

Decision making on Employment and Support Allowance claims

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This report covers findings from a small-scale qualitative study commissioned to understand more about how Decision Makers (DMs) make judgements in the minority of Employment and Support Allowance (ESA) cases where they potentially face conflicting evidence or are unsure which outcome should be awarded. For the purpose of this summary these cases will be referred to as 'borderline'.

The research involved 10 group discussions with DMs across 5 Benefit Centres (BCs) and 10 depth interviews with Atos Healthcare Professionals (HCPs) responsible for conducting Work Capability Assessments (WCAs), which took place in September and October 2011.

The research explored overall views on the role of the DM, the types of cases that tended to be borderline and the approaches to reaching a decision on these, relationships between Atos and Benefit Centres and the training and guidance available for DMs.

Key findings

The role of the Decision Maker

All DMs participating in the research were aware of the key recommendations made in the Harrington Year 1 Review of the WCA¹ around improving the fairness and effectiveness of the WCA specifically, and empowering and investing in DMs so that they are able to make the correct decision on ESA claims. For the most part they considered this appropriate and welcomed the recommendations and felt that there had been initial movement towards greater empowerment of DMs.

¹ Harrington, M., *An Independent Review of the Work Capability Assessment* (November 2010).

However, many felt that by the time of the research, subsequent guidance that they had received afforded them less control over decision-making. Some felt that they still had the ability to reach their own decision over borderline cases where they disagreed with the Atos advice, while others felt limited in this respect. The latter group included DMs who felt they had been expressly told that they could not make a decision that ran contrary to the Atos advice without securing Atos agreement to do this (which they had found Atos reluctant to provide).

Generally, DMs needed further clarity on how to approach decision making.

Borderline cases

None of the Benefit Centres covered by this research had specific procedures for identifying and handling borderline cases. Typically, these more complex cases were those that DMs came across in their normal caseload of claimants likely to be disallowed but where they felt that there was reason to question the advice of the HCP who had conducted the WCA. Cases that DMs found more difficult to reach decisions on were not generally limited to those that were on or near the WCA points boundary of two ESA outcome categories.

For most DMs, the WCA report compiled by Atos was considered to be the main piece of evidence when assessing a case and in the majority of these cases, the advice given by Atos in this report was followed. The proportion of cases where DMs sought clarification or guidance from Atos or acted against the advice of the WCA report was small. DMs struggled to quantify the volume of cases involved but estimates given tended to be around the 1 in 40 mark. DMs who felt that some of their decision

making power had recently been revoked stated that in the immediate aftermath of the publication of the Harrington Year 1 Review this volume had been much higher but they had been under pressure to reduce it.

Where DMs felt that there was evidence that ran against the advice in the WCA report they could either choose to raise queries with Atos and ask HCPs to review the case or they could choose to change the points allocated under particular descriptors² without recourse to Atos or to apply Non Functional Descriptors (NFDs). Some felt they had been instructed that only the former option was open to them and that – in cases where Atos did not agree with their suggested amendments they were forced to ‘rubber-stamp’ a decision that they were not satisfied with.

This research interviewed relatively senior DMs who in the main dealt with cases where the issue was of disallowance (rather than allocation to the Work Related Activity or Support Group). Most of the evidence collected concerned cases where DMs felt that the WCA advice of disallowance was wrong. While they had some experience of DMs questioning WCA advice to allow ESA, they reported such cases to be rare.

Cases where DMs were more likely to have queries over the HCP’s advice were those involving claimants with mental health or fluctuating conditions. This was generally because the descriptors that applied to mental health cases were felt to be more subjective and open to interpretation. This was a view shared by Atos staff. While there was some acknowledgement that this was inevitable, DMs felt that there was scope for greater clarity on the meaning of each of the descriptors and wanted training on how they should be applied.

Other types of borderline or unclear cases were those where there were apparent internal inconsistencies in the Atos medical report, where complications had been caused by claimants completing parts of the ESA50 that were not relevant to their condition or cases which had been assessed by Atos on paper scrutiny alone (i.e. without a face-to-face assessment). DMs also stated that it sometimes became complicated to reach a decision on a case if evidence was provided by the claimant after the WCA. Sometimes this was because it was difficult to assess whether documentary evidence genuinely added anything new to the case. More commonly the issue was that this evidence was provided verbally over the phone making it difficult to present to Atos.

DMs generally agreed that it was appropriate to consult Atos in cases where their queries about a case related to:

- internal discrepancies within the Atos medical report;
- a DM need for further explanation or clarification on a specific medical condition or term in order to reach a decision; or
- the claimant having provided further ‘medical’ evidence after attending the WCA.

Action taken on borderline cases varied more when reasons for considering acting against the HCP advice related to the DM perceiving discrepancies between the ESA50 and the WCA report or claimants providing additional evidence about the way their condition affects them (rather than strictly medical evidence) after the WCA.

² Descriptors are statements that best fit how a claimant’s condition affects execution of daily tasks or activities.

Reaching a decision on borderline cases

Some DMs felt that they could not act against the advice of the WCA report in these sorts of cases without the express agreement of Atos. Some felt that they had to refer these cases to Atos first but could still act against the advice of the WCA if Atos did not agree with their suggested approach. Others felt that they had discretion over whether or not to involve Atos at this point and could choose to act against the advice of the WCA report if they felt the evidence was sufficiently strong.

Generally, Atos HCPs felt that it was reasonable for DMs to act against their advice without involving them if they had sufficient evidence to do so. Atos HCPs viewed the role of DM as an independent assessor of evidence who should have the authority to make a final decision without necessarily seeking Atos' approval. They viewed their own role as one that was subsidiary and advisory.

Until recently, the Benefit Centres participating in this research had a regular scheduled Atos HCP presence within the Benefit Centre. This enabled some discussion of borderline cases. Workload pressures have led to the cessation of these visits which has reduced the amount of informal discussion of borderline cases that takes place (although there is still a helpline resource that DMs can access if they wish to discuss cases). However, DMs generally reported an amicable working relationship with Atos.

Implications for policy and practice

The research has identified some areas of the process that may be worth reviewing. These focus on the role of the DM and, more specifically, how DMs deal with borderline cases.

Communication of guidance on role of Decision Makers and Atos

The research found considerable variation in DMs' views of their role in the decision-making process, and some felt that the consistency of the communication of guidance about their role could be improved.

Decision Makers handling of mental health cases

DMs were more likely to query or go against the Atos advice in cases involving mental health issues. In some cases DMs felt that the mental health descriptors were vaguer and more subjective and that there was scope for more guidance and training on using these descriptors.

Collection of monitoring information

Evidence from this research suggested considerable variation in the volume of cases returned to Atos from the Benefit Centres for clarification, and the volume of cases where the final decision went against the advice in the Atos WCA report. It may be helpful to get an indication of the variation in DM approaches by collecting information about these aspects of cases.

Feedback on Decision Maker assessments

Deciding the outcome of ESA claims is a complex process and the original decision can be changed on appeal, leading DMs to feel that they need feedback to judge their own performance and therefore improve their decision making. More effective feedback mechanisms on decisions (including the level of cases that are successfully appealed), and communication with DMs on the factors that lead to successful appeals, could be beneficial.

Claimant calls from Decision Makers

Not all Benefit Centres had introduced the calls to claimants to inform them of the likely outcome of their claim and to give them the opportunity to provide additional evidence at the time of the research. DMs felt that it would be more in keeping with a move to empower DMs if they had some discretion over which claimants they made calls to. This would enable them to focus their efforts on borderline cases where they felt there was potential for their decision to be influenced by the call.

Reintroducing site visits from Atos Healthcare Professionals

In all Benefit Centres, regular site visits from a dedicated Atos HCP had been withdrawn as a result of workload pressures. However, the majority of DMs felt that these visits had been very positive in developing working relationships between DMs and Atos and improving the knowledge of DMs about how particular impairments or conditions might affect claimants, and would welcome their return. There was an indication that this regular presence encouraged greater discussion of borderline cases than is currently the case when DMs call the Atos helpline.

Training for Decision Makers

Most DMs felt that they had not received training that had been specifically designed for DMs and that what they had received had been adapted from material designed with other operational staff in mind. Some DMs felt they would benefit greatly from talking through case study claims and how they should be interpreted. Some less experienced DMs felt that they would benefit from a better understanding of the implications of outcomes of ESA claims. They felt this would put them in a better position when explaining the implications of their decisions to claimants and in determining the suitability of particular outcomes for individual claimants.

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You can download the full report free from: <http://research.dwp.gov.uk/asd/asd5/rrs-index.asp>

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