# Submission to the 5th Independent Review of the Work Capability Assessment

## Citizens Advice

**August 2014**

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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/.

## 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 is 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.

# The impact of previous Independent Reviews

## Question 9: The implementation of previous recommendations

## Summary

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:

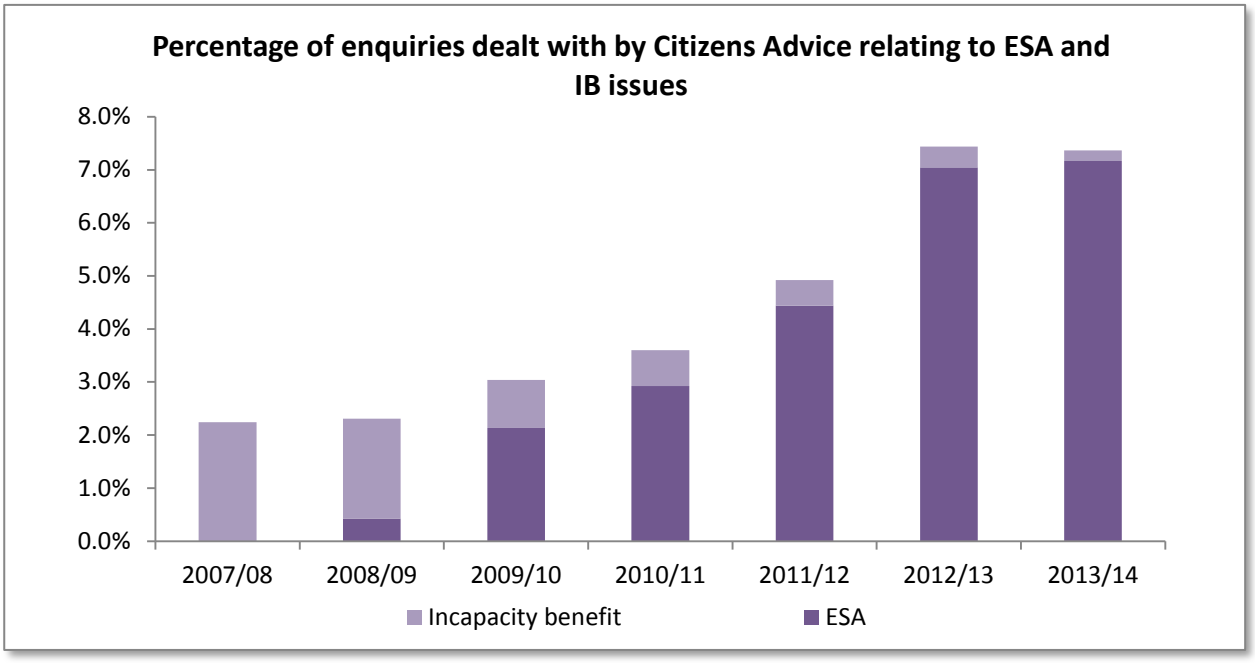
- Of those accepted in full, 29 had been fully implemented, three had been partially implemented and three more are still in progress; and
- Of those accepted in principle five had been fully implemented, two partially implemented, and three are still in progress.

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.

Citizens Advice has supported those specialist and user-led organisations that have repeatedly campaigned for increased understanding of long term and fluctuating conditions throughout the assessment process and particularly within the descriptors. However our comments below focus primarily on the impact of recommendations in other areas.




## Our evidence:

### Communications

Clients continue to tell us of the problems that they experience in comprehending and acting on the written communications they receive. These problems are rooted in an erratic approach to spelling and grammar (most likely caused by the use of automated systems to pull together claimant letters), regular inconsistencies in factual information provided in different types of communication and sometimes within the same letter, and a continued failure to provide communications in a timely manner conducive to ensuring claimants have adequate time to comprehend and act on information provided. DWP also continues to exhibit an inability to anticipate reasonable adjustments around communications or provide them when it is evident that client engagement in the process is dependent upon them.

The ESA50 particularly, despite multiple attempts at improvement, continues to present a significant challenge to claimants in making their case for financial support in that it does not clearly indicate the range of information which might be bought to bear on the claim and presents specific problems for those requiring information in an accessible format.

> **Case Study[1]:** Susannah is 50 years of age and has been diagnosed with multi-focal choroidopathy which causes blindness. The ESA50 she received through the post has lettering which is too small for her to read.

We understand that considerable time and effort has been spent improving the clarity of communications with claimants throughout the WCA process with a view to improving the ability of clients to understand and engage with the WCA and ensuring that decisions are right first time. However, we were pleased to see that both Dr Litchfield and that Government recognised in the last Independent Review that there was still more to be done in this area and that Government has committed to a comprehensive review of all letters and forms used in the WCA process. We would urge that this review be completed as a matter of urgency.

Further evidence on these issues is contained within our response to question 10.

### Quality and the client experience

Citizens Advice welcomed Professor Harrington's recommendation in the second Independent Review that the Government should commission regular independent assessments of the accuracy of WCA reports to ensure improvement, a key recommendation of our indicative study of the accuracy of WCA reports, *Right first time*. We are disappointed that the DWP has yet to commit to do this as we feel it could have a significant impact on the quality of service received by claimants and increase the impact of other reforms already in place. **The new contracts for the provision of WCA could be linked to these independent assessments, with financial penalties depending on overall report accuracy.**

This would save the Government significant amounts of money given the substantial cost of inaccurate reports, not only to the justice system through the appeals process, but also to DWP in preparing the papers, and the less quantifiable costs to the NHS and other hardship support services. Alongside these independent assessments of accuracy **Citizens Advice believes that the DWP should more consistently impose financial penalties on any future provider - for every decision overturned at appeal due to an inaccurate WCA report.**

We were also pleased that Dr Litchfield recommended that improvements might be made in the guidance provided around companions at face-to-face assessments. Our clients have long told us that current guidance is unclear, often unavailable in accessible formats and inconsistently applied. Our evidence also suggests that claimants are able to give a more effective account of the impact of their condition, at less detriment to their own mental wellbeing, where they are able to rely of the support of a companion. However, in the past year we have found little evidence of improvement in this area.

> **Case Study:** *Legal companion, trained under Keele University's Community Legal Outreach Companion project.*

[1] All names changed to protect client identities

> In January 2014 I accompanied a client to a face-to-face assessment. I arrived 20 minutes before the client's scheduled appointment and introduced myself to reception as the client's note taker. The receptionist expressed doubt as to the usefulness of my notes and whether I was allowed into the assessment room.
>
> The news that either I or the client's family member would be refused access into the assessment room was deeply distressing for the client. Under Atos customer charter, clients are encouraged to have someone accompany them into the assessment. There is no restriction mentioned in relation to having a note taker present. The uncooperative nature of the receptionist is contrary to the 'during your assessment' information that states that Atos will ensure that the client's experience is as comfortable as possible. After continued disagreement, the receptionist eventually contacted her manager who gave me permission to attend the assessment alongside the client and the family member.

### Medical evidence

DWP only takes responsibility to collect medical evidence from the claimant's own doctors in a small minority of cases – around 23% in 2012. Atos make the initial decision as to whether to collect medical evidence and usually only do so when it is clear from the initial information that the person is likely to be allocated to the support group without a face to face assessment. Professor Harrington's first review of the Work Capability Assessment (WCA) acknowledged the burden the provision of medical information places on individual claimants. We are disappointed that we have not seen further recommendations to mitigate this impact on people too unwell to coordinate their own evidence or who are unable to afford any charges for provision; and hence, that this situation has not changed to a great degree over the course of the previous 6 years.

Our recent survey of GP surgeries shows why in many cases it is not acceptable to rely on claimants providing their own medical evidence. We found that 29% of GPs refuse to give medical evidence to some or all of their patients, and those who do, 50% charge everyone and 26% charge some people. We have found examples of GPs charging up to £125 to provide the evidence needed.

There is substantial evidence that access to appropriate medical evidence from a relevant health and social care professional has a huge impact on the likelihood of eligibility decisions being right first time[2]. We provide more evidence on the importance of medical evidence to quick and correct decisions in answer to question 13.

[2] See Work and Pensions Select Committee: Inquiry into IB migration 18 May 2011; Barnes et al. (2010) Employment and Support Allowance: Customer and staff experience of the face-to-face Work Capability Assessment and Work-Focused Health-Related Assessment – DWP report 719; Work and Pensions Select Committee (July 2011) The role of incapacity benefit reassessment in the helping claimants into employment

## Decision making

In the fourth Independent Review, Dr Litchfield recommended that 'the assessor should avoid reporting inferences from indirect questioning as factual statements of capability'. Government accepted this recommendation, responding that 'it is paramount that assessment reports are an accurate reflection of the issues explored during discussions... [and] we will explore the feasibility of healthcare professionals using prompts from a semi-structured topic guide for WCA discussions.' However, evidence from Citizens Advice clients suggests that assessors continue to report inferences (and indeed conclusions drawn with little to no corroborating evidence) as fact in WCA reports. Further information on this issue is contained is our response to question 13.

A key recommendation from the Year 1 review was that all evidence should have equal weighting and that DWP decision makers should have more power to consider it and apply it to the decision making process. Bureaux advisers did initially report seeing a positive change in initial decisions following this recommendation. However, we have serious concerns that this is slipping, with increasing weight, once again, being given to Atos advice, above submissions from claimant's own GPs. The recent Big Benefits survey, carried out by the Disability Benefits Consortium, found that more than 4 in 10 respondents (46%) said the assessor did not take into account additional evidence about their condition that they submitted in advance. Nearly 7 in 10 (68%) did not feel that the decision makers are more likely to seek advice from the customer's chosen healthcare professional than in 2010, while nearly 6 in 10 (56%) felt that decision makers have not given greater weighting to additional medical evidence as compared with 2010.

Dr Litchfield also recommended that Government strengthen the requirements for healthcare professionals conducting WCAs to have 'suitable and sufficient experience of dealing with people with mental function conditions'. This is a longstanding concern held by ourselves and other specialist organisations, and therefore we are pleased to hear that guidance has been sought from medical bodies on their definition of 'suitable and sufficient' experience. While we have not yet seen any change in this area, we continue to receive evidence from bureaux highlighting the problems faced by clients when assessments are carried out by non-specialist staff. The new contracts to provide WCA services give the Government an opportunity to ensure that this happens.

We are aware that Government has responded to a number of the recommendations from the fourth Independent Review to improve the quality of decisions, promising 'further work' into the feasibility of Decision Maker triage, co-location of Decision Makers and health assessment providers and reengineering the case mix between Decision Makers.' However, the suggestion that this would require 'a significant reworking of existing processes' and subsequent lack of progress on this issue have been dispiriting. **These recommendations have the potential to improve the WCA process, speed up the claimant journey and improve the quality of decision making, and look forward to hearing of Government's progress on these issues in the near future.**

**We further recommend that the DWP should 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.**

### Reconsideration, appeal and reassessment

Citizens Advice welcomed the long-overdue attempt by the Tribunal Service to record the reasons for WCA appeal decisions, following long-term concern about the lack of feedback to DWP decision makers from the Tribunal Service, and from DWP decision makers to Atos healthcare professionals. However, further work is required.

Following a recommendation in the 2012 Independent Review, First-tier Tribunal Judges are now able to select one reason from a drop-down menu to explain why they overturned a decision. While this took much time and effort to achieve, it is rudimentary at best.

The list of reasons available to judges contains 15 statements, the first four being 'cogent oral evidence' on different descriptors. Initial DWP analysis revealed that, in 37.5% of cases, Judges chose not to record a reason. In 40.5% of the remaining cases, Judges chose from the top four on the list. This suggests that there is something wrong with the face to face assessment and a failure to capture this information initially.

Citizens Advice continues to be concerned about the lack of feedback to DWP decision makers from the Tribunal Service, following an ESA appeal. **We believe that allowing Judges to offer additional reasons for their decisions and establishing a formal feedback mechanism could significantly improve decision making as well as identifying the points in the process causing particular problems.**

To provide a clearer picture of the current workings of this system and the quality of information captured **it would be helpful if the DWP were to carry out further analysis of the current usage of this feedback system and to share the results of this.**

Evidence around mandatory reconsideration is contained within our response to question12.

## Our recommendations

Citizens Advice recommends:

- that as part of the final review process, the work begun in the most recent independent review to revisit previous recommendations and their implementation be revisited, and additionally that recommendations submitted by respondents to the reviews over more than one year be considered as part of this. Those recommendations which have been repeatedly proposed but unsatisfactorily implemented might then be prioritised for implementation at this point. This would ensure that learning from the reviews is not lost and that best

practice as identified by submissions throughout the review process is implemented.

- that the new contracts for the provision of WCA require independent assessments of quality, claimant experience and satisfaction, with financial penalties for poor results
- that the DWP consistently impose financial penalties on any future provider for every decision overturned at appeal due to an inaccurate WCA report and that this stipulation be referenced within the new WCA contracts.
- 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.

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## Experiencing the WCA process

### Question 10: Communications throughout the process

### Summary

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'.

## Our evidence

### The ESA50

The ESA50, while it has improved significantly over previous years, continues to give prominence to GP contact details and provides limited opportunities for claimants to provide details of alternative health and social care professionals, or to specify which of those professionals would be best placed to give evidence on their fitness for work.

People claiming ESA find the ESA50 questionnaire complex to understand and time-consuming to fill in. In many cases this is causing immense levels of anxiety and stress. 'Alun', who suffers from chronic fatigue syndrome, submitted evidence to this review via his bureau, stating 'one is given about a month to fill this in and I found that I had to use almost every one of these days to work on it.'

Advice Brighton and Hove point out in their recent report 'Fit for Work?[3]' that frontline advisers report that claimants often don't understand the questions and therefore don't answer in a way which would allow them to be awarded the points to which they are entitled. Advisers feel that it is particularly not fit for purpose with regards to describing limitations faced by claimants due to mental health problems.

***Question 12*** *(from the ESS50 form)*

*Tick the box if you can keep yourself safe doing everyday tasks such as cooking – do you need supervision (someone to stay with you) to keep yourself safe?*

- *Usually*
- *Sometimes*
- *It Varies*

This question is confusing on a number of levels. It is not made clear what 'keeping yourself safe' actually means and the 3 options of 'usually' 'sometimes' and 'it varies' are not distinct enough (for example, if I 'usually' require supervision then 'sometimes' and 'it varies' may also apply) Also, this question wouldn't necessarily prompt people to think more widely about safety, for example, self-harm, taking medication, suicidal thoughts, crossing the road and recognising unsafe situations with people. Ambiguity

[3] Fit for Work? – Advice Brighton and Hove, 2014

such as this can lead to poor responses, increased levels of anxiety and incorrect decisions.

> **In response to our recent GP survey, one respondent wrote: '**GPs should be asked by DWP for background medical information on all claimants as many claimants are not fully aware of all the conditions they have or their significance. I have seen patients' self-completed forms and they often understate their case by missing out important information. This is especially true of people with mental health problems, or people whose first language is not English.'

The last Independent Review recommended that the ESA50 be 'redesigned to make it clear that evidence, particularly in mental health cases, from CPNs, Support Works, Carers etc is valuable, and gives guidance on the functional aspects that will help Decision Makers.' This point was accepted and we understand that Government plans to incorporate changes in October 2014.

**We would recommend that a clear method of highlighting a preferred professional, alongside guidance on possible fees, be made available to claimants as part of the ESA50 and the accompanying letter (the ESA51). We would also suggest that future 6-monthly reviews of these and other 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.**

### Communications between DWP/Atos/Health and Social Care Professionals

Health and social care professionals who are regularly approached for information on their patients fitness for work have told CAB staff that they are not confident that they know what useful evidence they need to provide. Additional investment into internal communications early in the process may well have a significant positive impact on claimants.

> **Adviser interview:** '[The ESA 113 doesn't] explain about the benefit and how it works or the points scoring. I think if a health professional is able to understand what ESA is and how it is assessed and that there are 2 groups etc. then their letters may be more focused on the relevant things rather than being brief and general.' – Mary (adviser)

> **Adviser interview:** 'The problem with the freeform letter is that often the doctor isn't clear what he is being asked; thus, you get a generalist statement or something you are seeking is left out of the report.' – Bill (adviser)

> **Adviser interview:** 'Requesting medical evidence is helpful to support a client's claim but if the GP is not asked specific questions relating to the

client's illness or situation, the information given may not be beneficial to the appeal or may be too general to be of use.' – Carly (adviser)[4]

We provide more evidence on the importance of relevant and appropriate medical evidence to quick and correct decisions in answer to question 13.

A failure to transmit knowledge throughout the system often leads to conflict between advice given by different agencies or different telephone advisers. For example, Citizens Advice clients have been advised to apply for JSA during mandatory reconsideration by a phone adviser, but have arrived at the JCP to find advisers unwilling to offer a revised claimant commitment or pronounce them as fit for work in order to receive JSA.

**Case Study:** Jack was helped by Woking CAB when he was stuck between his Jobcentre - who told him he was not fit for work and therefore ineligible to claim JSA because he had a note from his doctor - and the DWP assessor, who said he was no longer able to claim ESA as he had been found fit for work.

Claimants often report a worrying lack of comprehension of benefits procedures among DWP staff at all levels. This ranges from providing outdated contact details, offering un-evidenced views on the claimant's suitability for the benefit, and advice to terminate or restart a claim at inappropriate times, leading to delay or failure of payment.

**Case Study:** Rupal had made a claim for ESA but was found fit for work in June 2014, at which point her ESA payments stopped immediately. She disagreed with this decision, but when she went to the Jobcentre, she was told that she could either claim JSA now, or ask for a mandatory reconsideration about her ESA decision, but could not do both. She was also told that mandatory reconsideration would only take 2 weeks. However, 2 months after she was found fit for work, the DWP has still not finished reviewing her mandatory reconsideration. Rupal has therefore been living with no real income for 2 months.

Last year Dr Litchfield highlighted that a previous recommendation concerning sharing of information about WCA outcomes with Work Programme providers had not been completed and should be addressed as a priority. This could have a positive impact on those claimants eligible for work related activity or found fit for work, by ensuring that all parties – and future employers – are clear of the support required to enter and sustain employment.

Furthermore**, establishing a clear process for transferring claimant information from medical evidence stage through the face to face assessment and any**

[4] All three from 'Reviewing the ESA Application Process: Medical Evidence and the Work Capability Assessment' – Rushmoor Citizens Advice Bureau, 2014

**tribunal proceedings** would allow for barriers to employment identified during the process to be transmitted through, not only to any prospective future employer but also to JCP teams in order to assist with setting appropriate levels of conditionality.

> **Case Study:** Janine was on Incapacity Benefit until the transfer to Employment Support Allowance (ESA) which she was refused. She is now on Jobseekers Allowance (JSA) which has been sanctioned because she hasn't met her jobseeking requirements. The client says that she can't look at a computer screen for as long as the Jobcentre insists she should without it bringing on a migraine.
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> **Mikes story (from our blog):** Over two years ago I went to the doctors suffering with depression. I was diagnosed by Atos as having a limited capability for work and placed on the Back to Work program. At one appointment I broke down whilst trying to explain how I felt. The chap seemed concerned but just started to try and build a cv with me. He told me to go home and try and think positively and he would contact me with another appointment. I didn't hear from him again.
>
> I was informed of some employment that would suit me, but when I next enquired about it I was told that this particular employment would not suit me due to my limited capability for work. Not only am I confused by this but it has made me feel much worse about myself.
>
> My benefit has now been sanctioned for 13 weeks because I missed an appointment - even though i have complied with every other appointment. The sanction has resulted in unbearable tension between myself and my partner, leading to my being homeless.
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> I have confided in my adviser and then been insulted. I have been spoken to as if I'm an infant and had my adviser raise her voice to me in telling me that my negative state of mind will get me into trouble. Plus, I am still expected to attend appointments with the person i have complained about, and remain calm and rational.
>
> I was initially told that this would be a turning point in my life but it has been quite the opposite. I have failed to understand the help the provider has to offer and now, instead of slowly coming off of anti-depressants, I feel more confused and depressed about the future and see no point in carrying on.

One adviser summed up the impact of poor communications thus: 'Claimants tend not to understand how the system works, their responsibilities and most of them feel disempowered to challenge decisions they think are incorrect, or seek redress.' For this reason it is particularly important that the quality of communications, and the impact of poor communications on the claim process, are evaluated through customer satisfaction surveys and taken into account when updating the content and format of communications. More evidence on this issue is contained within our response to question12.

### General communications with claimants

**Equality:** While in theory, the process is responsive to client need and offers flexibility in communication and engagement method, too often advisers find that in practice, claimants find it hard to access communications in an appropriate format. The Equality Act 2010 requires that public bodies anticipate and provide reasonable adjustments for disabled claimants, and we would urge the DWP to make further steps towards implementing this duty.

> **Case Study:** Billy is unemployed, with no savings, no assets and no source of income beyond Disability Living Allowance (DLA) and Incapacity Benefit (IB), which is currently being transferred to ESA. He has Autism, learning difficulties and Dyslexia and has a carer who is his named appointee for all his benefits. The client was informed that he has been found fit for work and could seek a mandatory reconsideration of the decision. However, when this was done the client and advisor were told by the DWP that they would not let them request a written statement for a mandatory reconsideration even though they went through implicit consent.

> **Case study:** Errol is deaf in one ear and has great difficulty reading and writing. He attended his WCA on 19 February. He said when he was interviewed he was being criticised because the information on the forms which he had filled in was incorrect. He explained it was not him who had filled in the forms. He was told he was shouting - but he said he explained that he is deaf, and that makes him talk loudly - he said he was not shouting. After less than five minutes, he was told the interviewer was ending the interview. He was told to go out and stand outside. No one explained to him what was going on. He said he asked if his wife could come in to help him but was told she was not allowed in.

Given that ESA is a benefit provided to individuals who are unable to work due to illness or disability, it is not enough that DWP continue to tackle the regular failure to provide reasonable adjustments for individuals 'in arrears'. As a public body, the DWP has an anticipatory duty to provide such adjustments and to ensure that where they are provided for one client they are replicated for others. **We recommend 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.**

**Timeliness:** For some of our clients it will not matter how much the quality of communications is improved if they continue to receive them too late to act on them. Our clients are regularly failed by a system which does not meet agreed timescales: early communications create distrust by outlining timescales which are not met, while later communications often arrive so late as to jeopardise claimants' abilities to meet commitments, reply within agreed limits, or sustain themselves financially as the process continues. We also note that while the failure of a claimant to comply with set timescales usually results in closure of the claim, or benefit suspension, there is no

comparable penalty for late or non-existent communications on the part of Atos or the DWP. The client stories below give some indication of the problems caused by late or non-communication and the impact of this on claimants.

> **Case Study:** In February 2014 I attended an assessment as a note-taker for Stoke and North Staffordshire CAB. Upon introducing myself to the receptionist I was informed that the client's assessment had been cancelled. I left the centre and contacted the bureau. After a return phone call I was told that Atos had cancelled the client's assessment 25 minutes before the appointment time. The client was on their way to the assessment when they were informed of the cancellation. The client's assessment had been cancelled by Atos on a number of previous occasions.

**To ensure claimants are able to engage with the process and fulfil the requirements it places upon them, we recommend a full review of the timeliness of all communications, and a clarification of acceptable timescales for response on both sides (i.e. from the claimant and Atos/DWP). This should include an outline of repercussions for both sides if timescales are not met.**

**Aline's Story (from our blog):** I became ill early November 2012, with Fibromyalgia, ME, and sleep apnea. On the 12th November 2013 I had to reapply for ESA. I heard nothing about my claim on the run up to Christmas so I phoned ESA and was told it hasn't gone to the decision makers. We had to go to the food bank for Christmas and new year. We had pasta mixed with soup for our Christmas meal.

This timeline details my communications with DWP since then:

- **9th Jan 2014:** Phoned about no money and because I had not received a permitted work letter, which they say has been sent.
- **14th Jan:** Phoned about no money or letter. Again they say they have sent the letter.
- **17th Jan:** Phoned about no money or letter.
- **20th Jan:** Received permitted work letter. Returned with photocopy of doctors letter showing all up to date sick notes.
- **13th Feb:** Phoned about no money. They have not received my returned letter. Phoning me back (didn't).
- **14th Feb:** DWP phoned me to say they have received the permitted work letter and it is going to the decision maker today. I will hear in 10-14 days (24th-28th Feb)
- **18th Feb:** Received letter dated 14th Feb stating if I don't send a sick note by the 15th Jan (?) they will stop/suspend my claim.
- **18th Feb:** Phoned to complain about the way my claim is being dealt with. Was asked to fill in the form while on phone, this I refused and asked to have it sent to me.
- **20th Feb:** Form to complain about decision(!) came - not a complaint form!
- **5th Mar:** I phoned to find out decision. Was told decision makers have gone over time. Advisor informed them to deal with it urgently and to phone me back today. My home number and email given. Did not phone back.

- **6th Mar:** Received letter informing me they have credited my account with £10.25 for 13th Aug 2013 (!)
- **6th Mar:** Phoned again. Asked why they didn't phone back, was told they had. I explained that because of my illness I am on the sofa with the phone next to me and I have had no phone calls from ESA. I am told they will phone me back today. Did not phone.
- **10th Mar:** Phoned ESA and asked to speak to the decision maker, was told I can't do that. They emailed them and asked to deal with this urgently, and to phone me back. They phoned (!) Not come to a decision yet.

I'm still without money, and I'm losing a job I am passionate about, I can't understand why I am being so badly treated. It is having an effect on my condition, when all I wanted to do is get better and get back to work.

**Face to face communications:** We are pleased to see that this review includes an assessment of claimants' perceptions of the process, as these are most often formed by their experiences at the face-to face assessment or through subsequent visits to Jobcentre Plus during the mandatory reconsideration period. Lack of consideration for claimant needs not only prevents their full engagement in the process but presents them with a poor impression of the support available through the welfare system.

> **Case Study:** Idris is profoundly deaf and needs a signer in order to communicate. He had a meeting at Peterborough Jobcentre about the work programme. He was unable to understand his adviser or communicate with her. The DWP has spoken to his mother on the phone and asked her to come with him to his work programme appointments. They have not offered to provide a signer or made other arrangements for client.

> **Case study:** Ali has enduring mental health problems. He had a panic attack during the medical assessment and asked the assessor for a drink of water in order to take medication to help calm him down. When this was refused Ali said he felt so bad that he would have to leave the room. The assessor stated that if he did this the assessment would be terminated. Ali felt humiliated and was ill and upset for several days after. This experience destroyed his trust in the system, which he now believes is just trying to fail applicants for ESA.

Claimants need to be treated with respect and dignity, and their assertions regarding their abilities and limitations in a work context must be considered seriously, regardless of the assessors' personal view of 'wellness' on the assessment day. This is particularly important for those with invisible illnesses and mental health conditions.

> **Case study**: 'She wasn't taking me seriously because you tell her "I take this medication" and she goes "So what? So what?" You see? Which would imply that like, she wasn't taking me seriously. Of course, I wouldn't

expect her to sympathise with me but I would expect her to take me seriously, which at times wasn't there.' Primrose (client[5])

'Alun' (a CAB client) reported that his blood pressure was taken with a machine designed only for home use and which therefore left him in pain and provided an inaccurate reading. He said 'when I suffer pain like that it doesn't just go off after a while… I suffered for days afterwards. The assessor described [in their report] how I seemed in the interview and yet wilfully failed to see beyond the pain and confusion I described, how much worse I would be in a work environment.' When asked what could have improved the quality of this experience, Alun suggested 'it would be nice if the interviewer didn't torture us with inadequate devices, listened to what we are saying, and took in the implications… [and] really observed the condition of the person in front of them'.

Further details on this issue are provided in answer to question 13.

**Phone calls:** Our clients experience a range of issues relating to phone communications, from a lack of information to incorrect advice which can hamper their claims. One claimant submitted evidence to us on this review question, stating: 'Not enough information is given when a claim is made over the phone. This should be the first point to inform people of the way the process works, but instead they have to wait until they receive a letter…when you call contact centres they have no answers and tell you it's with another department, paperwork has been lost, or its taking longer than expected.'

The introduction of a phone call to talk through a possible 'fit for work' finding has been a positive measure in providing many clients with an opportunity to submit additional evidence and prepare for a possible appeal. However, too many claimants find it confusing, misunderstand what they are being told and believe that they are being 'talked out' of appealing a decision.

*Decision making on Employment and Support Allowance claims*[6], published by the DWP in 2012, found that decision makers would like more autonomy in deciding which claimants to call and a better understanding of the different outcomes. Our recent study *The cost of a second opinion* suggests that while decision makers may be exercising discretion over calls made, decision makers continue to exhibit a lack of understanding of the ramifications of different outcomes, and hence do not consistently provide correct information on the next steps a claimant must take.

Citizens Advice Bureaux continue to see clients who have had a decision verbally, but have not received a decision letter until several weeks after the telephone call, by which time their benefit payments have stopped. In these cases the decision phone call does

[5] Reviewing the ESA Application Process: Medical Evidence and the Work Capability Assessment – Rushmoor CAB, 2014

[6] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214575/rrep788.pdf

not allow them to progress their claim in the absence of paper based confirmation and can serve to heighten distress in the interim.

Further details on communications during mandatory reconsideration can be found in answer to question 12.

## Our recommendations:

- DWP and the assessment provider should be mandated to abide by tribunal recommendations on reassessment frequency based on current health and future prognosis
- The 4th Independent review recommendation that the ESA50 be redesigned 'to make it clear that evidence, particularly in mental health cases, from CPNs [Community Psychiatric Nurses], Support Workers, Carers etc. is valuable' requires full implementation. We recommend that the 'about your treatment section of the ESA 50 be amended to enable applicants to give details for as many health and social care professionals as appropriate, and a clear method of highlighting those with the greatest knowledge of a claimants fitness to work. Moreover, the form should 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.
- We would also suggest that future 6-monthly reviews of these and other 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.
- Establish a clear process for transferring claimant information from medical evidence stage through the face to face assessment and any tribunal proceedings and brining this to bear on future support offered by JCP
- We recommend 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.
- To ensure claimants are able to engage with the process and fulfil the requirements it places upon them, we recommend a full review of the timeliness of all communications, and a clarification of acceptable timescales for response on both sides (i.e. from the claimant and Atos/DWP). This should include an outline of repercussions for both sides if timescales are not met.

## Question 11: Communicating actions required of claimants

### Summary

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.

### Our evidence

#### Claimant advice on medical evidence

The ESA50 continues to give prominence to GP contact details and provides limited opportunities for claimants to provide details of alternative health and social care professionals, or to specify which of those professionals would be best placed to give evidence on their fitness for work. The form makes no mention of what claimants should do if they are unable to provide additional evidence themselves because the relevant medical professional either refuses or charges more than they can afford.

**The ideal situation would be for DWP to request and pay for medical evidence from the most relevant professional in all cases where it is needed. However, to enable claimants to guide decision makers as to the most useful professional to approach, the form needs to be clearer.**

This issue is covered in more detail in our answer to question 13.

### Mandatory reconsideration

Our recent report '*The Cost of a Second Opinion*' found that communication is a key issue in relation to mandatory reconsideration. The report spoke to 20 clients regarding their recent experience of mandatory reconsideration. Some got a letter and a call telling them of the initial decision on their ESA claim, some just a call or a letter, some neither. For claimants with mental health conditions, appropriate and targeted communications are particularly key, as many do not answer the phone, or open their post – yet this study demonstrates that this is not the case.

For those who did receive communications, the quality varied enormously. Some clients were told about the option to apply for mandatory reconsideration on the phone, some read about it in the letter. In one case, the decision maker made an appointment to sign on for JSA with the client on the call before the letter was sent out.

When claimants are found fit for work their assessment rate payment ceases and a number of other benefits also stop. Claimants need to take immediate action to ensure that they do not fall into arrears and have the funds to support themselves – yet some of those we spoke to did not know that their housing benefit had stopped and found themselves receiving letters from the council about arrears, and threats of eviction.

One of the policy aims for the introduction of mandatory reconsideration is to identify any additional evidence which may help support the claimant's case, to provide a correct decision at the earliest opportunity. Very few participants who took part in the research recorded or recalled being told that supporting evidence should be submitted during the mandatory reconsideration period. Most became aware that submission of additional evidence was possible when told by an advisor at CAB. In one case, a participant who contacted the DWP to ask about progress on mandatory reconsideration was told that if DWP wanted additional medical evidence, they would contact her and ask her to provide it. There was no point during the process at which it was suggested that the participant provide something that may help change the original decision.

This issue is covered in more detail in our answer to question 12.

### Information sharing within advice and processing agencies

Citizens Advice hears regular reports of occasions where claimants are unable to fulfil requirements due to problems within the system (or where claimants fulfil requirements but are penalised because DWP or Atos do not).

> **Case study:** Jenny is on ESA whilst she undergoes treatment for Hepatitis C, the treatment for which is chemotherapy. She has been refused ESA

due to not attending a medical, despite being told by ATOS staff that she would have a home visit and not to attend.

**Case study:** Jerome was claiming JSA before he hurt his shoulder, when he was advised by the Jobcentre to claim ESA. He received a letter requesting further information which included a number to call for further help – but when he rang the number he found it was 'not in use'. He then received his 'statement of claim' which incorrectly described the claim as a 'repeat claim' and stated that his JSA was still in payment. By this time Jerome had no money for food or fuel and was experiencing considerable hardship. He eventually received a letter stating that he had been accepted for payment of ESA, but received no money. When a CAB adviser phoned the benefit delivery centre they were told that although the claim had been accepted, nothing could be paid until he provided a medical certificate/s for the previous week. This had not been mentioned in the letter or any other previous contact with the DWP.

We also find that claimants who engage entirely appropriately with the service are often caught up in requirements that they are not subject to, or provided with incorrect information on expectations, due to miscommunication with the DWP and between other agencies.

**Case study:** Julie is in the ESA support group. Having worked most of her life she can now barely walk and has documented health problems which led to placement in the support group in June 2013. Despite explanation, she receives regular phone calls and texts from a work programme provider, asking her to come to the work programme or contact an adviser.

## Our recommendations

Claimants need clear advice both at the start of the process and at checkpoints throughout the WCA as to their responsibilities to signpost assessors to health and social care professionals, request and engage with the mandatory reconsideration process and fulfil additional requirements.

- DWP to request and pay for medical evidence from the most relevant professional in all cases where it is needed.
- A full review of all communications as recommended by the last Independent Review

## Question 12: Mandatory reconsideration

## Summary

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.

## Our evidence

Tribunal data shows that appeal rates for ESA have fallen dramatically- an 89% decrease between January to March 2013 and the same period this year.[7] But, without statistics specific to mandatory reconsideration outcomes, it's impossible to tell how much of an impact it has had on cases reaching the tribunal stage. It could be that decision making is getting much better with the provision of additional evidence at the mandatory reconsideration stage, and fewer cases are reaching the tribunal as a result. Or it could be that people are falling out of the system due to being unable to navigate

[7] Ministry of Justice- Tribunal Statistics (quarterly)- January to March 2014

Ministry of Justice- Tribunal Statistics (quarterly)- October to December 2013
https://www.gov.uk/government/publications/tribunal-statistics-quarterly-october-to-december-2013

the extra stage in the appeals process that mandatory reconsideration has introduced. Equally, as the introduction of mandatory reconsideration coincided with the withdrawal of legal aid it is very likely that the lack of free legal support has negatively impacted on the ability of many claimants to pursue their appeal through the justice system.

Citizens Advice has recently started to collect data on any ESA client who has asked for advice as a result of having "no money whilst waiting for reconsideration." In the first quarter of available data (April to June 2014), over 1580 people have sought advice on this issue. The majority of clients were recorded as white/British (73%), male (56%), single (55%), and with a long term health condition (64%). One in five are aged between 55 and 59 and one in four are private tenants. Almost 6 in ten had an income of £400 per calendar month or less.

Cutting off people's employment and support allowance (ESA) benefits while DWP give a second opinion on their claim is adding an unnecessary administrative burden, causing stress and leaving some people with no income for a significant period of time.

ESA claimants are also being told that during MR they need to apply for JSA, as they have been found fit for work. To allow this Jobcentre Plus staff are meant to take account of a claimant's condition and reduce their conditionality accordingly. We are finding that this is not working in practice. For example:

> **Case Study:** Eric, 57, suffered brain damage as a result of an industrial accident at work and has severe mobility issues and poor coordination. He was refused ESA after an Atos assessment and old to attend the Jobcentre to sign on for JSA but when he got there, his job coach told him that because he had a fit note, he couldn't. The job coach was extremely sympathetic and Eric noted how apologetic the jobcentre staff were. They encouraged him to ensure that he requested mandatory reconsideration for ESA. Because he was not entitled to either JSA or ESA, Eric was living on £50 per week from his DLA award. He couldn't pay household bills and was struggling to put money on the electric meter. He was referred for a food parcel but because the food bank was four miles away and because he uses crutches, he didn't think he could carry the goods back, so didn't take it. Eric felt angry and abandoned, and said "Sometimes I think I would be better off dead."

> **Case Study:** Anita from Watford had depression and severe mental health issues but was only given 6 points and refused ESA. She asked for her decision to be reconsidered and was sent to her local Jobcentre to apply for JSA while she waited. However her Jobcentre advisor told her that she would find it too difficult to attend interviews because of her mental health and therefore could not qualify for JSA. This left her caught between two parts of DWP with no money at all; one told her she was too fit for ESA and another telling her she was too unwell for JSA.

> **Case Study:** Martin was reassessed for ESA and was given 0 points. His case went for reconsideration, and during this time, his benefits were

stopped, including Housing Benefit and Council Tax Benefit. Martin was initially told the reconsidered decision would take 14 days but it took 5 weeks. During this period he tried to claim JSA but was told he couldn't do so because he was unfit for work.

A key theme emerging from '*The cost of a second opinion*[8]', our recent research into Mandatory Reconsideration was the inconsistency of communications surrounding mandatory reconsideration. Some participants received information by letter, some by letter and telephone, some by telephone, and some received no communication at all. Those who did receive communication from DWP reported varying levels of quality and content, and many were left confused as to what to do next. This was particularly problematic for those who suffered from mental health conditions, and a common theme was heightened anxiety due to not knowing what to do next.

Point 1 on the appeals journey is "I receive decision notification that includes details of disputes process". In around half of cases, clients received a telephone call from a decision maker at the DWP in which the decision to stop ESA was communicated. Most calls did not mention mandatory reconsideration as a potential next step, and some suggested that the participant make an appointment at the Jobcentre Plus to sign on for JSA. Some mentioned neither mandatory reconsideration nor JSA, and simply advised the participant that they had been found fit for work, and a letter would follow to confirm. In one case, the decision maker made an appointment at the Jobcentre Plus whilst on the phone with the participant, after indicating that the decision to stop ESA had been made.

**Case Study:** Jill, a 30 year old who has suffered from renal disease and kidney failure since birth, and bladder problems and mental health issues since the age of 13, was unable to attend the Atos medical through illness. She had called ahead to say she was too ill to attend, however she subsequently received a call to say that her ESA would stop. On the decision call, the DWP decision maker made an appointment at the local Jobcentre for the following week and told Jill to attend and sign on for Jobseekers Allowance. She didn't know anything about mandatory reconsideration until she attended the Jobcentre and the job coach made her aware of it.

Most clients interviewed as part of the research received a letter from the DWP confirming what had been said on the first call and again, there were varying levels of information about next steps. Some letters mentioned mandatory reconsideration by name, some suggested that the participant should contact the department by phone if they disagreed with the decision, and a few didn't mention anything about challenging the decision. This resulted in a number of participants approaching CAB for advice and asking what they could do next. Most had heard that the appeals process was different

[8] The cost of a second opinion, Citizens Advice, 2014

to before, but were not clear about what mandatory reconsideration was, or how to ask for it.

Point 2 on the appeals journey is optional. It says “I ask for and receive an explanation of DWPs decision” In one case, a CAB advisor representing a client who suffers from severe mental health issues was told that the client must take a telephone call from DWP before they could proceed with mandatory reconsideration. The purpose of the call was to explain the decision that DWP had arrived at. Due to this client’s mental health condition, she does not answer the telephone to numbers that she doesn't recognise, and was not comfortable with this proposal. The DWP insisted that without the completion of this step, the mandatory reconsideration could not be lodged, and the client was told that she would receive a call within three working hours. Although the client was able to answer the call, this resulted in considerable stress and anxiety.

Most of the research participants had little trouble lodging a mandatory reconsideration request with DWP, largely because CAB advisors drafted letters asking for the case to be reconsidered. When asked if they could have completed this task without help, most said that they wouldn't have been able to, due to confusion about who to call and what to ask about. No-one missed the thirty day deadline to submit a mandatory reconsideration request, but help was essential in getting the request in on time.

> **Case Study:** Alan, a 48 year old who suffers with depression and anxiety said: “I couldn't have done this on my own. I didn't understand what I had to do and found the whole process confusing. I'm happy that CAB were here to help because otherwise I might have missed the deadline to get this in”

Some participants received a letter saying that their request for mandatory reconsideration had been lodged, others did not, and instead felt compelled to call DWP to check on progress. As with initial communication, those who were in contact with CAB at this stage and had lodged the request in writing tended to get better results.

The amount paid to the claimant during the reconsideration period is the same whether they are on the assessment rate of ESA or JSA. Therefore asking people to claim JSA instead of ESA only saves the Government money if claimants ‘fall out’ of the claim process at this point and claim not benefits, thus subjecting themselves to severe hardship.

It has proved very difficult to establish a clear figure from the administrative cost of moving ESA claimants onto JSA for the period of their reconsideration. Currently only some of these figures are freely available to the public, and these do not equate with figures provided in response to a recent PMQ tabled by Sheila Gilmore MP[9]. **We would**

[9] These figures, provided in response to a PMQ on 15 July 2014, (http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2014-07-15/205883/ and http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2014-07-15/205882/) are markedly different

**urge the DWP to provide clarity on the costs of these activities to allow a full public debate about the value for money of this policy decision.**

In fact, we calculate that due to switching between different benefits during this time, it costs the department over £100 per case in administration costs.

| Close ESA claim | Open JSA claim | JSA initial interview | Maintaining JSA claim (p/week) | Close JSA claim | Open ESA claim |
|---|---|---|---|---|---|
| 10.89 | 13.72 | 20.37 | £5.88 p/w | 13.72? | 25.09 |

If we combine the figures above, the average administrative cost to the DWP of moving ESA claimants between ESA and JSA is a minimum of £83.79 per claimant, plus 5.88 per week to maintain the JSA claim. Assuming an average reconsideration of a conservative 6 weeks, the cost of this policy to DWP is 118.59. In addition to this direct cost, each claimant is likely to take up a degree of additional 'hardship' support, consisting of:

- Advice (from a CAB or other)
    - Caseworker @ £21.28 p/h
- Foodbank parcels (up to three in most areas)
    - Average value of £12 per parcel
- Local hardship payments or loans (where these exist)

In Sheila Gilmore's debate on 6 September 2013, Mark Hoban argued that the ESA claimants moving onto JSA in this situation would be able to secure modified conditionality to avoid sanction. However, on 11 June 2014, Jason Feeney, Benefits Director at the DWP, acknowledged in evidence to the Work and Pensions Select Committee that despite repeated assurances that this was the case, 'not all advisors had been aware of this', and as a result new guidance had been circulated at the end of April. We have seen little evidence of a change in Jobcentre Plus practices to reflect this. In addition, Mr Feeney said that people should never be refused JSA outright, without the opportunity to have 'a meaningful conversation about conditionality' with a Jobcentre Plus advisor. Yet DWP's own guidance specifically states that 'a claimant will not be able to remain on JSA if their period of sickness exceeds 14 days'. This is a particular problem for those claiming JSA during an ESA reconsideration.

Claimants interviewed as part of our recent Mandatory Reconsideration research also reacted strongly to the suggestion that they claim JSA, emphasising that it was not the correct benefit for their situation. Jim, 54, was self-employed and laid floors for a living. His job had resulted in increasing problems with his hip and he was advised to have a

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from those published earlier this year, in which the cost for the administrative elements pertaining only to JSA appear to total £162.76. We are following this up with the minister.

hip replacement operation so that he could go back to work. Otherwise, his hip would have deteriorated to the point that he would have to give up work for good. Speaking about the prospect of claiming JSA during mandatory reconsideration for ESA, Jim said "I don't need a job. I've got one. I just can't do it for a while. There doesn't seem to be any common sense applied."

For those who did claim JSA, none felt that they moved closer to the labour market, and none successfully found work. It was common to hear how they felt uncomfortable or out of place at the Jobcentre and struggled with confidence levels. Again, most were positive about the staff at the Jobcentre, but felt that the support on offer was too late in coming, and the job market was something they didn't recognise anymore.

One participant, who was in her late fifties, commented on how the Jobcentre was not a "place for her." She mentioned the posters in her local Jobcentre, which she said depicted "well dressed young people". She said this made her feel isolated and degraded, and said that it was not acceptable for her to have been left without employment support for decades, and then expected to apply for ten jobs per week, most of which she felt she was too old to do.

Three participants, all over fifty, completed a CV for the first time, but didn't feel confident that it would actually help with finding work. Colin, 58, had never used a computer, and was asked to complete a digital CV and apply for 10 jobs per week. As well as feeling incapable of doing this, he was extremely stressed about being asked to sign on for JSA when he didn't feel like he could work. He said "It felt like I was living a lie because I was telling them I was fit for work when I knew that I wasn't. My integrity is beyond reproach and I felt like I was lying to everyone".

Two participants had been previously mandated to the Work Programme whilst on ESA, and were extremely positive about the support they received.. When Atos assessments both resulted in the removal of ESA, they claimed JSA whilst waiting for the results of mandatory reconsideration. This was particularly problematic for one participant who was close to securing a supported 16 hour per week job. This job was only available to those mandated to the Work Programme who were also on ESA, and when he signed on for JSA, his eligibility for the job was removed. He said *"I was close to work, and then they moved me on to JSA and I couldn't take the job. I just don't see the sense in that."*

For those claimants who are unwilling or unable to claim JSA, the mandatory reconsideration period can feel like a punishment. Our research found that interviewees felt 'abandoned' or unfairly treated. Those with no other form of financial support are also left with no means of living from day to day. The research found that this significant financial impact was mitigated in many cases by borrowing money (up to £900 for one), selling items (a motorbike), and using up savings from working days.

Most interviewees were also unaware that other benefits such as housing benefit and council tax benefit would stop alongside ESA, especially those who were directed to Jobcentre Plus to sign on for JSA. Some were told by DWP on calls or via letter, but most found out through conversations with CAB, or when the councils called to discuss

non-payment of rent. This was particularly problematic for one participant, who had accumulated rent arrears of over £1000 due to her housing benefit being stopped.

The MR process is also failing on an administrative level. The process, designed to take two weeks, regularly takes 8 or more weeks to complete. A number of CAB clients have reported loss of MR request forms, delays in registering their claims, or problems with closing and reopening ESA and JSA throughout the process. This has led to cases such as:

> **Case Study**: Ester was declared fit for work despite having long term hypermobility and attention problems. She applied for mandatory reconsideration, so her ESA was stopped - however she was not informed of this and only became when she attempted to withdraw money from the bank. When she contacted DWP, she was told there was no record of her having applied for reconsideration, so nothing at all was happening to her claim. The problem was compounded because it was a joint application for the client and her partner. As a result neither was in receipt of ESA, Housing Benefit or Council Tax support during this time. They fell behind on their bills and had little money for the electricity meter. The client's partner could not afford anti-depressant medication and the couple were reliant on a foodbank.

*The cost of a second opinion* also found significant issues with delays. None of those clients interviewed received a decision within two weeks, and none presented additional medical evidence which would have reasonably extended the period of time this takes. Some clients called to chase up their claims and were told a variety of different things. Some were told that there were national backlogs, some were told there were local backlogs. Some were told to keep calling back for updates, some were told to wait on a letter. Two clients contacted MPs because cases were in excess of 10 weeks without a decision.

There was a considerable financial impact on those who were unable or unwilling to claim JSA during mandatory reconsideration, largely because of the amount of time it took for DWP to reach their reconsidered decision. Most said they could have coped if the decision was going to take two weeks as they were initially told, but eight to ten weeks resulted in significant financial pressure.

When participants or CAB advisors contacted DWP to check on progress, they were often given different timescales and different reasons for delays. Some were told that there was a backlog and decisions were generally taking around six weeks, some were told that decisions in their areas were taking longer due to higher numbers of requests. There seemed to be little difference in delays across England and Wales, but a quantitative study would be much more suitable in determining the validity of this claim.

The process has detrimental impacts on both physical and mental health. All clients commented on how this process has increased stress, anxiety and depression. ‘Alun’ (a

CAB client) described mandatory reconsideration as 'one of the worst experiences I ever had when being considered for benefits'.

**Recommendations:**

- Continue to pay people ESA at the assessment rate during the mandatory reconsideration phase. We have had almost 12,000 signatures on our petition supporting this proposal www.change.org/fitforwork
- Contact claimants by their preferred method throughout the Mandatory reconsideration process.
- Ensure that telephone calls made to claimants come from an identifiable number, providing an option to call back or seek support to do so.
- Ensure that the process of mandatory reconsideration is communicated in a consistent and straightforward way, and emphasis is placed on the provision of additional evidence
- 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
- Ensure that frequent customer surveys are introduced to assess levels of understanding of the process and overall satisfaction with communication levels.
- We would urge the DWP to provide clarity on the costs of these activities to allow a full public debate about the value for money of this policy decision.

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## Question 13: The WCA process as a whole

## Summary:

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:

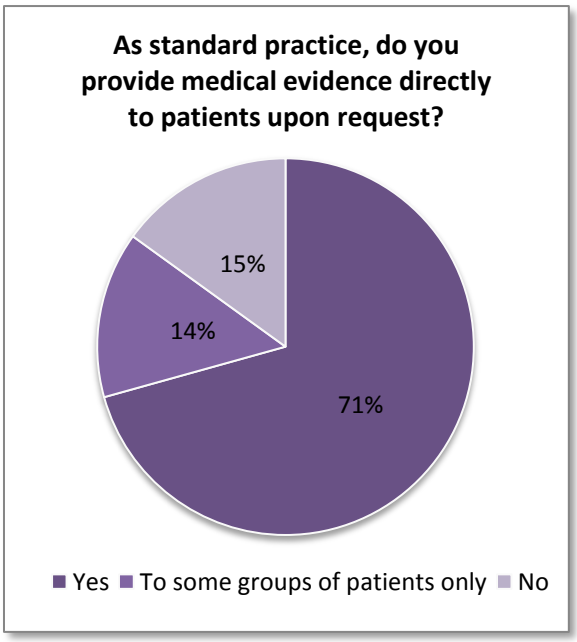
- The failure of DWP or the contracted assessment body to seek or subsidise medical evidence on behalf of claimants, particularly the most vulnerable.
- Multiple failures in the quality of the experience for claimants, specifically:
    - Discrimination (particularly under the Equality Act 2010 and in 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

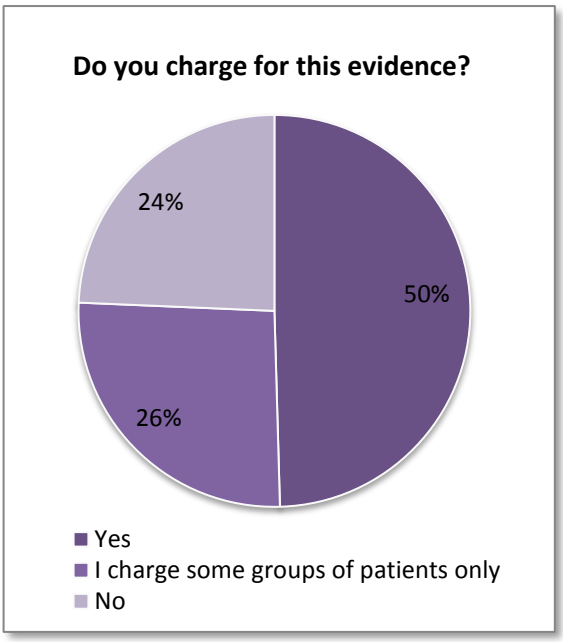
- Inefficiency and maladministration of claims (including loss of paperwork and failure to keep to specified arrangements or timescales)
- Incorrect decisions
- Removal of ESA during the Mandatory Reconsideration period

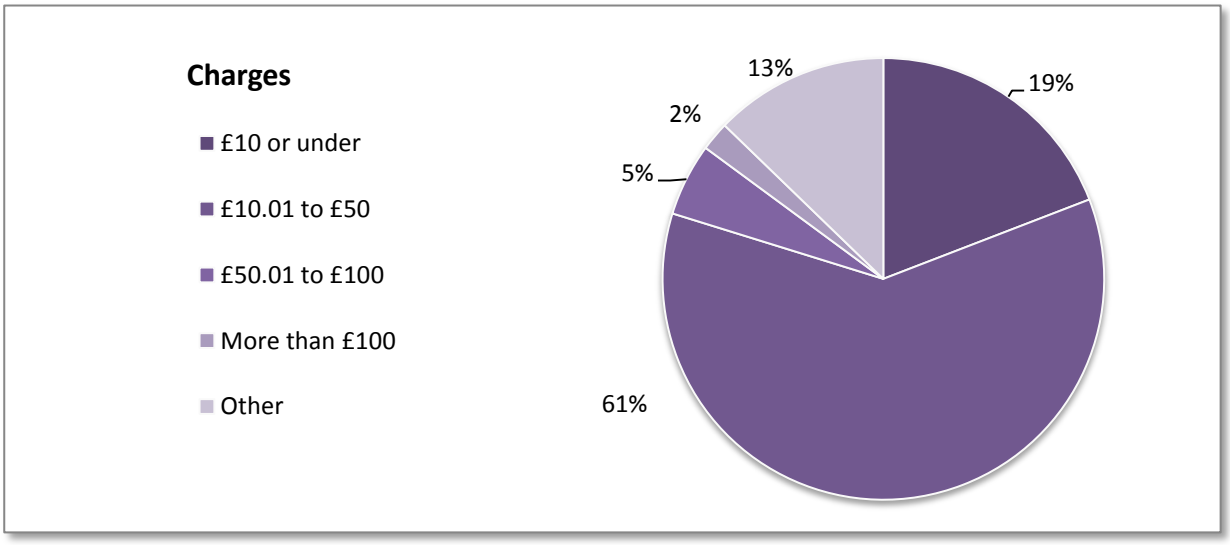
## Our evidence:

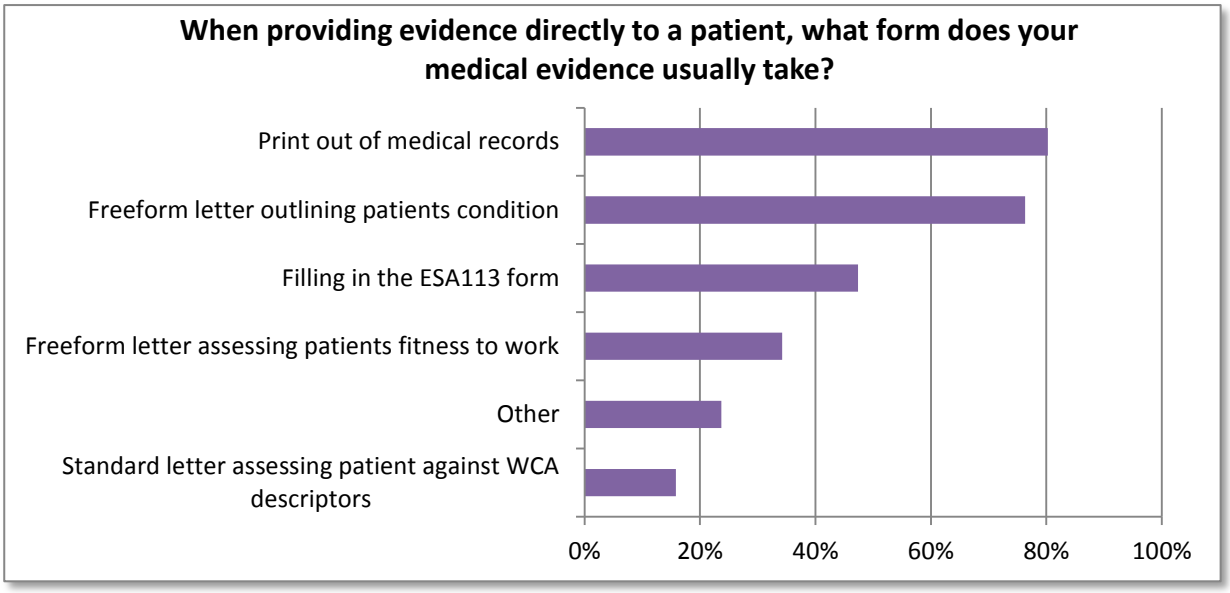
### Medical evidence

Citizens Advice has long believed that it is unfair to expect disabled people to source their own evidence and to pay up to £125 for it to support their ESA claim. As part of our *Fit for Work?* campaign, a recent Citizens Advice survey found that 15% of GPs do not provide medical evidence to patients. Of those that do provide this evidence, 50% charge everyone and 26% charge some people. Disabled people are more likely to get an accurate decision if they can source and afford medical evidence. But this two-tier system exposes people with mental health problems or learning disabilities to significant detriment, as recognised by the Upper Tribunal's 'interim' Judicial Review judgement that the WCA process puts people with mental health problems at an unfair disadvantage.






We asked respondents to provide their rationale for charging. Reasons given included:

- *The charge is for more detailed medical evidence. The evidence is provided when the patient is worth supporting.*
- *We get many requests for information which is not always required by a third party – we charge the fee for our time and administration of the task and to ensure that patients are committed to wanting this evidence.*
- *In line with BMA guidelines – to cover GP time/administration/postage costs as activity is non-NHS funded.*
- *We regret having to charge patients who can least afford it any fee at all. The fee is to provide a disincentive to request information that is not really required.*
- *To cover admin time. Also to try and discourage requests. We tell patients to get Atos to write to us directly.*

When we asked GPs who set these charges, we were concerned to discover that many thought that guidance had been set at a national or regional level or were adhering to blanket policies set by Practice Mangers. However, only 24 per cent of GP surgeries surveyed had an agreed, written policy on the provision of medical evidence to patients as part of the ESA Work Capability Assessment (WCA) process.

Whether part of an agreed policy or not, respondents suggested that individual practices and GPs are the key decision-makers in determining if and how evidence is to be provided. This extended to offering exemptions to set policies for sympathetic patients and even, it was suggested in follow up interviews, raising the threshold for patients deemed 'timewasters'. There is little consensus around other stakeholders with the power to determine guidelines for medical evidence provision.

We also asked if respondents could identify any changes to the system you which would make it easier for them to provide medical evidence free of charge to the client. The majority of respondents to this question suggested simplifying the process,

providing clearer guidance and ensuring payment was maintained through contract. Verbatim responses included:

- *Standard ESA forms are easier to process compared to patients requests for letters and supporting evidence*
- *Would like to see a standard letter from the DWP, paid for by the DWP. Is very unhappy that GPs' time is taken up for free. It is unfair that patients are required to obtain their own evidence.*
- *A specific form detailing exact requirements, rather than patients asking for all of their records each time.*
- *Need for evidence should be fully funded and should not require patients to request this evidence.*
- *Free for the patient would need reimbursement from another source. If providing sick notes that should be medical evidence enough.*

**Duty of the DWP to request evidence from the most relevant health and social care professionals:** We do not believe enough use is being made of the ESA113 or FRR3 forms and as a result too many seriously ill people are being called for a medical and then being measured against descriptors which do not necessarily fit their problems.

The ESA 113 form asks about the patient's condition and, crucially, whether their condition affects their day-to-day functioning. However, it was sent out in only 23% of cases in 2012 (Atos, 2013). The FRR3 form, which is sent out to other clinicians in some circumstances (DWP, 2012), is so rarely used that even DWP staff contacted through the benefit enquiry line had "never heard of it"[10].

GPs are also given the most prominent billing in the ESA50 form and there is limited space to mention other more suited Health and Social Care professionals. However, it may be crucial that an HCP who isn't the applicant's GP, provide medical evidence.

> **Adviser interview:** 'I believe the form is only sent to GP's. A GP may not be the most appropriate person to obtain supporting evidence from for a client's ESA application - this might be because the client is seeing a consultant / specialist or has for example a key worker because they have mental health issues.' – Gary (adviser)[11]

We were pleased to see that Dr Litchfield last year recommended that the DWP continue to work with BMA to develop and co-design a revised electronic ESA113 with the aim of simplifying the process for GPs and improving the quality of evidence available. We are currently awaiting the results of conversations between the DWP and BMA regarding the methods through which supporting evidence might be gathered in a more efficient, meaningful and non-time-consuming way.

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[10] Reviewing the ESA Application Process: Medical Evidence and the Work Capability Assessment – Rushmoor CAB

[11] Reviewing the ESA Application Process: Medical Evidence and the Work Capability Assessment – Rushmoor CAB

We are not suggesting a return to the situation where the client's GP has the final decision on whether or not someone can work**. We do strongly believe, however, that the knowledge of a client-nominated Health and Social Care professional about the client's medical condition is an important element of the decision making process, and hence both the ESA113 and the FRR3 should be used much more frequently.**

**Guidance on effective evidence:** Currently, the lack of guidance for health and social care professionals leads to the provision of ineffective evidence in some cases. Advisers argue that HCPs rarely fill in any details on the ESA113 form regarding WCA descriptors their clients might meet. This is because they can often tick boxes and still fulfil their contractual obligation.

Additionally, the ESA113 offers limited space to fill out details regarding descriptors if completed by hand. The language used also discourages detail, for instance it asking '*if known* from your knowledge of the patient… provide a *brief* explanation [emphasis added] of your patient's difficulties' (DWP, 2014, p2).

This lack of clarity leads to situations such as the following:

> **Case Study:** Jeremy is in receipt of ESA - having transitioned from IB - and also receives DLA (lower rate). He has been placed in the WRAG and has been advised and assisted to appeal to go into the Support Group. The additional evidence he requested from his doctor took the form of a letter containing just 20 words which stated what illness client had. Jeremy had to pay £20 for this.[12]

> **Case Study:** Jonathan was in receipt of IB for a longstanding back injury which has led to sciatica and problems with his right ankle. He was refused ESA following an assessment. A CAB adviser went through the descriptors and felt that Jonathan should have qualified for the benefit, as he cannot walk more than 100 metres without stopping due to pain. The 300 metre walk from car park to bureau had taken him 25 minutes due to his need for frequent rests. Jonathan decided to appeal and asked his GP for a letter supporting this, but it was only a simple computer printout stating his diagnosis, which wasn't much use for DWP.

Our conversations with national bodies representing various health and social care practitioners, in addition to views highlighted through our medical evidence research, suggest that **clear guidance on the provision of effective evidence, and the establishment of standard proformas on which to record this evidence, would dramatically decrease the workload of those health and social care professionals providing such evidence and ensure that its relevant to the WCA process was heightened.**

[12] Client case study, Aberavon CAB, cited in 'Getting Britain Back to work' (Swansea CAB , 2014)

**Consideration of medical evidence:** In many cases there will be enough information in the medical records to make a decision without the need for a medical assessment. We frequently hear of clients who have taken medical letters to their assessments (often written for other purposes, but with clear factual information about their medical condition) only to have them ignored by the HCP.

**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.**

## Quality

There are three major quality issues evidence in our clients' experiences of the WCA system. These are:

- The poor quality of the client experience throughout the process, and particularly at the face-to-face assessment
- The continued production of poor quality or factually incorrect reports by Atos healthcare professionals
- The lack of an independent quality assurance and assessment process allowing claimants to feed their concerns back into a process designed to ensure continuous improvement of the service provided

The cumulative effect of a process requiring engagement in complex form-filling exercises, beset by delays and centring (for many) on a frightening depersonalised face-to-face assessment; often culminating in a decision then overturned at appeal stage; have a severe and negative impact on the clients we see. The negative impression of the WCA so prevalent across the media could be dramatically improved were the process as a whole reviewed with regard to the cumulative impact of these issues in mind. Ensuring that claimants receive early indications of the service they can expect to receive and a timely – and unsolicited – apology for delays, mistakes and maladministration might go a long way towards improving attitudes towards ESA.

**The face-to-face assessment is a particular source of concern for many claimants and would benefit from a radical overhaul.**

### Poor quality assessment and inaccurate reports

Citizens Advice has long had concerns about the accuracy of the WCA reports that Atos provides to the DWP as part of the DWP decision-making process. *Right first time?*, our indicative study of the accuracy of such reports, found worrying levels of inaccuracy, with over two thirds of reports exhibiting have at least a medium level of inaccuracy and around 40 per cent demonstrating such a serious level of inaccuracy that they were likely to lead to the wrong decision being made.

*Right first time* found evidence of omissions or incorrect observations, incorrect factual recording of medical histories, unjustified assumptions about the claimant's condition,

and a lack of empathy shown. In summer 2013, Monmouthshire CAB carried out a study of 56 ESA claims that had gone to tribunal, and found 44% of the appellants were suffering from ME, Fibromyalgia, depression, mental health or alcohol related issues - suggesting a lack of understanding of the way in which these problems affect work capability on the part of those undertaking the assessment, or insufficient guidelines. 70% of these clients were awarded benefit on appeal. 30% of appellants who were awarded ESA on appeal had been awarded 0 points at their work capability assessment, including two who were awarded 24 and 27 points by the appeal panel.

Current evidence indicates that many of these issues remain or have become more pressing. The 2014 Big Benefit Survey found that of those clients who had seen a copy of the report of their face to face assessment, just 8% said it was an accurate reflection of the answers they gave. In 2010 the figure was 9%. Nearly 9 in 10 respondents (87%) feel that assessors have not improved the accuracy of their reports on claimants compared with 2010. Over 8 in 10 believe that the WCA does not accurately identify who should be classed as fit for work, placed in the WRAG or the support group.

Problems reported to Citizens Advice range from individuals with uncommon conditions and mental health problems reporting a complete lack of understanding of the implications of their illness by the HCP, to those who felt that answers given were used to infer unrelated conclusions about fitness to work or that examples of their fitness were entirely fabricated. For example, one client in Swansea was reported as 'going fishing' when in fact he has never been fishing at any time in his life. Another client found that his report stated that he regularly walked to and from a corner shop to buy milk – a claim he disputes as not only is he unable to travel that distance without serious pain and regular rests, but he has also been a vegan for a number of years and does not drink milk.

We were pleased to see that DWP decreased the percentage of 'poor quality' reports deemed acceptable from 5% to 4% last year. However, the lack of strong, enforceable penalties associated with this threshold presents only a tenuous incentive for providers to improve the quality of this reporting.

> **Case Study:** A CAB in Bedfordshire reported the extremely serious case of Stephen who suffered from epilepsy. He had to leave his job after his condition worsened culminating in him having a large seizure at work. He applied for ESA and was put in the Work Related Activity Group (WRAG) following a face to-face assessment by Atos. Both Stephen and his carer, who attended the WCA with him, were concerned by their experience. They reported that the assessor did not seem to understand the limitations caused by the risk of seizures, and asked questions which did not seem appropriate such as if he could touch his toes or lift things. As part of being in the WRAG, Stephen was required to take part in the Work Programme, but both an adviser from the provider company (Seetec) and his own hospital consultant neurologist agreed that he had been put in the wrong group and could not participate in this activity. He had suffered symptoms

of an impending seizure whilst doing a computer job search, and had recently been admitted to hospital because of a severe exacerbation of his condition which meant that he was at high risk of seizures which could now be fatal.

**Case Study:** Despite serious mental health issues Elaine scored 0 points at her WCA and was found fit for work. On appeal she was placed in the support. During the hearing, she could be heard talking to herself and often stood up and wandered around. At the WCA, the assessor had noted that the client was talkative, but failed to see how inappropriate this behaviour would be in the workplace.

**Case Study:** Samia is 61 years old and has severe osteoarthritis, asthma and incontinence and was allotted to the work related activity group of ESA, without medical examination. The assessment said that it established she could walk up to 100 metres, even though her evidence said she was in extreme pain at any distance. She was also assessed as having manual dexterity even though she could only press a single button; any attempt to press multiple buttons would be impossible because of pain. Samia has been required to go to employment related activities to continue to receive ESA. DWP did not either accept client's own medical evidence or arrange a medical examination.[13]

**Pauls Story (from our blog):** According to my WCA assessor I can read N15 text at 50cm with my left eye. This is impossible - I have monocular double vision (double vision in both eyes) regardless of which one is covered. This sight test was not carried out in accordance with laid down sight test procedures or at a known distance. The assessor goes on to state that I regularly travel to York. I have not been to York for almost 25 years.

The report declared that I am fit to use machinery and computers, and to do heavy labour. My Opto-neurolgist and my optician say I cannot use revolving machinery as I cannot safely judge distances and speeds, while the IBS consultant states that I should not do heavy lifting. This report contradicts everything that I have in writing from people far more qualified than the assessor. I was also informed that Atos had not contacted the IBS clinic or the consultant Gastro surgeon that I have been under for more than 15 years for any information. As a result of this I am now losing my ESA as of 30 March.

**In cases such as these we would argue that the WCA provider has failed in their duty to provide high quality assessments, and hence that leveraging a financial penalty if these reports are later found to have prejudiced an ESA application would be a sensible method of improving quality.**

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[13] Swansea CAB 'Getting Britain back to work', 2014

### Lack of independent quality assurance

Over the past six years Atos has consistently reported a high customer satisfaction record, and quality assurance procedures set by DWP have not identified dramatic failings within the system. However, the experience of our advisors, who regularly help people who are furious at the way that they have been treated, suggests that Atos might not be asking the right questions. This is likely to be because the areas of focus in the current quality assurance process are not congruent with the issues experienced by claimants and therefore do not come up in structured phone interviews or questionnaires.

**We are therefore calling on DWP to introduce regular independent scrutiny of their satisfaction surveys. Citizens Advice recommends that the quality assurance process be outsourced to an independent provider with experience in consulting or working with disabled people; and that the content of the questions be amended to ensure that claimants are encouraged to give a full outline of the quality of their experience at all parts of the process.**

### Delays

We are very concerned by the current 700,000 person backlog in the ESA assessment system. Citizens Advice Bureaux continue to report worrying delays in people being invited to their Work Capability Assessment, including reporting seeing ESA claimants waiting up to 2 to 3 months after the 13 week assessment period for an assessment. This extends the period during which disabled people have to manage on very limited incomes – any eventual benefit award is backdated but this does not compensate for the debts that may have been built up in the meantime. Those claimants living in areas with local support schemes which rely on receipt of ESA to determine eligibility are also likely to lose out as these benefits – whether financial or in kind – are not likely to be backdated. Extended delays in the process also compound the stress and uncertainty inherent in claiming the benefit.

> **Peter's story:** Peter faced a 5 month wait for a Work Capability Assessment and found it increasingly difficult to meet his mortgage repayments. He suffered from anxiety and was further depressed at the long wait and uncertainty about what his financial position would be going forward. The delay also had an impact on any other benefits he might be entitled to.

> **Derek's story:** Derek waited four months for a face-to-face assessment. Having first applied in early January 2013, he was sent an appointment by Atos for June. This was then cancelled and a new appointment sent for July. At the end of August Derek still had not received a decision – the bureau were told that this was because the case had been selected for audit, which causes additional delay. Derek suffered from depression and anxiety, exacerbated by the delays and the difficulty of managing his day-to-day expenditure and outstanding debt repayments on his reduced benefit income

**Kevin's story (from our blog):** I am a UK Veteran and I receive a War Disability Pension. I also had a Stroke 7 years ago this June, it left me with limited mobility all down my left side and 24/7 "Central Post Stroke Pain". I received an Atos fitness for work questionnaire just before Christmas, with a deadline for return of the 26th December 2013 (as if anyone would be working then). Less than a week later I received a reminder from Atos, saying that they have not yet received my form. It is now the 4th February 2014 and I have heard nothing from Atos, despite their covering letter stating that it was "Urgent".

**Case Study:** Giovanna suffers from severe arthritis. She made a claim for ESA in May 2013 and was paid the basic rate of £71.70 a week. Under the guidelines for ESA she should have been called for a medical assessment of her entitlement to a higher level of payment after about 13 weeks. However 9 months later in February 2014 she had still not been offered an appointment for a medical assessment. When Giovanna came to her local bureau they contacted DWP, and a Belfast "Escalation Unit" emailed a response confirming that they would contact Atos to request that her assessment be treated as an urgent referral (although they also noted that Atos seemed to be taking a long time to reach even urgent referrals, and the Unit could not do anything more to speed up the process.) A month later she was still waiting for an appointment. The bureau telephoned Atos and were told that it could still take another 16 weeks before Giovanna could be offered an appointment. In that case she will have remained on the basic level of ESA for more than a year before her work capability is medically assessed.[14]

Overall, delays will only be remedied through further investment in staff and assessment spaces to ensure that claimants move smoothly through the process. However, in order to mitigate the negative impact of delays, additional, regular communications would help to reassure claimants of the status of their ESA claim and allow them to prepare more effectively for upcoming activities.

### Reassessment

Citizens Advice continues to be concerned about the frequency with which ESA recipients are reassessed for their benefit, often only months after they have been successful at appeal, which will likely have taken a year or more to be resolved. The 2014 Big Benefits survey found that two thirds of advisors (66%) believe that claimants are being reassessed more frequently than in 2010, while 9 in 10 (92%), believe that the frequency of assessments is having a negative impact on claimants' health.

**Janice's Story (from our blog)**: I have several chronic illnesses and am disabled. I submitted my claim for ESA in July 2013 – delivered and signed

[14] Richmond CAB ESA report 2014

for – I STILL haven't heard anything! It is now February 2014 – 7 months! Last time I phoned JCP – just before Christmas – they told me Atos hadn't even looked at it yet. Every time I try to get through to JCP there is a 30 – 40 minute wait and then they are very unhelpful, often rude. They are clearly very stressed. But not as stressed as I am – by the time I get a decision it will be time for me to start another claim form. It is a nightmare. I need to change my doctor but feel I can't do it now as if they contact me for more information, I will be with a new doctor who doesn't know me. I am stuck. I have developed mental health issues since this has all happened – I never had them before.

**Brian's Story (from our blog)**: I have been for 2 assessments by Atos in the last 3 years. I was not told by either Atos or DWP about the cycle of assessments so when I was recalled for a second assessment after approx. 6 months I first thought there had been an admin error. Atos would not engage with me or reply to my query at all. Eventually the Jobcentre responded to my letter of enquiry and explained the situation. My second assessment was done by a Doctor and instead of being on a 12 month cycle I was put on a 2 years cycle. The whole process now hangs over my life like a dark cloud and does nothing to help the anxiety I suffer waiting for that envelope to drop through the door.

## Recommendations

- The Department of Work and Pensions (DWP) should listen to evidence from the health and social care professionals who know claimants best.
- The medical evidence required to make each claimant's case should be provided free of charge.
- A tougher new contract so the new company providing work capability assessments will be held accountable for poor reports and bad customer service through (but not limited to) financial penalties.
- The DWP should continue to pay people ESA while a second opinion is given on their application
- Ensuring that claimants receive early indications of the service they can expect to receive and a timely – and unsolicited – apology for delays, mistakes and maladministration
- 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
- The ESA113 and the FRR3 should be used much more frequently
- We are therefore calling on DWP to introduce regular independent scrutiny of their satisfaction surveys. Citizens Advice recommends that the quality assurance process be outsourced to an independent provider with experience in consulting or working with disabled people; and that the content of the questions be amended to

ensure that claimants are encouraged to give a full outline of the quality of their experience at all parts of the process

- Overall, delays will only be remedied through further investment in staff and assessment spaces to ensure that claimants move smoothly through the process. However, in order to mitigate the negative impact of delays, additional, regular communications would help to reassure claimants of the status of their ESA claim and allow them to prepare more effectively for upcoming activities.
- The face-to-face assessment is a particular source of concern for many claimants and would benefit from a radical overhaul.
- Clear guidance on the provision of effective evidence, and the establishment of standard proformas on which to record this evidence, would dramatically decrease the workload of those health and social care professionals providing such evidence and ensure that its relevant to the WCA process was heightened.

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## The WRAG and Support Group

### Question 15: group allocation (general)

#### Our evidence

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.

DWP figures suggest that on average, 37% of appeals have resulted in the original work capability decision being overturned since 2008. While appeal statistics from the most recent period available (April 2012 – March 2013) suggest that more decisions are right first time, with a decrease to 32% of appeals overturning the original decision, this movement is not fast enough and a significant proportion of claims are still judged incorrectly the first time around.

**Case Study:** Eldora is appointee for her 28-year-old son who has autism and learning difficulties with a mental age of 5 - 8 years. He needs constant supervision from family and support workers, cannot go out alone, frequently soils himself and does not clean himself unless prompted, behaves inappropriately and sometimes aggressively. On migration from IS to ESA he was put into the WRAG and was only transferred to Support Group on appeal, supported by the bureau following his first work-focussed interview at the Jobcentre, a process which he did not understand at all. After little more than a year he is being reassessed with a new ESA50 to complete, despite having been in receipt of the highest rate care and higher rate mobility components of DLA for most of his life

**Case Study**: Ayse was treated for mouth and throat cancer in 2012, and was still suffering from the after effects of surgery and radiotherapy into the following year. As of December 2013, she was still due another operation on her mouth. She was re-assessed from ESA in August, was not asked to attend a medical examination. The DWP decision maker put her in the work related activity group on the basis of the ESA50 alone, despite having information which showed that Ayse meets at least one, possibly two, of the descriptors in Schedule 3 of the ESA regulations, which would place her in the support group. Ayse subsequently had her ESA sanctioned because she was too ill to attend a work-related activity appointment with a work programme company.

We are also concerned about the allocation of those with serious and progressive conditions to the WRAG. It does not make sense to place those with deteriorating health in a group which expends government resources on bringing them back into employment and constitutes a source of stress and pressure for the claimant, where medical opinion agrees that a return to work would be unfeasible in the short or long term. We are especially concerned that the default position for someone with a life expectancy of 1 year is the WRAG unless they meet the descriptors for the support group.

## Recommendations

- create a (reciprocal) information sharing process between the WCA, JCP and employment support – 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

# Mental Health and Learning Difficulties

## Question 16(a): Group allocation (mental and health and learning difficulties)

## Summary

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.

## Our evidence

In his 2013 review of the WCA, Dr Litchfield said 'its simplicity runs the risk of oversimplifying multifaceted health conditions and the way that people deal with those conditions which may be very complex.' [15] Our evidence supports this and many of our clients with mental health conditions, progressive or fluctuating illnesses find that the WCA does not adequately capture the complexities of their condition or disability, and the extent to which their conditions or disabilities prevent them from working.

Despite attempts at improvement, neither the ESA50 nor the face-to-face assessments appear suitable to investigate the impact of mental health problems or learning difficulties on ability to work. The complexity of the forms means that bureaux see A HIGH proportion of this client group, offering more in depth support, simply to assist them to fill in the form and comprehend the information they are required to provide.

> **Case study:** Mike was a previously homeless care-leaver with no qualifications and without employment for the past 20 years, has a long term mental health condition and is recorded as having made five suicide attempts this year. The client was assessed by Atos as suitable for the work-related activity group (WRAG) when they transferred from IB to ESA. A Citizens Advice adviser attended a work-focused interview (WFI) with the client and mentioned that client may appeal for Support Group, given his worsening mental health, suicide attempts and his social worker's confirmation that he should be living in supported accommodation. The DWP representative carrying out the WFI stated that she did not need to know his personal circumstances; he was just there to discuss work. The client was informed that the Support Group was closed to all but the terminally ill with six months to live. The adviser challenged this and it was

[15] Litchfield, Dr P (2013) *An Independent review of the Work Capability Assessment - year 4*

restated as fact. He was also told that because he has no qualifications, he will have to study English and Maths.

**Case Study:** Paul is 45 and has been diagnosed with Aspergers Syndrome. He also suffers from chronic fatigue. He receives DLA lower rate care and mobility and receives a great deal of day to day support from his mother. Paul is currently very distressed and overwrought because he is waiting for a medical assessment for renewal of his ESA. When he was initially transferred from IB to ESA he had an Atos medical assessment that was undertaken by a physiotherapist who was not qualified in mental health and had no understanding of his condition. She was in a rush and panicked Paul, who froze and was unable to answer the questions correctly. His mother said he was so overwhelmed and distressed he had to lie on the floor afterwards to recover. The outcome of the assessment was that he was put into the Work Related Group. He found this incredibly stressful, so much so that at a Working Links interview he attended the interviewers called a halt to the interview saying that they needed to 'stop this torture' and gave him a number to ring to ask to be put into the Support Group. With help from the CAB the Client was put into the Support Group in July 2013 for a period of 12 months but he has now been called for another medical.

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## Question 17 (a): General improvements for this group

### Evidence

### The Face-to Face assessment

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. Rushmoor bureau carried out a series of interviews with this client group which highlight a number of key flashpoints around the face-to-face assessment – extracts from these are cited below.

Mental health suffers regularly report finding the journey to their face-to-face WCA traumatic due to problems using public transport or anxiety at long or unfamiliar journeys. The assessment centres themselves also pose particular problems for claimants with mental health issues and learning difficulties.

'I have been off work for two years with severe depression and public transport sends me into a tailspin. So I arrived flustered.' – Amy

'Priscilla' submitted evidence to Citizens Advice for this review regarding her experiences of the assessment process. She said 'going home, I remember thinking 'I am not backwards. I am not thick'… [the assessor] did not know me. She did not understand the debilitating effects of mental illness. Why was I not allowed my doctors notes?'

Clients were disappointed by a lack of medical expertise and capacity during the assessment. Firstly, clients felt that some HCPs lacked an understanding of mental health issues. Many HCP questions were almost impossible to answer for certain clients. Moreover, there was lack of appreciation that some individuals, such as those with social anxiety complications, may take some time and attention to adapt to the assessment surroundings. Additionally, assessors didn't always appear to comprehend the potentially negative effects of questions requiring claimants to recall traumatic life events.

'I got quite upset for some of the questions cause I get quite low… I was contemplating suicide… it was hard to talk about it. I don't know if they were that trained on mental health.' – Samantha

'I didn't feel like I could explain myself, because of my illness, meeting strangers is stressful, and I take time to get my footing.' – Amy

Priscilla felt that 'my fate was sealed before I had walked through the door [of the assessment centre]'. She was so concerned that she would be found fit for work following her face to face assessment that she sold her property in order to raise funds to live on. She told us 'I live very frugally [because] I cannot go through the torment [of another assessment]'.

For some individuals, the assessment day was severely traumatic. The negative experience of the assessment day led to a deterioration in the mental health of several claimants. In one case a woman broke down and suffered a relapse in her depression. After the assessment centre she attempted suicide.

'I went home and cried. They don't see the fallout, when you get home behind closed doors. You have to see the whole day. It triggered the depression to what it was… I attempted suicide… They just didn't care.' – Grace

'I got quite upset for some of the questions cause I get quite low… I was contemplating suicide… it was hard to talk about it.' – Samantha

### Communication

Clear, coherent and sympathetic communications are vital for populations experiencing mental ill health or exhibiting learning difficulties. Unfortunately, as indicated in earlier portions of this submission, communications are often lacking across the board – and

the problems that these inappropriate, delayed and often complex communications cause this claimant group clear and significant harm.

> **Case Study:** Frank is the father of 38 year old autistic son with learning difficulties and incontinence. His son has been on DLA and Severe Disablement Allowance since 1992 and migrate to ESA in January 2014.The client was very upset at the tone of letters from DWP, describing them as full of work 'sanctions'. He felt that as his son would not be able to get himself to the Jobcentre alone, and would not speak to strangers, the letters seemed to take no account of any of his problems.

> **Case Study (from our blog):** My 23 year old son has had mental health issues for 5 years. He has been in the past referred to the early intervention team for mental health, been to psychiatrists and on medication. He was on ESA and disability living allowance but in the summer of 2012 was assessed fit for work and therefore had to go and sign on unaided without the support from mental health team. When I phoned the ESA department my first port of call was a man that was not at all helpful - I got a little upset and he hung up on me. My son signed on 2-3 occasions and then stopped as he couldn't cope with the stress of being somewhere at given time and he told me the advisor was not nice and that he felt pressured to look for work he felt unable to apply for. I know with the right support he would be doing a lot better.

### The WRAG

A tailored approach to the provision of effective support to claimants with mental health issues and learning difficulties through the WRAG has the potential to successfully support this client group into appropriate employment – yet we have seen little evidence of support providers adopting a more personalised approach.

> **Case Study:** Jon is a single male, on the autistic spectrum, suffering from anxiety and diabetes. He has been placed in the work-related activity group for ESA and been given a Work Programme provider called Prospects. The client is keen to work, but Prospects, who call the client once every 3 weeks, do not seem to have set up a work plan for him. Instead he has found himself a voluntary position at the Community Furniture Project.

> **Case Study:** Helal has a diagnosis of autism and mental disability. He managed to work for 20 years but then could not carry on because of experiencing problems with anxiety. Since then he has been receiving ESA. He is in the work related activity group which necessitates work related interviews which client finds extremely upsetting. His experience of having to interact with the DWP and JCP has been very negative. He says that he has been treated dismissively and not been listened to concerning his problems. He would like to receive IT education to work from home but

has been told that this is not on offer from the DWP. This has led to a relapse of his mental condition.

## Recommendations

- Where clients do not have a current specialist support worker they should be offered a designated personal adviser to support them through their claim
- There should be a system in place to 'flag' claimants who have mental health problems, and in all cases where mental health needs have been identified, medical evidence should be collected before an assessment takes place.
- A complete review of the assessments for those with mental health issues. Often clients have very cogent medical evidence from specialist consultants that is dismissed by Atos and the assessor. This evidence could be sought as a matter of routine for specific types of health conditions in order to avoid the need for a medical assessment and reduce delays in decision making. It could serve to support those with mental health problems more effectively.[16]
- Further use of mental health champions and the recruitment of additional mental health specialists to assess clients with high-level needs

[16] Swansea 'Getting Britain back to work', 2014

## Thanks and acknowledgements

This submission drew heavily on the Citizens Advice report *The cost of a second opinion*, 2014.

Full version available at:
http://www.citizensadvice.org.uk/the_cost_of_a_second_opinion_report_july_2014final2.pdf

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    - Monmouthshire CAB

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