems with the application of the guidance used in the process, but no conclusive evidence that the descriptors themselves are not working.
34. Alterations to the guidance can be implemented more easily than changing the legislative descriptors, as has been shown by the evidence-based review process.
35. The Review therefore considers it more appropriate that, at this stage, DWP and the representative groups and their clinical advisers work together to make changes to the guidance in line with a recommendation in the year two Review.

### **Pain and/or fatigue**

36. The year two work on the fluctuating conditions descriptors highlighted that there may be a need for separate descriptor on pain and/or fatigue within the WCA.
37. Adapting slightly the general process used by the Review, advice was sought first from clinical experts in rheumatology and pain management and relief. They then sought wider views, where appropriate.
38. The clinical experts were unable to make a compelling case for the inclusion of a stand alone descriptor. Instead they pointed towards the importance of the guidance supporting the assessment process.
39. Several representative groups were then approached for their views. One agreed that the recommendations from the fluctuating conditions representative groups made during year two were comprehensive but did suggest more focus on narrative answers rather than 'tick boxes' might be helpful. Another argued that claimants should be able to score enough points based on the pain and/or fatigue they suffer by considering both the causes and the consequences.

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40. This argument is valid but should be covered in the general descriptors through the use of reliably, repeatedly and safely – which is one of the key concerns for the representative groups involved in the evidence-based review – and through an emphasis on the potential negative consequences of pain and/or fatigue (and the corresponding need to explore these in both the face-to-face assessment in the decision making process) in guidance and training.

### **Is further work needed?**

41. Whilst the consideration of pain and/or fatigue is important within the WCA neither appear to warrant their own, separate descriptor.

42. Representative groups and their clinical advisers are already involved in the routine updating of the guidance and training materials used by Atos healthcare professionals and DWP Decision Makers.

43. Separate consideration should therefore be given to working with pain and fatigue experts to update the relevant sections of these materials.

### **Overall conclusions**

44. The year one and year two Reviews noted a considerable groundswell of discontent with a number of the descriptors used in the WCA. These included those used to assess mental, intellectual and cognitive conditions, fluctuating conditions, the treatment of cancer patients, sensory impairments and pain and/or fatigue.

45. All of these sets of descriptors have now been evaluated and, where considered necessary, progress made to address issues.

46. Identifying what changes might be needed to modify the existing descriptors has proved challenging: the issues are complex and gathering compelling evidence for change is both time consuming and difficult.

47. Nonetheless, this has been completed for the treatment of cancer patients; and a formal evidence-based review is underway for both the mental, intellectual and cognitive descriptors and the fluctuating conditions descriptors.

48. A review of pain and/or fatigue has show that inclusion within the fluctuating conditions group will address the matter.

49. For sensory impairments, the Review remains unconvinced that the case has been made adequately for a formal review of the descriptors. Further evidence is needed to change this stance.

50. The work on descriptors, thus, remains incomplete. It is hoped that the year four and five Reviews will pursue, with vigour, the completion of this important work.

## Chapter 5: Training

### Background

1. The year two Review made a number of recommendations related to the training and competence of the professionals involved in the various stages of the Work Capability Assessment (WCA) process: Decision Makers in Department for Work and Pensions (DWP) Operations, healthcare professionals in Atos Healthcare, and Judges or Medical Members in First-tier Tribunals.
2. The Review recommended:
  - Regular audit of DWP Decision Maker performance;
  - Monitoring of the quality and appropriateness of DWP Operations and Atos training; and
  - Where appropriate, the sharing of knowledge and training between the various groups involved in the WCA.
3. One of the conclusions drawn by the year two Review was that: ‘the practical application of training is as important as the training itself. The quality of outcomes will help determine whether or not the training is being used to ensure the WCA works as well as it should’. Without doubt this remains the case.

### Findings

4. Contact was made with DWP Operations, Atos Healthcare and the First-tier Tribunal asking for information in two main areas:
  - What training materials have been developed or updated in 2012; and
  - What provisions are in place to ensure that DWP Operations staff, Atos healthcare professionals and Judges and Medical Members in First-tier Tribunals are in appropriate Professional Development schemes.

### DWP Operations

5. Since the acceptance of the recommendations in the year one Review extensive training and development, and associated materials, have been developed for DWP Decision Makers. These have all been aimed at improving the skills and knowledge of Decision Makers to allow them to effectively sit at the heart of the WCA.
6. Most importantly, the Quality Assurance Framework has been introduced as an audit tool to drive both quality and consistency of Decision Maker performance, although (as noted in Chapter 2) focus on both quality and accuracy is needed here.

## **An Independent Review of the Work Capability Assessment – year three**

7. Decision Makers are not formally part of a Professional Development scheme. This is understandable given that they are not required to be medically or legally qualified to undertake their role.
8. The Review's expectation, however, is that the introduction of the Quality Assurance Framework will act as a proxy to maintain professional standards.

### **Atos Healthcare**

9. Between March and July Atos compiled the information requested.
10. They were able to provide an impressive list of around 100 training documents that had either been updated or created anew. These included a group of 'train the trainer' events which, in the Review's opinion, are a good initiative.
11. In terms of Revalidation of healthcare professionals, Atos have now developed a scheme directly with the General Medical Council (GMC) to ensure revalidation every five years. The Chief Medical Officer at Atos is the Responsible Officer for this process.
12. Twenty per cent of Atos healthcare professionals will go through the Revalidation process in 2013, and the remainder over the following two years.

### **First-tier Tribunal Judges and Medical Members**

13. The Review wrote to the Chief Medical Member in March seeking the information outlined above. The Chief Medical Member referred the Review to the First-tier Tribunal President.
14. No response has been received from the President. During the year two Review, however, he made it clear that he believes that any consideration of judicial training is outside the remit of the Review.

## **Conclusions**

15. Both DWP Operations and Atos Healthcare are actively engaged in training and developing their staff involved in the WCA process to improve performance.
16. Auditing of performance is now an integral part of the Decision Maker's work programme.
17. Whilst Atos have developed an impressive list of training materials for their healthcare professionals and their trainers, the Review has seen little evidence to show the effectiveness of these courses in either driving up the quality of assessments or improving the skills and knowledge base of the attendees.

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18. Although there has always been a contractual obligation for Atos to have registered and licensed healthcare professionals, and a programme of Continual Professional Development in place, the Review is pleased to learn that they are now signed up to a regular Revalidation process with the GMC.
19. No parallel conclusions can be drawn concerning the skills or knowledge of the First-tier Tribunals Judges or Medical Members in their important work in the appeals process. This is disturbing, particularly given concerns raised elsewhere in this Review about the transparency of the appeals process.

### **Recommendation**

After reviewing the information received on training this year I recommend that:

**The year four and five Reviews should further explore the quality of the outcomes rather than simply on the quantity of the training offered.**

20. It is essential that professionals involved in every stage of the WCA process can be shown to be of the highest quality in terms of the relevant skills and knowledge, and the impact this has on their performance.
21. The last two Reviews have considered the training offered as part of the WCA process. However, neither Review has been able to demonstrate satisfactorily the link between the training offered and the added value this offers to the individuals involved.
22. Only then can the Review be assured that the WCA is being undertaken to a standard commensurate with the importance the benefit system demands.

## Chapter 6: The call for evidence

1. Over 750 individuals and organisations responded to the call for evidence.
2. This is a significant number of responses and is the largest number of responses received during the course of the three Reviews. The Review would like to thank the individuals and organisations who took the time to share their evidence and experiences.
3. The call for evidence this year focused on three separate areas to reflect the various parts of the Work Capability Assessment (WCA) process:
  - Communications;
  - The face-to-face assessment; and
  - Decision making.

### Individual responses

4. The majority of responses to the call for evidence were from individuals who had been through the WCA. These were overwhelmingly negative about both the process and the outcomes, the two often appearing closely linked. As the respondents to the call for evidence cannot be considered a truly representative claimant sample the Review considered these responses separately to those from organisations.

### Communications

5. Most responses indicated that there had been no change in the Department for Work and Pension's (DWP's) communications supporting the WCA; few respondents stated that they had improved.
6. A consistent response was that the ESA50 is too complicated and does not have enough space for the claimant to explain fully how their condition affects them on a daily basis. This was particularly the case for those claimants that had complex or multiple conditions.

*"The form appeared to be just as long and as complicated to complete and was quite a daunting task having to repeat everything all over again", Ms V*

*"The ESA50 form was still a long form to fill in and my GPs/NHS Consultants didn't want to fill in the part of the form that they had to", Mr D*

## **An Independent Review of the Work Capability Assessment – year three**

7. There was a mixed range of responses about the way in which DWP communicates with claimants. Some people, particularly those with mental health conditions, stated that there was too much contact and they found this stressful and could exacerbate their existing condition. Other respondents stated that there had been none or little contact from DWP – despite the recommendations from the year one Review – and were often unaware what stage their claim was at.

*“I have recently had a decision on my second WCA. This time I had a telephone call to ask if there was anything I would like to add to my WCA before the decision was issued”, Ms D*

*“It states that there are additional telephone calls to advise of the claims process, I received no such calls”, Mr R*

### **The face-to-face assessment**

8. The face-to-face assessment received a high level of criticism from most respondents. Many of the concerns identified remain consistent with call for evidence responses from previous years.
9. Respondents with mobility problems often find it difficult to access the assessment centre. Some claimants also reported difficulties in arranging a home visit.

*“Was given no access to being assessed in my own home. Told I had to attend the assessment centre or lose my benefit. Told the parking was right outside there door. It was 150–200 yards and I was in terrific pain by the time I got to the door. Then I had to stand and continuously push the buzzer before I was given access. I was in tears with pain and nearly on the floor”, Ms B*

10. Respondents’ reported experiences with healthcare professionals remain worrying, particularly given the introduction of the Atos customer charter. Claims of rude and unwelcoming healthcare professionals, often more focussed on the computer screen than the individual, remain frequent. This can mean that claimants feel unable to explain fully how their condition affects them.

*“Each time I tried to explain fully my conditions and how they affected my every day life he would interrupt and go on to the next question”, Ms T*

11. There appears to be an increase in individuals who having submitted further documentary evidence from their GP or chosen healthcare adviser feel this is ignored or overlooked at the face-to-face assessment, and in the WCA process more generally.

## **An Independent Review of the Work Capability Assessment – year three**

*“Very difficult process when you have letters from GP, Psychologist, Neurologist etc. informing DWP that they consider you unfit to work, but as these professionals have a limited knowledge of [the] system these letters were not considered useful as the terminology they used did not cover the descriptors used”, Ms B*

*“This latest time I was denied in spite of medical evidence that was sent, and in the dismissing letter the Decision Maker even stated that they were not sure what evidence my GP (of over a decade) had for the claims in their letter explaining my condition, and instead defaulted to the 43-minute assessment by a nurse!”, Mr N*

12. This is a complex area: it is difficult to say what type of evidence is being submitted and if and how this relates to condition or function; there is still a strong misconception about the assessment being based on clinical diagnosis and the independent role of Atos continues to be impugned; and GP bodies have told the Review that it is not for them to play a central role in their patient’s benefit claims as this could affect their advocacy role. The provision of further documentary evidence is discussed in detail in Chapter 2.

13. Finally, when claimants receive a copy of the final report produced by the Atos healthcare professional they continue to report that this does not reflect their experience of the face-to-face assessment. Incorrect details are input or important points omitted, and assumptions are made about a claimant’s condition. People with complex health conditions often feel that the healthcare professional does not have the necessary skills or training to complete the assessment. Claimants believe that universal audio recording of assessments would help rectify this.

*“He had omitted facts and trivialized my health conditions so much so that I lodged a complaint to Atos about said doctor as his report could not give the DWP Decision Maker a true picture of my health and capability to perform everyday tasks”, Mr M*

*“Recording equipment needs to be available for every face to face assessment, in order to prevent errors from occurring, especially as Decision Makers use the resultant medical reports as statements of fact and will often make a decision using just the medical report and the ESA50 questionnaire”, Ms R*

### **The decision making process**

14. Improvements in the process at an individual level appear most evident in decision making. There does, however, remain further work to do here.

## **An Independent Review of the Work Capability Assessment – year three**

15. Individuals continue to report that decisions are not explained fully and are often not aware of what options were available to them if they are placed in the Work Related Activity Group or found fit for work.

*“[Need] to have the groups such as Work Related [Activity] or Support Groups explained to the people i.e. how much money this will give, what support is given, are sick notes needed, will I need to attend appointments and is so how often. I feel if this was explained completely it would reduce a lot of stress for the people claiming”, Ms H*

16. There does, however, seem to have been an improvement in the receptiveness of Decision Makers to reconsider an initial decision, either following the phone call to claimants or following the submission of supporting evidence.

17. Some respondents would like decisions to be made on the advice of a GP or chosen healthcare adviser but both the face-to-face assessment and the decision making process add a valuable level of independence to the assessment.

18. A large number of respondents also referred to the frequency at which people are being called for repeat assessments after a decision has been made or an appeal has been heard. This is seen to have a negative impact on people’s health, particularly mental health.

*“It increases stress having to continuously attend the assessments, and beyond understanding how one can be awarded zero points at assessment, but win on appeal, have to attend assessment again within twelve weeks, health unchanged in this time, but be again awarded zero points, having to go through the whole appeals procedure again...it is exhausting, unendurable and leaves me feeling hopeless”, Ms P*

19. The Review understands that DWP is aware of these concerns, and is pleased to see that positive action is being taken. Future Independent Reviews may wish to explore what impact this is having.

### **Responses from organisations**

20. Responses from organisations, whilst still being concerned about aspects of the WCA, did recognise some positive improvements as the previous Review’s recommendations had been implemented.

21. However, concerns were raised in terms of both the speed and the depth of the changes. As noted elsewhere, the Review shares these concerns and is expectant that the positive progress already seen will be consolidated and built upon in the coming year.

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*“Although we recognise that there have been improvements in the WCA process, we do not believe that reforms have gone far enough”, Centre for Mental Health, Hafal, Mental Health Foundation, Mind, Rethink Mental Illness, the Royal College of Psychiatrists and the Scottish Association for Mental Health*

*“While we welcome some of the changes that have been implemented as a result of the first two independent reviews, we believe that the WCA remains flawed and requires significant further reform”, Disability Benefits Consortium*

22. An excellent submission from the Disability Benefits Consortium included analysis of the WCA from two surveys of:

- 350 welfare rights advisers, asking them about their perception of change to the WCA; and
- 4,300 disabled people, asking about their experiences of the WCA.

23. These surveys served to emphasise the general conclusions of some positive progress having been made, but that there remains more to do. For example, the welfare rights advisers survey showed that:

- Over 75 per cent of respondents disagreed (or strongly disagreed) that support from Jobcentre Plus had improved over the last 18 months.
- Over 80 per cent disagreed that “customers feel better informed about what to expect and what their responsibilities are”.
- Almost 80 per cent disagreed that “customers are more aware of the need to collect evidence from their favoured healthcare professional”.
- Over 85 per cent disagreed that assessors had “been more likely to collect additional evidence at the start of the assessment process”.
- Over 85 per cent disagreed that assessors had “improved the accuracy of their reports on applicants”.
- Over 80 per cent disagreed that assessors had “acted more sensitively towards applicants during assessments”.
- Around 14 per cent of respondents agreeing that Decision Makers were taking a more central role in the process and giving greater weight to medical evidence.
- Over 55 per cent disagreed that Decision Makers had “taken a more central role in the assessment process”.
- Over 75 per cent disagreed that they had “been more likely to overrule the Atos recommendation”.
- Over 85 per cent of respondents disagreed that “more applicants are getting the right decision (in your view) about their ESA eligibility”.

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24. And the responses from claimants showed that:

- 60 per cent (compared to 55 per cent in 2010) disagreed that the assessor had asked about all the symptoms/aspects of their impairment or health condition that affect their ability to work.
- 68 per cent (the same percentage as in 2010) stated that the assessor did not take into account how their symptoms/aspects of their impairment or health condition change/fluctuate.
- 31 per cent of respondents (compared with 29 per cent) agreed with the statement 'They took the right amount of time to communicate effectively with me', and the number disagreeing with this statement reduced from 57 per cent in 2010 to 52 per cent in 2012.
- Less than half (48 per cent) of people had seen a copy of the report from their assessment, and of these just 7 per cent felt that the report was the report was an accurate reflection of the answers they gave in their assessment.
- Less than a quarter (24 per cent) of people stated that someone had explained to them why/ how the decision had been reached, and just a third of claimants (33 per cent) stated that someone had explained what the decision meant for them.
- Claimants who went through the WCA after April 2011 were slightly more likely to state that the reasons for the decision (increasing from 22–25 per cent of respondents) and what it meant for them (increasing from 29 per cent to 35 per cent of respondents) had been explained than those who went through an assessment before April 2011.

25. Although the results of both surveys are not as positive as the Review would like to see, it is important to bear in mind the inherent biases in both the question set and the people who responded. This is the second year the survey has been run and it remains a most useful source of evidence for the Review as it provides quantitative data from a large number of respondents. It would be helpful if the Disability Benefits Consortium continued to carry out this work on an annual basis.

## **Conclusions**

26. Having a call for evidence to support the Independent Review is a most useful process, and allows for both individuals and organisations to give their views on the operation of the WCA. Whilst much of the evidence submitted is anecdotal it still gives an important indication of if and how things are changing.

## **An Independent Review of the Work Capability Assessment – year three**

27. Responses to the call for evidence from organisations have recognised that some aspects of the WCA have changed. But they have also highlighted that there remains more to do. The Disability Benefits Consortium survey makes this point strongly and, whilst there are small shifts in attitudes in some areas, the Review agrees that DWP needs to maintain focus and attention to the changes if real progress is to be made.
28. Individual responses are much less positive. Whilst the facts of each response are impossible to verify both the level and ferocity of ongoing criticisms remain worrying.
29. People who have had a neutral or positive experience in their assessment are unlikely to respond to an exercise like this. However, there remain some concerning accounts of individual experiences. There are always likely to be some claims where the processes in place are not administered as they should be, but the frequency and consistency of these reports is worrying.
30. In many (but certainly not all) cases the satisfaction with the process – and reflections on fairness and effectiveness – seem directly linked to the outcome received.
31. There appears to be a communications gap here, particularly around the aims of the assessment. Issues of administrative and procedural justice are still not having an effect: the Review hopes these become more apparent as previous recommendations become fully embedded.

# Chapter 7: Complex problems and chaotic lifestyles

## Background

1. A section of the year two Review highlighted the potential for people who have particular problems to face difficulties in the Work Capability Assessment (WCA) process.
2. Whilst the WCA rightly focuses on functional capability rather than diagnosis, life circumstance or employability, the Review believes that there are some groups whose circumstances mean they may require extra help in the WCA.
3. Problem drug users were considered in the year two Review. This year the Review's attention has also been drawn to homeless people and to victims of miscarriages of justice.

## Problem drug users

4. In 2011 the UK Drug Policy Commission put the case to the Review that some problem drug users have problems over and above claimants with other mental health conditions. They argued that problem drugs users could need additional help and support as their condition could lead to stigmatisation and often require more intensive rehabilitation.
5. The year two Review recommended that the UK Drug Policy Commission work with Department for Work and Pensions (DWP) Operations and Atos Healthcare to improve and enhance the guidance and training available to Decision Makers and healthcare professionals. The Government accepted this recommendation in principle.
6. Whilst the UK Drug Policy Commission have been consulted over the Atos guidance for problem drug users, their response to the call for evidence suggested they continue to 'have serious concerns about the quality of training given to assessors' and that 'as a sector [they] would welcome more input into [DWP] processes'.
7. This response suggests that, whilst some action has been taken, the year two recommendation has not been followed through to effective action and positive change.

Based on the evidence presented, I recommend that:

**DWP Operations and Atos Healthcare should take further steps to engage effectively and meaningfully with the UK Drug Policy Commission and other related groups concerned with the needs**

**and difficulties of problem drug users to improve the WCA processes for them.**

## **Homelessness**

8. A number of groups representing homeless people approached the Review outlining their concerns about the operation of the WCA for this group of people. These included:
  - That homeless people often have significant and complex physical and mental health issues, which can be caused by and/or exacerbated by being homeless;
  - That the 'summing' nature of the points in the WCA does not adequately reflect the multiplier effect of different health conditions;
  - That homelessness should be specifically included as part of the assessment criteria; and
  - That multiple issues, including low confidence and self esteem, low levels of skills and education, lack of work experience and chaotic lifestyles, can affect the employability of homeless people in the labour market.
9. Whilst the Review recognises the difficulties faced by homeless people, as noted above the fundamental principle of the WCA remains right: that it is based on functional capability, rather than diagnosis, lifestyle circumstances or employability.
10. There is therefore no justification for treating homelessness as a 'special case' within the WCA. This appears instead to be an issue of the guidance available to Atos healthcare professionals and DWP Decision Makers to enable them to consider all relevant factors as they carry out their part of the process.
11. The Review approached Atos about developing specific guidance on homelessness, and to do this in conjunction with the representative groups. They agreed to this: the module will be developed in the first quarter of 2013 and be delivered in the second quarter.

## **Victims of miscarriages of justice**

12. In March 2012 Dame Ruth Runciman approached the Review over a group of individuals who she believed required special consideration within the WCA.

## **An Independent Review of the Work Capability Assessment – year three**

13. Each year 15–20 people are released from prison having had their conviction overturned by the Court of Appeal. Unsurprisingly given their experiences, they can display a staggering range of psychiatric disorders: not only may they display enduring personality changes, but they also often have post traumatic stress disorder, or depression or misuse of drugs, or a combination of these. Released from prison they are often estranged from family, friends and society in general. The Review was in no doubt that these people did indeed deserve specific treatment given their previous mistreatment by the State.
14. In May 2012 the Independent Reviewer wrote to the Minister for Employment outlining his views on this specific group of individuals. This letter, which contains further information on these cases and a potential way for handling them, can be found at Annex 2.
15. In short, the proposal was that details of each case, as they arose, should be sent to a designated individual in DWP who would then assign an experienced Decision Maker in the relevant District to manage their claim.
16. The Minister accepted the recommendation, and specific plans to handle these cases are at an advanced stage. Indeed, DWP Operations are now ready to trial the scheme with the next individual subject to a miscarriage of justice.

## Chapter 8: Northern Ireland Independent Review

1. Based on the parity principle, Great Britain and Northern Ireland administer the same range of benefits, paid at the same rate and subject to the same conditions. Social security benefits in Northern Ireland are administered by the Social Security Agency (SSA), an executive agency of the Department for Social Development (DSD).
2. Northern Ireland legislation places a duty to Independently Review the WCA in Northern Ireland. As in previous years, Professor Harrington agreed to lead the Independent Review process in Northern Ireland.

### **Implementation of the year one and year two recommendations**

3. The year one and two Reviews were endorsed by the Northern Ireland Assembly in September 2011 and November 2011 respectively. Since then the Social Security Agency has been actively engaged with DWP colleagues to implement the recommendations.
4. Significant progress has been made, with all year one recommendations relevant to the Social Security Agency implemented and 20 of the 23 year two recommendations also now implemented. The changes made include:
  - The introduction of the Pre-Disallowance Decision telephone calls, to improve transparency of the decision making process;
  - Improvements to forms, including amending the ESA50 to include a personalised justification statement;
  - The introduction of Mental Function Champions to provide advice to healthcare professionals when dealing with claimants with mental, intellectual and cognitive illnesses
  - Plain-English personalised summary statements in every healthcare professional report to improve claimant's understanding of the face-to-face assessment; and
  - Improving training and guidance for Atos healthcare professionals and SSA Decision Makers.

## **An Independent Review of the Work Capability Assessment – year three**

5. The previous two Reviews placed an emphasis on putting Decision Makers at the heart of the whole process and empowering them to make independent decisions. The year two Review acknowledged the high quality of decision making in Northern Ireland, and a recent survey confirms that the majority of Decision Makers in Northern Ireland believe that they are at the heart of the process and feel empowered to make independent decisions based on all the evidence before them.
6. Similar to findings in Great Britain, some Decision Makers are uncomfortable making the new pre-disallowance calls, especially when the claimant disagrees with or does not understand the decision that has been reached. This was more prevalent amongst less experienced staff. However, evidence to date suggests that the calls are helpful for both Decision Makers and claimants and this will be further evaluated as part of the ongoing Northern Ireland ESA Research survey.
7. Northern Ireland has consistently performed strongly in achieving a low fail to return rate for medical questionnaires (the ESA50 form), with an average of 13% of claimants not returning the form. This can, in the main, be attributed to staff's commitment and the SSA's continued engagement to raise awareness amongst claimants and the Advice, Voluntary and Community Sector of the importance of engaging in the process and returning the questionnaire.
8. A Health Assessment Adviser was appointed by the Department for Social Development in August 2011 with responsibility for ensuring the quality of services provided by Atos. This includes their audit processes, the standard of training and training materials provided to healthcare professionals, quality assurance of medical guidance and the approval of all appointed healthcare professionals.
9. Over the past year a Quality Assurance Framework, incorporating a formal quarterly audit process, has been developed. A number of audits have now been completed, including an external audit validation process, and to date no major issues have been identified with the Atos processes, training or procedures in Northern Ireland.
10. The appeals process remains an area of concern for the Review. It is the aim of the benefit assessment process to get the decision 'right first time'. Throughout the WCA process there are a number of opportunities for the claimant to provide all relevant evidence to assist the Decision Maker in making their decision. Despite this, 35 per cent of appeals in Northern Ireland were upheld in the claimant's favour. However, this was mainly due to additional evidence being presented at the appeal hearing which may have been oral and/or ocular evidence considered by the appeal panel or further written medical evidence provided by the appellant or witness.

## **An Independent Review of the Work Capability Assessment – year three**

11. Whilst judges in Great Britain have started to provide limited feedback on the reasons why they upheld an appeal, these arrangements are not yet in place in Northern Ireland.

### **Research into what happens to people placed in different Employment and Support Allowance groups, and what influences these outcomes**

12. The year two Review recommended that research be undertaken to examine in more detail what happens to people found Fit for Work and those placed in the Work Related Activity Group and Support Groups.
13. This research has commenced in Northern Ireland with the outputs anticipated early 2013. Research already conducted by DWP will provide a useful benchmark for the Northern Ireland research findings.

### **Descriptors**

14. Respondents to the call for evidence in Northern Ireland were critical of the suitability of the descriptors used in the assessment, particularly for claimants suffering from mental health conditions and from cancer.
15. In early 2013 DSD, in conjunction with DWP, will conduct an evidence-based review to assess whether proposals to improve the mental, intellectual and cognitive descriptors and the fluctuating conditions descriptors would lead to any improvements in the assessment process.
16. Following a consultation into the effects of cancer treatment conducted in February 2012, work is now underway to improve and simplify access to ESA for cancer sufferers with changes to cancer treatment provisions currently planned in early 2013.

### **Training**

17. In line with developments in DWP, training has been updated for Atos healthcare professionals and regular audits of medical assessments, training and the quality of the personalised summary statements are conducted by the SSA's qualified Health Assessment Adviser.
18. In a recent survey of Northern Ireland Decision Makers 81.5 per cent of respondents were confident or very confident in their decision making. The survey also emphasised the improvements made following the implementation of the year one Review's recommendations with 62 per cent of respondents considering that the information contained in the personalised justification statement (ESA50) as useful when making their decision. A majority (80 per cent) of Decision Makers also confirmed that they now found it easier to complete the Decision Makers Justification.

## **An Independent Review of the Work Capability Assessment – year three**

19. These figures are encouraging and support the Review's view that improvements are being made.

### **Call for evidence**

20. Over 250 responses were received to Northern Ireland's call for evidence. The key themes in these responses were that:

- The face to face assessment can still be impersonal and mechanistic;
- Mental health conditions and people with cancer are often not adequately catered for in the assessment, and as a result the descriptors need improving;
- If supplied, medical evidence is 'ignored'; and
- Claimants felt pre-judged and that the system was set up to remove them from the benefit.

21. All Northern Ireland responses were shared with the Great Britain Review for its consideration.

### **Miscarriages of justice**

22. Work continues in DWP to put arrangements in place for a designated Departmental contact to help manage the claims of persons released from prison due to a miscarriage of justice. Although these cases are a relatively rare occurrence in Northern Ireland discussions have commenced with the Department of Justice and prison support groups to put similar arrangements in place in Northern Ireland.

### **Conclusions**

23. While unable to visit Northern Ireland during this Review, there was a frequent dialogue with Departmental officials throughout the process to gather relevant information and co-ordinate implementation of the recommendations in Northern Ireland.

24. It is evident that DSD has embraced the previous Review's findings and been proactive in implementing the recommendations to improve the so called 'claimant journey' for the people of Northern Ireland.

## Conclusion

1. The third and final Review by this Independent Reviewer confirms that the Work Capability Assessment (WCA) remains a valid concept for assessing benefit claimants' eligibility for Employment and Support Allowance (ESA).
2. Whilst the WCA continues to garner considerable – and sometimes, but not always, justifiable – criticism the Independent Reviewer has not seen or heard any compelling arguments or evidence that the whole system should be scrapped. Instead it needs to be made fairer and more effective by improving both the process and the technical descriptors used to assess eligibility.
3. This Review concentrates on the need to complete the reforms already started but which are incomplete in their scope and depth. No major new reforms are proposed.
4. The process whereby claimants are assessed in a fairer, more transparent and effective way has started although more needs to be done to ensure that all claimants receive this new, improved process. Implementation is happening, but the impact is not yet being felt nationwide.
5. DWP Operations have made significant progress in changing the system for the better even if the whole process of change has been slower than was originally envisaged in the year one and year two Reviews.
6. Work on the new descriptors for cancer treatment claimants is nearly complete; and a formal review of mental, intellectual and cognitive descriptors and the fluctuating conditions descriptors will be finished in 2013.
7. It is essential that all relevant medical and allied evidence about the claimant is available to the DWP Decision Maker at the earliest possible stage in the assessment process. If this can be achieved then Tribunals will be based on Judges and Medical Members considering the same body of evidence as the Decision Maker did.
8. Significant further work also remains to increase the transparency of the assessment. Changes already implemented to ensure conclusions reached at the face-to-face assessment and in the decision making process are justified are helpful. However, most importantly, ensuring quality feedback from First-tier Tribunal Judges so both claimant and Decision Maker understand why the initial decision has been changed needs to be urgently addressed.

## **An Independent Review of the Work Capability Assessment – year three**

9. This can all be achieved in the final two years of the Independent Review process so long as all parties involved in the assessment persevere with the proposed reforms. Whilst the job is not yet finished its importance remains undiminished.
10. Future Independent Reviewers may have different views, but the main issues on which this Independent Reviewer believes the forthcoming year four and five Reviews need to focus attention are:
  - Continuing to improve communications, both between claimants and DWP and within DWP, following national implementation of recommendations or the evaluation of pilot activities;
  - Driving forward implementation of the previous Review's recommendations, ensuring that momentum is not lost and that robust data on the results and impact of the implementation are captured;
  - Overseeing the continued work to consider changes to the descriptors, and assessing the impact of any changes which are made;
  - Focusing on the quality of the training offered to professionals throughout the WCA process;
  - Ensuring robust processes are in place for DWP, Atos and representative groups and their clinical advisers to work together to improve existing and develop new guidance and training materials used in the WCA; and
  - Improving feedback mechanisms throughout the whole WCA process, but most importantly those between First-tier Tribunal Judges and DWP Decision Makers.

## Annex 1: List of recommendations

<b>Implementation of the year one and year two recommendations</b>	
1	Decision Makers should actively consider the need to seek further documentary evidence in every claimant's case. The final decision must be justified where this is not sought
2	In order to build on the progress already made DWP Operations need to find an appropriate balance between better quality decisions that are carefully considered and 'right first time' and the achievement of appropriate benchmarks at a local level, otherwise there is a real risk of derailing the positive progress made to date
3	DWP should continue to work with the First-tier Tribunal Service, encouraging them to, where appropriate, ensure robust and helpful feedback about reasons for decisions overturned by the First-tier Tribunal
4	DWP must take the initiative and highlight the improvements that have been made where they exist, as well as being open about where problems remain and their plans to address these
<b>Training</b>	
5	The year four and five Reviews should further explore the quality of the outcomes rather than simply on the quantity of the training offered
<b>Complex problems and chaotic lifestyles</b>	
6	DWP Operations and Atos Healthcare should take further steps to engage effectively and meaningfully with the UK Drug Policy Commission and other related groups concerned with the needs and difficulties of problem drug users to improve the WCA processes for them
<b>Annex 2 – recommendations made during the course of the year</b>	
1	Timely feedback on reasons for upheld appeals
2	Decision Maker's Reasoning and appeals
3	Miscarriages of justice

## Annex 2: Recommendations to Minister for Employment during the course of the year

### Recommendation 1 – timely feedback on reasons for upheld appeals

Prof. Malcolm Harrington  
WCA Independent Review  
2<sup>nd</sup> floor Caxton House  
Tothill St  
London, SW1H 9NA

Rt. Hon. Chris Grayling MP  
Minister of State for Employment  
Department for Work and Pensions  
4<sup>th</sup> floor Caxton House  
Tothill St  
London, SW1H 9NA

22 February 2012

Dear Chris,

#### **INDEPENDENT REVIEW OF THE WCA – ADDITIONAL RECOMMENDATION**

As you are aware, better communication between Tribunals and Decision Makers – particularly feedback from Tribunals about reasons for upheld appeals – was the one area in which I failed to make progress in my second independent review of the Work Capability Assessment.

Shortly before Christmas I spoke at a meeting of the Upper-tier Tribunal Judges and I believe that the discussion which followed my presentation has provided a solution to this problem. The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 allow the Secretary of State the power to seek a written statement of reasons for overturn of a

## **An Independent Review of the Work Capability Assessment – year three**

decision. This may provide the necessary route to achieve the feedback Decision Makers tell me they require.

Whilst this facility already exists in legislation, I would like to make a first recommendation for year three that:

**In order to improve the quality of decision making the Secretary of State for Work and Pensions asks the Tribunal Service for timely feedback on reasons for upheld appeals.**

The 'right first time' principle of decision making will be key to improving the efficiency of the WCA. This recommendation is not intended to make Judges justify their decisions, but is rather to help improve the quality of decision making and reduce re-work in DWP Operations.

I appreciate there are several ways in which this could be achieved:

- Decision Makers (acting for the Secretary of State) could ask for the reasons why their decision has been overturned in all cases, or could limit their requests to occasions where they believe the original decision was sound. The first option would enable DWP to gather statistical evidence on the reasons for upheld appeals (and subsequently improve their own performance, for example through the reconsideration process) but may prove burdensome in an administrative sense for both DWP and the Tribunals Service. The second option, whilst limiting the potential for organisation level improvements, would greatly benefit individual Decision Maker performance and development.
- Information could be supplied by the Tribunal Service in several different ways. I believe the simplest solution would be to use a tick-box such as the one outlined in my second review. This would have the advantage of ensuring consistency in feedback. However, some Judges have told me they would be willing to provide a short (say 100 words) justification for their decision to uphold an appeal. This would be significantly more helpful on an individual level to Decision Makers.

Piloting or trialling this approach may be helpful in the first instance. This would enable both DWP and the Tribunal Service to explore further any practical and operational problems with the proposal.

I am acutely aware of the resource restrictions the Department is facing at present, but an ideal option may be for several pilots to test some the various options outlined above. These trials could focus on and determine the most time and cost efficient approach to gaining this essential information.

The addition of 'timely' in the recommendation is an important point. It is vital that if things are to improve Decision Makers should be provided with advice from the Tribunals Service soon after the appeal has been heard. This may strengthen the argument for using the summary one-liners outlined in my second review as this approach will take far less time for Judges to complete.

## **An Independent Review of the Work Capability Assessment – year three**

I realise that making recommendations so soon after the publication of a review is unusual. However, given the importance of this issue I hope you will give this recommendation due consideration.

If the Department accepts this recommendation I will also discuss it the First-tier Tribunals President. Whilst there may be some short-term difficulties for them with this approach, I believe that in the medium-term improving Decision Maker performance will increase the number of right first time decisions and reduce the overall number of appeals: this will in turn ease the burdens currently placed on the Tribunals Service.

Best wishes,

**Professor Malcolm Harrington CBE**

## Recommendation 2 – Decision Maker’s Reasoning and Appeals

Prof. Malcolm Harrington  
WCA Independent Review  
2<sup>nd</sup> floor Caxton House  
Tothill St  
London, SW1H 9NA

Rt. Hon. Chris Grayling MP  
Minister of State for Employment  
Department for Work and Pensions  
4<sup>th</sup> floor Caxton House  
Tothill St  
London, SW1H 9NA

10 May 2012

Dear Chris,

### **INDEPENDENT REVIEW OF THE WCA – IB REASSESSMENT APPEALS**

At our meeting on 18 April we discussed your commission for me to look in detail at IB reassessment appeals, and the reasons for the apparent lack of a decrease in the proportion of upheld decisions despite the considerable work done by DWP to implement my recommendations. As I said at that meeting, I would not feel confident drawing firm conclusions, and making recommendations based on those, from the evidence I have been able to gather so far. My team is continuing to gather that information for me and I will update you on progress with this work in due course.

We did, however, also discuss more immediate ways in which I believe the appeals process could be streamlined and improved.

DWP Decision Makers are now producing a Decision Maker’s reasoning for every decision taken. This is then being modified as necessary following reconsideration. If the Department is confident in both the quality of decisions made and the quality of the reasonings, it makes sense to me to use these as the basis of any submission to the Tribunals Service against a claimant’s appeal. The DM reasoning will explain and justify the decision made, making it clear that all necessary points of law have been taken into consideration.

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Therefore, rather than an Appeals Officer re-writing the Reasoning valuable time and resources could be saved by adding necessary information to it and then submitting it. The DMs reasoning is then the backbone of the Department's case for that claim, any reconsideration, and any appeal.

As you know, feedback from Tribunal decisions about reasons for upheld appeals is still the vital piece of missing information for me, and I have already made a recommendation about this to you. By using the DM reasoning as the basis of the Department's submission to a Tribunal, it would then be entirely reasonable to expect feedback from the Tribunal Judge on why they considered the decision the DM had reached as set out in the DM reasoning was incorrect. The DM could then learn from this essential feedback which in turn would have a positive impact on improving the quality of decisions made and reducing the proportion of appeals being upheld. It might also have an effect on the Judges by making them more circumspect about overturning the DMs stance.

Best wishes,

**Professor Malcolm Harrington CBE**

### **Recommendation 3 – miscarriages of justice**

Prof. Malcolm Harrington  
WCA Independent Review  
2<sup>nd</sup> floor Caxton House  
Tothill St  
London, SW1H 9NA

Rt. Hon. Chris Grayling MP  
Minister of State for Employment  
Department for Work and Pensions  
4<sup>th</sup> floor Caxton House  
Tothill St  
London, SW1H 9NA

31 May 2012

Dear Chris,

#### **INDEPENDENT REVIEW OF THE WCA – MISCARRIAGES OF JUSTICE**

During my time as Independent Review Lead for the WCA, I have been approached by a number of organisations and support groups proposing that the individuals they represent deserve special treatment by the DWP. Until now, in line with the policy intent of the WCA, I have been of the opinion that all could be accommodated within the (now improved) system.

However, Dame Ruth Runciman, on behalf of the Advisory Board of the Miscarriages of Justice Support Service (MJSS) has brought a group to my attention who, I believe, do deserve special attention: these are the 20 or so people who, each year, are victims of a miscarriage of justice when the Court of Appeal overturn their convictions, usually after referral from the Criminal Cases Review Commission. As you will be aware, the MJSS is a specialist service with a national remit that operates from the Royal Courts of Justice Citizens Advice Bureau (RCJ CAB) with funding from the Ministry of Justice.

I do not believe that this very small group should be exempt from the WCA process or have automatic entitlement to placement in one of the groups. But I do believe that they need careful and sympathetic handling as they go through the system.

## **An Independent Review of the Work Capability Assessment – year three**

Case studies reveal that, on their release these prisoners often have serious psychiatric health problems and – not surprisingly – a deep sense of injustice. After long periods of imprisonment, a number also exhibit Post Traumatic Stress Disorder. They need careful management as they go through the WCA, particularly as these conditions have been brought on or exacerbated by errors the State has made.

I propose that the MJSS of the RCJ CAB identify these cases as they arise and that a designated DWP official is in place to receive notification of each case. The DWP official then oversees the WCA process by ensuring that in the area of the country where the ex-prisoner resides, an experienced Decision Maker takes the case and identifies an Atos healthcare professional (who is an expert in mental health) to undertake the face-to-face assessment.

I realise that this next section is, perhaps, beyond my remit, but I already have identified an individual in the MJSS RCJ CAB who would start the process and act as the point of liaison with DWP. Senior DWP officials tell me that they could identify someone in Caxton House who would take on the cases.

I believe we, society, owe this small number of ex-prisoners a fair and smooth passage through the WCA process. Following their traumatic experience of the judicial process the WCA process needs to do everything it can to ensure the types of distributive and procedural justice which my first review talked about are in evidence. If adopted, this approach will ensure that these people will go through the WCA as everyone else will, but with that extra element of care that, in my view, they deserve.

Best wishes,

**Professor Malcolm Harrington CBE**

## Annex 3: What happens to people placed in different Employment and Support Allowance (ESA) groups, and what influences these outcomes<sup>15, 16</sup>

### Key points

1. The employment outcomes by ESA group are in the table below:

ESA outcome category	Percentage in work 12–18 months after claim
All ESA claims	25%
Fit for Work	25%
Work Related Activity Group	9%
Support Group	10%
Claim closed or withdrawn	39%
Claim in progress	22%

Adapted from Barnes *et al.* (2011), *Routes on to ESA*. DWP Research Report Series No 774.

2. Around half of new claimants for Jobseeker's Allowance leave the jobseeker's register within three months, and three quarters within six months. The majority of these return to work<sup>17</sup>.
3. The key factors associated with work entry/return for ESA claimants were:
  - Being in employment prior to the ESA claim; and
  - Being found Fit for Work or either closing or withdrawing the ESA claim.

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<sup>15</sup> Adapted from Barnes *et al.* (2011), *Routes on to ESA*. DWP Research Report Series No 774.

<sup>16</sup> The employment outcomes referred to in this briefing relate to employment status reported 12–18 months after claiming ESA, unless otherwise stated.

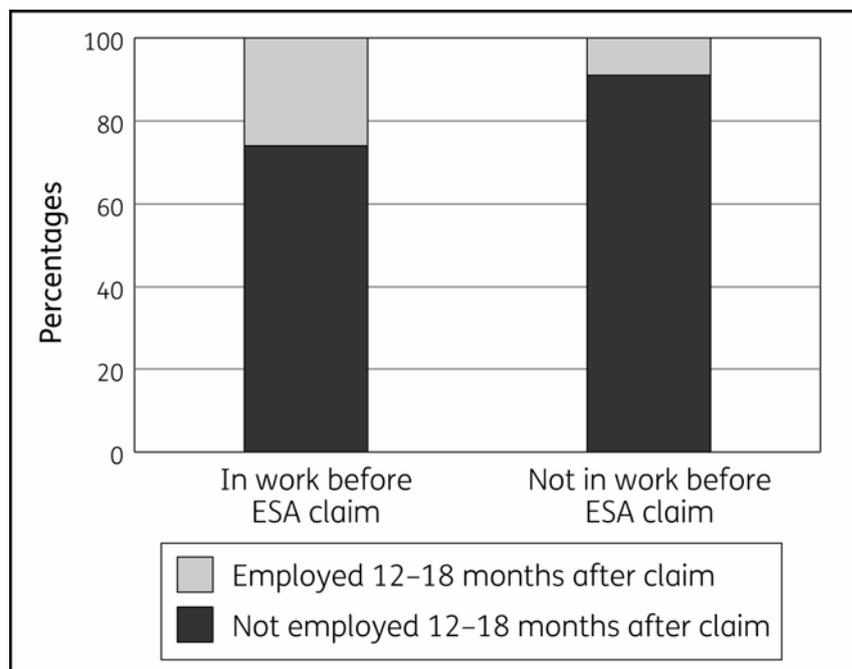
<sup>17</sup> [www.nomisweb.co.uk](http://www.nomisweb.co.uk), quoted in Black and Frost (2011), 'Health at work – independent review of sickness absence'.

## An Independent Review of the Work Capability Assessment – year three

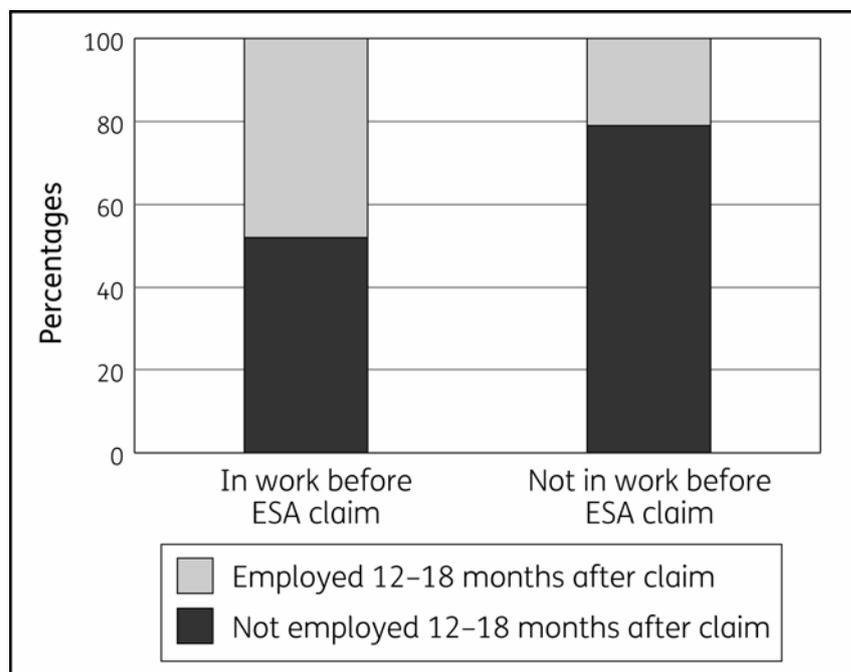
4. Being in work prior to making an ESA claim appears to make little difference to the claim outcome, with 22 per cent of people making a claim from work and 21 per cent not in employment prior to making a claim being awarded the benefit.
5. However, of those claimants who were found eligible for ESA, 26 per cent who were in work before claiming had entered jobs 12–18 months after the start of their claim; compared to 9 per cent of people who were not in work prior to claiming.
6. Job entry rates were generally higher for people in the Fit for Work or claim closed or withdrawn groups, but there were differences between claimants who had been in employment before claiming (48 per cent returned to work) and those who had not (21 per cent returned to work).
7. Among claimants who had been in work immediately before claiming ESA increased likelihood of returning to work was associated with:
  - Early recovery from health condition(s);
  - Believing that work improves health; and
  - Having qualifications.

### Employment outcomes by claim trajectory and pre-claim employment status

**Figure 1: Employment outcomes of ESA claimants allocated to WRAG or Support Group**



**Figure 2: Employment outcomes of ESA claimants not awarded ESA (Found Fit for Work, or claim closed/withdrawn)**



8. Forty per cent of people who were in work prior to their ESA claim had worked at some point in the 12–18 months since their initial claim, with just over half of these (51 per cent) returning to the same job<sup>18</sup>.
9. Only 18 per cent of people who were not in work prior to their claim had worked at some point in the same period<sup>19</sup>.

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<sup>18</sup> Includes people who had returned to the same job either at the baseline or follow-up survey or in-between, whether or not they were still in that post.

<sup>19</sup> Counts those who were in work and working at the baseline survey (about 6–8 months after ESA claim) or the follow-up (about 12–18 months after ESA claim) survey as well as those who had done some work in-between.

## Annex 4: Acknowledgements

1. Throughout my time as Independent Reviewer the Department for Work and Pensions (DWP) have been open to my recommendations to improve the Work Capability Assessment (WCA). This third year has proved no different.
2. Staff at all levels of DWP have embraced the recommendations to ensure positive change, even if this job is not yet complete. I would like to thank the organisation as a whole for this. I have not previously named DWP officials, but I would like to thank Karen Foulds and Sharon Hepworth for proving to be so enthusiastic in effecting change. Also, Cath Hamp and Mark Royston who have made the feedback from the First-tier Tribunals a reality.
3. My Scrutiny Group of Dr Olivia Carlton, Simon Gillespie and Neil Lennox were again superbly led by Professor David Haslam. They have remained a source of immense help and support throughout this years work. I am indebted to them and the resolve they have provided.
4. Many of the major charities have, once again, been actively engaged in the Review's work this year. The largely constructive way in which they have done this is to be commended given the sensitivities of balancing the concerns of the people they represent against the desire to see a fairer and more effective assessment. In particular, I am most grateful to Jane Alltimes, Hayley Jordan, Tom Pollard, Beth Reid, and Charles Shepherd.
5. I also would like to thank the organisations and individuals (over 1,000 in total including Northern Ireland) who responded to the call for evidence, or with whom I have had chance to discuss the WCA . The views and experiences of individuals have been particularly enlightening about some of the problems they have faced.
6. For their individual contributions, I would particularly like to thank:  
Jerry Ashworth; Professor Stephen Bevan; Professor Dame Carol Black; Dr Laura Crawford; Cathy Duff (Northern Ireland Social Security Agency); Lord Michael German; Shelia Gilmore MP; the Rt Hon Chris Grayling MP; Tom Greatrex MP; Lord Archy Kirkwood; The Countess of Mar; Professor Rob Moots; Dame Ruth Runciman; Professor Tom Sensky; Nicola Singleton; Professor Stephen Stansfeld; Baroness Celia Thomas of Winchester ; and the Rt Hon Stephen Timms MP.

## **An Independent Review of the Work Capability Assessment – year three**

7. Lastly, and most importantly, I could not have undertaken this task without the enormous support, guidance and indeed friendship I have received for my Team. Mark Wilson has been a rock of good sense, good humour and excellent drafting skills. Philip Cooper has developed into an exceptionally able member of my team. I owe much to them both and I wish them all the success that they clearly deserve in the future.



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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)**

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