



Response to the 5th Independent Review of the Work Capability Assessment: Executive summary

Citizens Advice

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Introduction

The Citizens Advice Bureaux (CAB) network is the largest independent network of free advice centres in England & Wales. In 2012/13, we advised 2.1 million people on 6.6 million issues, through 413 individual bureaux providing advice from over 3,000 locations, online and on the phone.

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination. The service aims to provide the advice people need for the problems they face, and to improve the policies and practices that affect people's lives.

Last year the CAB service helped more people with Employment and Support Allowance (ESA) problems than any other issue - close to 450,000 problems. We have helped people with over 1.5 million problems with ESA since it was introduced. In 2012/13, ESA queries made up 21% of our benefits enquiries and 7% of total enquires. There were more ESA enquires than Jobseekers Allowance, Working and Child Tax Credits, Council Tax Benefit and Child Benefit combined. This, alongside the Minister's evidence at the recent Select Committee hearing that over 700,000 people are still awaiting an assessment demonstrates that ESA is still a major issue, which is why we are running a campaign to improve the system (more details at www.citizensadvice.org.uk/fitforwork).

Citizens Advice supports attempts to help sick and disabled people flourish in the labour market, but we have long had concerns about the nature of medical assessments for incapacity and disability benefits, and the quality of decisions based upon them. CAB advisors regularly tell us that people with serious illnesses and disabilities, who could not reasonably be expected to seek work, are found 'fit for work.' Others, who, with considerable support, could undertake some work, are denied benefit and, with it, the support it offers to prepare for returning to work.

We have seen increasing evidence of claimants being left without money during the mandatory reconsideration stage; and extensive delays for people who are appealing against decisions. Simply replacing Atos as a provider will not be enough to improve this process. The whole system is hampered by delays, inaccuracy and inconsistency, and this must be addressed if we are to provide a fairer system in which decision making is effective and redress is achievable. The re negotiation of the WCA contract gives the Government an opportunity to make fundamental reforms to the process and we are keen to help the DWP get this right.

We outline here the main issues that have come to our attention via clients and bureaux since the fourth Independent Review, and we understand that a number of bureaux have submitted evidence separately. We think that the fact that bureaux across the country are experiencing very significant problems with the Work Capability Assessment (WCA) process demonstrates that the problems we report are not isolated incidents.

For more individual claimant stories you can visit our blog at <https://blogs.citizensadvice.org.uk/blog/topics/fit-for-work/>.

The impact of previous Independent Reviews

Citizens Advice has broadly welcomed the recommendations of all four previous independent reviews, although we continue to feel that they have not gone far enough in addressing the problems we, and others, have identified within the WCA process.

Recommendations of previous independent review have broadly focused on the descriptors, communications throughout the process and the decision making process, including allocation of claimants to either the WRAG or support group and further reconsideration and appeal opportunities. However, the limited degree to which these recommendations have been agreed and implemented by the DWP has hindered the ability of these proposals to impact on the experience of claimants.

During the course of the fourth Independent Review, Dr Litchfield looked in detail at how the Department had implemented Professor Harrington's recommendations. He concluded that:

- Of those accepted in full, 29 had been fully implemented, three had been partially implemented and three more are still in progress; and
- Of those accepted in principle five had been fully implemented, two partially implemented, and three are still in progress.

We are concerned that this does not paint a complete picture of the changes as they have impacted on claimants – our evidence suggests that even where recommendations have been accepted and 'implemented', change has not always reached all stakeholders and improvements have rolled back in a number of areas.

We would also point out that a number of recommendation to substantially overhaul to face-to –face assessment, amend descriptors and training to support claimants with mental health conditions or learning disabilities, and review back to work support have been submitted on multiple occasions by partners and stakeholders with relevant expertise and yet have not been accepted by the Independent Review team. It may therefore be productive to review these recommendations across time to ensure that positive solutions have not been overlooked.

Over the five years since the first independent review the proportion of our advisors time taken up by ESA issues has increased until it has become the single biggest issue that we have faced. We feel that this indicates that recommendation to improve the process have not had a significant impact on claimant experience.

Communications throughout the process

Effective communications underpin the successful operation of any benefit, yet, as stated previously, efforts to improve them in relation to the WCA process has been patchy at best. Key issues remain with:

- The ESA50 form
- Communications between the DWP/HCPs/Atos
- Overall communications with claimants during the process, encompassing:

- Equality issues and reasonable adjustments
- Timeliness
- Face to face communications
- Phone calls (specifically around mandatory reconsideration)

These require not only changes to processes and guidance provided at a national level, but support for DWP District Managers to communicate and implement these changes at a regional level and across all relevant stakeholders. Ongoing monitoring will also be required to ensure that any improvements in communication are fully implemented on a permanent basis and do not 'roll back'.

Communicating actions required of claimants

Evidence from Citizens Advice bureaux across the country indicates that there is a clear and ongoing issue with the information currently provided to claimants regarding the actions they must take during the application process.

It is important to acknowledge that some of the people we see going through this process have multiple problems in terms of their physical and mental wellbeing, financial situation and capability. Claimants of disability and ill-health benefits are also disproportionately likely to require reasonable adjustments in terms of communications methods and styles in order to effectively engage with the process. These factors make it particularly important that information provided in the expectation that claimants will take action is clear, timely and provided in an appropriate manner. In some cases this may require the provision of information to nominated support workers, information in multiple formats or at increased frequency, and particularly removing the burden from the claimants by taking responsibility for fulfilling some of these expectations from claimants (where appropriate) and reallocating it to the DWP or assessor. However, the WCA process, as it currently stands, is complex and confusing even for high-functioning individuals.

Areas of particular concern are:

- The advice given to clients on requesting and providing medical evidence at different stages of the process.
- The guidelines provided around requesting mandatory reconsideration and the need to close (and then re-open) the existing ESA claim if applying for JSA during this period.
- The information provided to JCP workers, DWP staff and advisers in order for them to support claimants or ensure that claimants can fulfil expectations.

Mandatory reconsideration

If the introduction of mandatory reconsideration ensures better decision making before cases go to appeal, then it will have been a sensible policy to implement. However, Citizens Advice has concerns about the effectiveness of the policy in achieving these aims, and the human cost to those who go through this process.

When mandatory reconsideration (MR) was introduced, the DWP said it should take on average two weeks, but Citizens Advice regularly see people waiting 6 weeks or more without a decision, and without payment of ESA. Some CAB advisors have reported not seeing a single client getting their MR back in two weeks.

Citizens Advice believes it is inconsistent and unfair to halt people's benefits while they go through mandatory reconsideration as it leaves many of our clients in severe financial hardship. This policy:

- Does not necessarily save money (JSA, which claimants are advised to apply for in the meantime, is paid at the same rate. Additional costs are also incurred by moving between ESA and JSA. The only money saving will come from those claimants on ESA (CB) who are not entitled to JSA (CB) who are therefore left destitute.)
- Leaves many clients penniless and reliant on hardship payments and foodbank vouchers
- Forces many others to undergo a pointless exercise of claiming a benefit they – and often their JCP advisers – feel they will be unable to fulfil the requirements of, and to apply for jobs they will be unable to perform. Many are sanctioned because of an inability to fulfil JSA requirements which they are informed will be adjusted in line with their abilities but which local advisers seem ill prepared to modify in many case.

The WCA process as a whole

While Citizens Advice has welcomed the recommendations of all four previous Independent Reviews and the consequent changes and improvements made to the ESA system, we are clear that the WCA process remains fundamentally unfit for purpose. Key problems include:

- The failure of DWP or the contracted assessment body to seek or subsidise medical evidence on behalf of claimants, particularly the most vulnerable.
- Multiple failures in the quality of the experience for claimants, specifically:
 - Discrimination (particularly under the Equality Act 2010 and in terms of the DWP's anticipatory duty)
 - Customer service
 - Delays
 - Poor quality assessments and factually incorrect reports
 - Lack of independent quality assurance and assessment process
 - Inefficiency and maladministration of claims (including loss of paperwork and failure to keep to specified arrangements or timescales)
- Incorrect decisions
- Removal of ESA during the Mandatory Reconsideration period

The WRAG and Support Group

In 2010 we addressed in some detail our five key areas of concern about the way the WCA operates as part of our report [Not Working: CAB evidence on the ESA Work Capability Assessment](#). These were:

- it takes little account taken of variability in symptoms
- the descriptors should be more than additive
- it takes no account of generalised pain and exhaustion which affects overall functioning rather than having a significant effect on one aspect of functioning
- it takes no account of the social model of disability
- the guidance for the health care professionals could be more appropriate

Despite evidence of efforts to improve the descriptors and allocation of points to claimants over the past four years, we do not feel that the situation has changed significantly during this time. Bureaux continue to see clients who report that the WCA allocated them to an inappropriate group or found them fit for work despite their health problems.

Group allocation (mental and health and learning difficulties)

We continue to find that claimants with mental health issues and learning disabilities are regularly failed by an assessment process which is not geared towards their mental health or capabilities and which exhibits undue impact upon their mental health. This is particularly evident for those incorrectly found fit for work or placed in the WRAG and hence subject to compulsory jobsearch requirements which waste the time of employers and place a strain on already vulnerable claimants.

General improvements (mental and health and learning difficulties)

At the Work and Pensions Committee in June this year, Dr Graham suggested that mental health specialists were unnecessary in the WCA process. She told the Committee that she believed that the quality of assessments was “where it needs to be.” However, the experiences of our clients and those claimants that have contacted Citizens Advice through our ‘fit for work’ campaign suggest that this is not correct. The problems highlighted earlier in this response combine with a series of specific deficiencies to create a particularly complex situation for those with mental health problems and learning difficulties.

Our proposals for changes to the WCA

We propose specific recommendations throughout this submission, as summarised below. However, we believe that in addition to full implementation of the previous independent review recommendations, three key changes could lead to wholesale improvement of the system. These are highlighted in bold below.

A tougher new contract is required, so the new company providing work capability assessments will be held accountable for poor reports and bad customer service.

This new contract should include:

- a requirement for independent assessments of quality, claimant experience and satisfaction, with financial penalties for poor results
- financial penalties for every decision overturned at appeal due to an inaccurate WCA report
- a requirement for frequent customer surveys to assess levels of understanding of the process and overall satisfaction with communication levels

To support this, additional steps recommended to improve the quality of customer service are:

- that claimants receive early indications of the service they can expect to receive and a timely – and unsolicited – apology for delays, mistakes and maladministration
- that a full review be carried out both into the replication of reasonable adjustments already requested and provided by individual claimants and into further adjustments that might be anticipated to arise in the future from such a client group
- that in order to mitigate the negative impact of delays, additional, regular communications be scheduled to reassure claimants of the status of their ESA claim and allow them to prepare more effectively for upcoming activities
- that the face-to-face assessment, a particular source of concern for many claimants, be subject to a radical overhaul
- that a (reciprocal) information sharing process between the WCA, JCP and employment support be created – so that those placed in the WRAG or found fit for work have an agreed list of the reasonable adjustments required for them to participate in work related activities or work
- that a full review of all communications, and a clarification of acceptable timescales for response on both sides (i.e. from the claimant and Atos/DWP) be carried out. This should include an outline of repercussions if timescales are not met
- that future 6-monthly reviews of communications pertaining to the ESA journey seek the input of Citizens Advice and other similar agencies to ensure that emerging or continuing issues with accuracy and claimant comprehension are picked up at the earliest possible point.

The Department of Work and Pensions (DWP) should listen to evidence from the health and social care professionals who know claimants best, and ensure this is provided this free of charge.

This could be supported by redesigning the ESA50:

- to make it clear that evidence, particularly in mental health cases, from CPNs [Community Psychiatric Nurses], Support Workers, Carers etc. is valuable
- to enable applicants to give details for as many health and social care professionals as appropriate via the 'about your treatment' section
- to ask how long a patient has known their health and social care professional and offer an opportunity to provide the information of a previous long-term GP or HCP who may be more familiar with the patient's condition.

Additionally:

- where there is likely to be considerable factual information in the client's medical record, it should be mandatory for the decision maker to request and to properly consider this information (and for it to be seen to have been considered) as part of the decision making process
- clear guidance on the provision of effective evidence, and standard proformas on which to fully record and explain this evidence, should be offered to all health and social care professionals
- a clear process must be established for transferring claimant information from medical evidence stage through the face to face assessment and any tribunal proceedings and bringing this to bear on future support offered by JCP

The DWP should continue to pay people ESA during the mandatory reconsideration period. Additionally:

- DWP and Jobcentre Plus staff should receive updated, clear instructions on the necessity of supporting ESA claimants to apply for JSA and offering these claimants the option of a flexible claimant commitment and reduced conditionality during mandatory reconsideration
- claimants should be contacted by their preferred method throughout the Mandatory reconsideration process
- telephone calls made to claimants should come from an identifiable number, providing an option to call back or seek support to do so
- the process of mandatory reconsideration should be communicated in a consistent and straightforward way, and emphasis is placed on the provision of additional evidence
- the DWP should provide clarity on the costs associated with moving claimants onto JSA during mandatory reconsideration, to allow a full public debate about the value for money of this policy decision.

To prevent claims reaching the mandatory reconsideration stage; and to support claimants in getting a decision that is right first time, we also recommend:

- that Government commit to tangible work on the feasibility of Decision Maker triage, co-location of Decision Makers and health assessment providers and reengineering the case mix between Decision Makers
- that the DWP update documentation and training to ensure that there is clear differentiation between the purpose statements for HCPs and DMs; and that a simple narrative explaining the differences is used consistently internally and externally
- that DWP carry out further analysis of the current usage of the tribunal feedback system and to share the results of this
- that allowing Judges to offer additional reasons for their decisions and establishing a formal feedback mechanism could significantly improve decision making, allow for a better understanding of the many factors that may contribute to overturning a decision, and identify points in the process causing particular problems
- that the DWP continue to work with the First-tier Tribunal Service, to ensure that there is robust and helpful feedback about reasons for decisions overturned
- that DWP and the assessment provider be mandated to abide by tribunal recommendations on reassessment frequency based on current health and future prognosis.