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An Independent Review of the Work Capability Assessment – year five

Dr Paul Litchfield

November 2014

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Presented to Parliament pursuant to Section 10
of the Welfare Reform Act 2007

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Foreword

This is the fifth, and final, independent review of the Work Capability Assessment (WCA) as established by the Welfare Reform Act 2007. It is the second review that I have carried out and the three previous reviews were conducted by Professor Malcolm Harrington. The WCA is intended to distinguish between people who cannot work because of health related problems and those who are fit for some work or who could, with support, eventually return to the world of work. It has been operational since 2008 but has been subject to multiple changes in both form and interpretation, some resulting from independent review recommendations. Despite the passage of a considerable period of time, the assessment remains highly controversial and the subject of much criticism. Indeed, the Work and Pensions Select Committee has recently called for a "fundamental redesign of the structure of ESA outcomes".[1]

Given this backdrop, it seemed appropriate in this final review to reflect on some of the key changes that have taken place, to examine the impact on outcomes and to consider what lessons may have been learned for the design of any future assessment.

The main principles from my previous review have been carried forward into this year. I remain convinced that a perception of fairness is critical to the successful operation of any system such as this and that perception must be held not just by people making a claim for benefit but also by the staff administering the system and by the taxpayer that funds it. A key element in achieving a perception of fairness is communication and it is clear that the Department has made considerable efforts to increase its activity in this area over the years. However, some of the language used remains impenetrable to ordinary people and there are some vulnerable groups who may not be as well served in this respect as one would hope. The report highlights these areas and recommends action.

Mental health has also remained an area of particular focus for me. Almost half the people going through this system have a mental health problem as their primary condition and when comorbidities are included the number rises to two thirds. This is not particularly surprising given the prevalence of mental illness in our society but the scale of the issue indicates that mental health should be front and centre in any discussion about the WCA; that has not always been the case in the past. This year I also wanted to examine in greater depth the experiences of people with learning disabilities. This group is also large, numbering some 1.4 million people in the UK, and might be considered among the most vulnerable of those trying to navigate a complex system. It became clear to me that there are particular issues that need to be addressed in supporting people with learning disabilities through the process and I hope that the recommendations made will be helpful.

[1] House of Commons Work and Pensions Committee, 2014, Employment and Support Allowance and Work Capability Assessments (HC 302).

Last year I concentrated particularly on the Work-Related Activity Group (WRAG) and this year I therefore turned my attention to the other main outcome area, the Support Group. The number of people falling into this category has been rising rapidly and while at the inception of the WCA approximately 10% of new applications were assigned to the Support Group, that proportion has now risen to almost 50%.[2] I have tried to understand the drivers behind this change but, necessarily in a review such as this, I have mainly identified lines of enquiry to be pursued rather than concrete answers. An area that has caused me particular concern is the large number of young people under 25 that are assigned to the Support Group, mainly as a consequence of mental health problems. I would suggest that this is an issue that goes much wider than the WCA and which has long term implications for the employability of what could become a "lost generation".

In thinking about the future, I have looked at systems in some other countries. The UK must have a system which is optimal for this country but there may well be learning from other places that can be built upon. It appears to me that we have taken the WCA about as far as it can sensibly go in terms of modification and adjustment. Work and the workforce are going through a period of unprecedented change and it must be questionable whether an assessment designed in the early part of this century will best meet society's needs in its third decade. If any new assessment is designed, the fundamental question of whether health related capability for work is the criterion that society wishes to use to determine benefit levels should first be considered. If that remains the remit then sufficient time must be allowed and suitable expertise must be deployed to create and test a tool which is both robust and meets the requirement for perceived fairness. In the meantime, my counsel would be to let the current WCA have a period of stability – it is by no means perfect but there is no better replacement that can be pulled off the shelf.

Dr Paul Litchfield

November 2014

[2] DWP, September 2014, ESA WCA Published Statistics. All figures rounded to the nearest 100 and nearest percentage point.

Executive Summary

1. The Work Capability Assessment (WCA) is designed to determine eligibility for Employment and Support Allowance (ESA). It is a functional assessment based on the premise that eligibility should not be determined by the description of a person's disability or health condition but by how their ability to function is affected, which may vary considerably between individuals.
2. The WCA has now been in operation for six years and during that time has been in a constant state of change. A number of drivers have underpinned those changes, including amendments to government policy, recommendations from independent reviews and operational service delivery issues.
3. In conducting this Review, it has become apparent that despite these changes and some undoubted improvements, there remains an overwhelming negative perception of the WCA's effectiveness amongst people undergoing an assessment and individuals or organisations providing support to them.
4. The Fourth Review had a particular focus on mental health. This is continued in the Fifth Review, but has been expanded to also look at the experience of those with learning disabilities and other groups that may be disadvantaged by the process and experience particular difficulties with the WCA. The Fourth Review concentrated particularly at the Work Related Activity Group (WRAG) and this year the focus has shifted to consider the Support Group in more detail.
5. As this is the final statutory review, in addition to reflecting on the evolution of the WCA since its introduction, it seems appropriate to consider some of the issues that the Department for Work and Pensions (DWP) might need to take into account in the years to come.

Key findings and themes from this review

- **Evolution of the WCA** - The scale and scope of the many changes to the WCA since its introduction may have had unintended consequences and further developments have occurred since the previous Independent Review. Mandatory reconsideration was introduced in 2013 and a step which might have been expected to receive a favourable reception has become associated with much negative perception. A number of factors appear to have contributed to this. The Evidence Based Review tested the WCA against a set of alternative descriptors. The methodology used was not ideal in scientific terms but it is, nevertheless, a useful piece of work that has

improved the understanding of both the content of the WCA and the way in which it is applied. Overall, the published conclusion that there is no strong case for replacing the WCA with the alternatives tested is supported. There is learning about the use of semi-structured interviews and more complex issues relating to sensitivity and specificity that should be taken into account in the design of any future assessment. Overall, the sense is that the WCA has never really had time to bed down and each change serves to resurrect public interest and may serve to reinforce what are generally negative perceptions.

- **Support Group** – Since its introduction in 2008, there have been significant changes in outcomes for individuals going through the WCA. In 2009 63% of people first assessed were found fit for work with 26% assigned to the WRAG and a further 10% placed in the Support Group.[3] By 2013 these outcomes had shifted significantly with 47% of people making a new claim entering Support Group with only 34% being found fit for work. There have been a number of drivers for this shift and some are likely to be transient but the change is remarkable and, in particular, the growing number of young people being placed in the Support Group is of concern. The main driver for the increase appears to be the use of Regulation 35 (2) (b), where an individual is considered to constitute a substantial risk of harm. This category has increased substantially in both numerical and proportionate terms – some 38% of new Support Group cases now enter on those grounds.[4] Surprisingly, two thirds of these decisions are made on a papers only basis. The issues warrant further investigation to ensure that the application of the WCA is meeting the policy intent and that individuals are placed in the most appropriate group.

- **Perceptions** – The previous review highlighted the importance of the WCA not only being fair but also being perceived as such across a wide spectrum of opinion. Effective communication is key to improving this perception of fairness, both for people going through the WCA and for staff administering the system. This Review has sought to capture views from a wider range of stakeholders through the analysis of social media trends, as well as seeking feedback from the those members of staff within the DWP, working on ESA. Analysis of social media confirms that perceptions of the WCA remain overwhelmingly negative. The degree of negativity is perhaps telling given it is more than six years since the introduction of the WCA. One might have expected that views would have softened as people became used to the new system and saw that efforts were being made to improve it but that would seem not to be the case. Particular concerns about the level of information provided by the DWP in advance of a WCA were raised. The reliance on traditional written

[3] DWP ESA WCA Published Statistics, 11 September 2014, All figures rounded to the nearest 100 and nearest percentage point.
[4] Table 12. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.

communications works to the disadvantage of the DWP and an investment in better quality multi-media resources appears indicated.

- **Decision Making & processes –** Decision Makers have rightly been empowered to make decisions on eligibility for benefit but the high and rising overturn rate of Healthcare Professional recommendations was commented on last year. The overturn rate in moving people into the Support Group is not as high as it was for the Work Related Activity Group but there is again an almost total lack of movement in the opposite direction; it is implausible that in any system changes would only occur in one direction if a balanced view was being taken. When a person is awarded ESA the duration of their award is also set and this may be for as short a period as 3 months or as long as 3 years. Frequently setting short re-referral periods for those so severely incapacitated as to be allocated to the Support Group appears counter-intuitive and using the Support Group for young people with acute, and generally self-limiting, conditions may cause more harm than good.
- **Groups meriting special attention** – There are 1.4m people in the UK with a learning disability and only a small proportion of those of working age are in employment.[5] A great deal of feedback was received concerning the barriers that individuals with a learning disability face with the WCA process. This includes difficulties with DWP standard communications, which are written in a way that many find impossible to comprehend without support. The introduction of Easy Read communications would go some way to overcoming these difficulties. The face-to-face assessment is also a particular challenge for many people with a learning disability given the common propensity to interpret questions literally, give responses that they think will please and overstate their capability. Vulnerability can be situational as well as intrinsic to the person. The Review has looked at those leaving the armed forces, those spending extended periods in hospital and those being liberated from prison. Each group faces its own barriers to interacting with the WCA process and have in common non-standard health record arrangements.
- **Future of the WCA** – As well as looking back, it is appropriate for the last statutory independent review to look ahead. The report by the Work and Pensions Select Committee published in July 2014 calls for a 'fundamental redesign of the structure of ESA outcomes'.[6] The Reviewer has been asked to contribute to this debate in relation to the structure of work capability assessments and their application in determining eligibility for benefits. If it is decided to undertake a fundamental redesign of the WCA, there are a number of key principles that the Department should take into account:
    - Any assessment should not only be fair but be perceived as such

[5] DWP, 2014, Family Resources Survey United Kingdom, 2012/13.
[6] House of Commons Work and Pensions Committee, 2014, Employment and Support Allowance and Work Capability Assessments (HC 302).

- There must be clarity of purpose - determining benefit eligibility and supporting employment outcomes may not be compatible objectives
- Residual elements of the medical model of disability should be eradicated in favour of a biopsychosocial model
- Departmental staff should be at the heart of the assessment and should drive information requirements
- Any revised assessment should exploit information already provided to the DWP, rather than duplicating effort and incurring unnecessary expense
- Decision Makers and HCPs should see a representative range of cases and have appropriate training in the capability impact of common conditions

Northern Ireland

6. The legislation in Northern Ireland is different to that in Great Britain though principles of parity apply. At the time of writing the Welfare Reform Bill (NI) 2012 had not been passed and therefore Appeal Reform changes have not been implemented. Other key differences to Great Britain include a separate contract with the Provider, who is therefore remaining, and the role of the Department for Employment and Learning (DEL) in providing support to those who receive benefits following a WCA decision.

7. The data collected routinely in Northern Ireland and Great Britain differs so many direct comparisons are not possible. Nevertheless, there is a rising trend for people to be placed in the Support Group in both jurisdictions and a significant driver appears to be the increasing use of Regulation 35 (2) (b), relating to a substantial risk to mental or physical health. The number of young people being assigned to the Support Group is high (48%) and rising; this also mirrors the trend in Great Britain.[7] Almost half of the young people in the Support Group have a mental health condition. These features have worrying potential long term consequences for society.

8. The Department for Social Development does not administer work-related support and this activity is undertaken by DEL, predominantly through Jobs and Benefits offices. Currently the only information provided from the WCA to DEL is the outcome of the assessment and a medical diagnosis. The absence of any information about capabilities means that the DEL adviser has to revisit these issues before being able to identify appropriate goals and training for the person concerned. This is not only inefficient and potentially less comprehensive than WCA data but it also serves to medicalise what should be a capability focussed interaction.

[7] DSD Analytical Services Unit MIDAS Liveload data.

Chapter 1: Introduction – the Review outline

The Work Capability Assessment – purpose

1. The Work Capability Assessment (WCA), introduced in October 2008, is designed to determine eligibility for Employment and Support Allowance (ESA). ESA is a benefit that provides support to people whose disability or health condition causes them to have limited capability for work.
2. The WCA is a functional assessment and is based on the premise that eligibility for ESA should not be determined by the description of a person's disability or health condition, but rather by how their ability to function is affected, which may vary considerably between individuals with the same diagnosis.
3. An individual's capability for work is assessed against a number of descriptors which aim to cover the effects of any health condition or disability on their ability to carry out a range of everyday activities. The level of functional impairment is converted into a numerical score which is then used by the Department for Work and Pensions (DWP) to determine whether a person is eligible for ESA.
4. The assessment aims to identify and place people making a claim into one of three categories:
    - Those who are fit for work
    - Those who have limited capability for work
    - Those who have limited capability for work-related activity
5. People considered fit for work would normally be informed that they may be able to claim Jobseeker's Allowance and be directed towards Jobcentre Plus for support to enter or return to employment. Some people may then be referred to the Work Programme, which delivers employment-related support on behalf of DWP.
6. A person deemed to have limited capability for work due to illness or disability would be expected to take steps towards moving into work in due course. These individuals are assigned to the Work Related Activity Group (WRAG).

7. A person classed as having limited capability for work-related activity is considered sufficiently impaired to prevent them making any steps towards moving into work. These individuals are placed in the Support Group.

End to end process

8. The WCA process begins when a person contacts the DWP to make a claim for ESA. Some basic information is gathered at this stage to determine eligibility and an initial 'assessment rate' of ESA is paid once the Department receives a medical certificate or Fit Note, issued by a General Practitioner (GP), from the person making a claim.

9. All cases are referred automatically to the Health Assessment Provider (the Provider), who sends out a Limited Capability for Work Questionnaire (ESA50). The ESA50 is completed by, or on behalf of, the person making the claim and seeks information about their health condition or disability and the impact on their capability; it also invites the person to attach any relevant medical evidence that may be available to them. In a small number of cases where, even from the limited information available, it seems likely that the Support Group criteria will be met a shorter Capability for Work Related Activity Questionnaire (ESA50A) is issued instead of the ESA50. Those people who are identified as being terminally ill have their claims processed as quickly as possible and should be placed automatically in the Support Group.

10. The person making the claim returns the completed ESA50 (or ESA50A) to the Provider. On the basis of this information, and any other material submitted, the Provider determines whether there is sufficient evidence to recommend assignation of the individual to the Support Group. In some cases the Provider may seek further information from the person's GP via a standard form (ESA113) where it seems that a face-to-face assessment would not be the most appropriate means of securing further evidence. However, in the majority of cases (72% in 2013)[8] the claim proceeds to a face-to-face assessment.

11. People required to attend a face-to-face assessment are invited to their local Assessment Centre to see a Healthcare Professional (HCP). The HCP interviews, observes and may conduct a limited examination of the person making the claim, while completing an on-line report template. The resultant report with a recommended "score" is returned to DWP for the attention of a Decision Maker.

12. The Decision Maker considers the HCP's report, the completed ESA50 and any additional evidence provided to determine if the person making the claim is fit for work or whether they should be placed in either the WRAG or Support Group.

13. A person is placed in the WRAG when they are deemed to have limited capability for work. This is determined by assigning points for limitation

[8] Table 1. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.

against 17 activities, each graded by statements describing a 'level of function' (known as a descriptor). The threshold for being placed in the WRAG is 15 points, accumulated across the 17 activities. People in the WRAG receive a higher rate of benefit than the assessment rate. People in the WRAG are expected to undertake reasonable work-related activity such as CV writing and courses to help them acquire work skills, agreed between Jobcentre Plus or providers working on behalf of DWP and the individual.

14. A person is placed in the Support Group if, in addition to having limited capability for work, they are also considered to have limited capability for work-related activity. This is identified by assessing a person making a claim against 16 criteria and if they meet one (or more) of these criteria they are placed in the Support Group. People in the Support Group receive a higher rate of benefit than those placed in the WRAG and there are no expectations placed on them to participate in work-related activity.

15. There are specific circumstances in which Decision Makers can assign people to the WRAG or the Support Group even if they do not meet the normal criteria. For example 'exceptional circumstances' are defined in Regulations 29 and 35 of the ESA Regulations 2008, in which there would be a substantial risk to health of that person or another, were the person found fit for work or 'special circumstances' such as terminal illness.

16. People who are ineligible for ESA and are not assigned to the WRAG or Support Group are considered fit for work. If it looks likely that a person will be found fit for work, the Decision Maker will try to contact the individual by telephone to ask whether there is any further information that should be taken into consideration. If the Decision Maker is unable to make contact, they will make the decision on the basis of the information that they have.

17. People can dispute the decision made about their eligibility for ESA. Since October 2013, reconsideration by a Decision Maker has been mandatory before an individual can lodge an appeal. This part of the process is called 'the mandatory reconsideration', and is where the claim is reviewed by a different Decision Maker to the one who made the original decision. If an individual does not agree with the revised decision, they can then lodge an appeal.

18. Since the introduction of the WCA in 2008 there have been numerous changes made to the benefit rules and processes for ESA. Some of these have been the result of change in policy, while others have been intended to drive improvements in the process. Many of these changes have come as a direct result of recommendations made by independent reviewers. In addition, the DWP has itself implemented numerous changes to both the benefit and the WCA. Further detail on this can be found in Chapter 2. It is clear that these multiple changes have been introduced to try and improve matters but they bring with them the risk of unintended consequences, including deviation from the original policy intent.

Independently reviewing the WCA

19. The Welfare Reform Act 2007 legislated for the introduction of the WCA. This statute provides the basis for the Independent Reviews. Section 10 states that:

    "The Secretary of State for Work and Pensions shall lay before Parliament an independent report on the operation of the assessment annually for the first five years after those sections come into force."

20. This is the fifth and final statutory Independent Review. Professor Malcolm Harrington led and published the first three Reviews in which he made a total of 49 recommendations. In the fourth review Dr Litchfield made a total of 37 recommendations, 5 of which related to Northern Ireland and the remainder to DWP. The implementation and impact of these recommendations is discussed in Chapter 2.

The Fifth Independent Review

21. In March 2014 the Secretary of State for Work and Pensions appointed Dr Paul Litchfield to carry out the Fifth Independent Review of the WCA. Dr Litchfield is an occupational physician and currently Chief Medical Officer for BT Group plc.

22. The terms of reference for the current Review are to:

    - Provide the Secretary of State for Work and Pensions with an independent report evaluating the operation of the assessments of limited capability for work and limited capability for work-related activity.
    - Evaluate the effectiveness of the limited capability for work assessment in correctly identifying those claimants who are currently unfit for work as a result of disease or disability.
    - Evaluate the effectiveness of the limited capability for work-related activity assessment in correctly identifying those claimants whose disability is such that they are currently unfit to undertake any form of work-related activity.
    - Evaluate perceptions of objectivity surrounding the assessments.
    - Take forward any outstanding areas of work identified in the years one to four reports during year five.
    - Monitor and report on the implementation of the recommendations in the years one to four reports that are adopted by Ministers.
    - Provide independent advice to Ministers and the Department on any specific issues or concerns with the WCA that arise during the term of appointment, on which the Government may seek his independent view.

23. The Secretary of State for Work and Pensions also appointed an Independent Scrutiny Group to provide oversight, challenge and support to Dr Litchfield during the Review. As well as providing on-going support throughout the review process, the group met four times and was chaired by Professor David Haslam, Chair of the National Institute for Health and Care Excellence (NICE). The other four members of the group were:

    - Neil Lennox, Confederation of British Industry and Head of Group Safety at Sainsbury's;
    - Professor Keith Palmer, Professor of Occupational Medicine, University of Southampton;
    - Hugh Robertson, Senior Policy Officer, Trades Union Congress; and
    - Ciarán Devane, Chief Executive, Macmillan Cancer Support.

24. The Independent Scrutiny Group's terms of reference are to:

    - Ensure that the process for conducting the review is robust, comprehensive and fair and reflects the terms of reference for the review.
    - Ensure the process for gathering evidence and relevant data is in accordance with accepted standards and best practice.
    - Monitor progress of the review to ensure it remains on plan and discuss and challenge emerging issues and findings.
    - Be available to the Reviewer to provide advice and support as the review progresses.
    - Provide challenge as the final report is formulated to ensure the findings are robust and are presented in a clear and appropriate format.
    - Ensure the Reviewer maintains his independence, acting as a point of contact and sounding board where necessary.

The scope

25. This is the fifth statutory independent review of the WCA and the second carried out by Dr Litchfield. A key aspect has therefore been to continue to review and monitor the implementation of recommendations from previous years and to attempt to assess their impact.
26. The WCA has now been in operation for 6 years and a number of changes have been made during that time. There has been a considerable shift in the outcome for people undergoing the assessment with a significant increase in those being placed in the Support Group. This review takes a closer look at the Support Group to better understand the drivers for this and assess the impact this is having.

27. The Fourth Independent Review highlighted the importance of the WCA being perceived as a fair and objective test. This Review continues to consider perceptions of the WCA, stressing the important role that interactional justice plays in determining whether the WCA is seen as a fair assessment. Interactional justice focuses on how people believe they are treated and the quality of communication with them.[9] The Fourth Independent Review focused predominantly on perceived justice resulting from face-to-face assessments and written communications. This Review builds on that work by considering not just traditional written and verbal communications but also other channels.

28. Departmental data indicates that mental health conditions represent the primary cause of incapacity in 40% of cases going through the WCA and 41% of those placed in the Support Group up to December 2013.[10] The way in which the WCA assesses people with mental health conditions has been of particular concern to a number of voluntary sector organisations. During the course of the Review, the need to consider how the WCA serves those with learning disabilities was also highlighted. There are some 1.4 million people with learning disabilities in the UK[11], many of them of working age, and less than 15% are in even limited employment. The figures available to the Reviewer are not sufficiently detailed to state with confidence the numbers of individuals with a learning disability as a primary condition in receipt of ESA. The numbers available suggest that only a small proportion receive ESA for this reason: this is almost certainly because of the high levels of comorbidity but it also suggests that there is a risk of this group being "hidden" from departmental attention. For these reasons the Fifth Independent Review continues to pay particular attention to mental health and the remit has been expanded to also focus on those with learning disabilities.

29. As the final statutory independent review, consideration has been given to the long term future of the WCA. This Review considers international approaches relating to the assessment of limited capability for work as a result of health conditions or disabilities, and alternative systems developed outside the UK. This information is applied in Chapter 8 where consideration is given to developing any assessment that might be required to meet future needs.

[9] Greenberg, J. (1990). 'Organizational justice: yesterday, today, and tomorrow', Journal of Management, 16, 399-432.
[10] Table 2. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.
[11] DWP, 2014, Family Resources Survey United Kingdom, 2012/13.

The Review process

30. The Review was broken down into three broad stages though there was some temporal overlap:

    - Examination of changes to the WCA process since late 2013 and the Evidence Based Review.
    - Gathering of evidence including multiple stakeholder meetings and a formal Call for Evidence.
    - Analysis of data, evidence synthesis and report writing.

Examining the WCA process

31. Due to a number of changes introduced towards the end of 2013 or since the Fourth Independent Review, all parts of the WCA process have been re-examined. Meetings and briefings were held with both senior and working level officials from DWP, Atos Healthcare and HM Courts and Tribunals Service. Visits were made to 3 Benefit Centres (Stratford, Balham and Bridgend) where the main focus was on observing and speaking to Decision Makers as they reviewed cases. A WCA Assessment Centre and a Personal Independence Payment Assessment Centre in Coventry were visited, where processes and face-to-face assessments were observed. A Work Programme provider (Cardiff) and a Jobcentre Plus (Stratford) were also visited to help build an understanding of the process following a WCA with a view to considering how the WCA could benefit from greater links with the later stages of an ESA claim.

Evidence gathering

32. The Call for Evidence was launched on 10 June 2014 and closed on 15 August 2014. As with last year's call, responses were sought on-line, wherever possible, to ease both the submission and the analysis of evidence. Traditional channels were also accepted to maximise participation. In addition, the Review made use of social media, promoting the Call for Evidence on Twitter to try and engage a wider group of people. Evidence was received from a broad range of stakeholders, including individuals who had been through a WCA process, welfare rights advisors and local and national voluntary groups. 299 responses were received from individuals and 152 from interested organisations.
33. Three stakeholder seminars were held in July 2014 to supplement the Call for Evidence; one specifically focused on mental health and learning disabilities and another particularly focussed on the process of mandatory reconsideration. The Reviewer also met with the Disability Benefits Consortium and held a number of group and individual meetings

with interested organisations, including meeting with stakeholders when visiting Scotland. In total, more than 50 stakeholder organisations took up the opportunity to attend a meeting or seminar with Dr Litchfield.

34. The Reviewer met with Ministers and officials from the devolved administrations in Scotland and Wales as well as in Northern Ireland. Consultation also took place with a number of senior officials from the New Zealand Government as part of how other countries are developing their assessment systems.

35. Throughout the Review, a dialogue was maintained with DWP Ministers and senior officials from DWP Policy and Operations. In addition a staff survey targeted at ESA Decision Makers, Jobcentre Plus staff, and contact centre staff was conducted.

Research and Analysis

36. Departmental research specific to the WCA was examined and the Review was kept apprised of on-going research being conducted by DWP. Access was provided to routine management information collected by both the Department and Atos Healthcare and, additionally, specific data analysis and modelling was conducted to explore specific facets of the process.

Chapter 2: The development of the Work Capability Assessment since 2008

1. The Work Capability Assessment (WCA) was introduced in 2008 with the purpose of determining eligibility for Employment and Support Allowance (ESA). ESA was introduced with the intention of supporting more people with health conditions or disabilities into employment, whilst providing support for those people who are unable to work.

2. The WCA was designed with the aim of supporting ESA by assessing an individual's functional capability for work, rather than focusing on their health condition or disability. The intention was that, as well as identifying those people fit for work, the WCA would differentiate between those able to undertake work-related activity in preparation for a future return to work from those so severely functionally ill or disabled, that it would be unreasonable to require them to engage in such activity.

3. The Department for Work and Pensions (DWP) has recognised that developing an assessment of this nature would be challenging and require continuous improvement. The Welfare Reform Act 2007 legislated for the introduction of the WCA. This statute provides the basis for the Independent Reviews. Section 10 states that:

   "The Secretary of State for Work and Pensions shall lay before Parliament an independent report on the operation of the assessment annually for the first five years after those sections come into force."

4. One consequence of this process of continuous improvement is that the WCA has been in a constant state of change since its implementation.

5. A number of drivers have underpinned changes made to the WCA, including amendments to government policy and legislation resulting from independent reviews and changes in the delivery of the WCA resulting from operational experience. Whilst there have been numerous changes to the WCA over the last six years, several have had a particularly significant impact on the overall delivery of the assessment.

6. The first major set of changes resulted from the Department-led review of the WCA descriptors in 2009/10, changes as a result of which were implemented in 2011. That review aimed to:

   - Establish whether the WCA correctly identifies capability for work.
   - Consider the appropriateness of the content of the assessment.
   - Suggest amendments that better account for an individual's adaptation to their condition.

7. The revisions to the descriptors resulting from this work aimed to increase the focus on capability, better account for adaptation and simplify the language used in the descriptors. 10 of the 17 descriptors were altered in legislation in 2011 and the number of descriptors reduced from 20 to 17 in total.

8. Until 2010, a work-focused health-related assessment (WFHRA) was conducted. The WFHRA provided an opportunity for an individual undertaking a WCA to discuss their perceived barriers to work and identify reasonable adjustments that could help them to enter employment. The discussion was conducted by a healthcare professional (HCP) at a WCA Assessment Centre, but did not influence the WCA decision. This assessment was suspended in 2010 following an evaluation indicating that it was not adding significant value to the WCA process. The purpose of this suspension was to provide the Department with the opportunity to reconsider the purpose and delivery of the WFHRA. In April 2013, a decision was made to suspend the WFHRA for a further 3 years to allow DWP time to consider the support available to individuals in the light of the introduction of Universal Credit.

9. Following the First Independent Review of the WCA, the Department introduced an additional step in the decision-making process; the decision assurance call. When the DWP is minded to make a fit-for-work decision, the Decision Maker will call the person making a claim to advise them of this and ask whether there is further evidence that may inform the decision.

10. In 2011, the systematic reassessment of people claiming Incapacity Benefit (IB) began. This programme is still underway and requires most individuals claiming IB to undertake a WCA if they wish to continue claiming a health-related income benefit. The implementation of this programme resulted in substantially increased numbers of claims to process and a shift in the characteristics of those partaking in the WCA process as people with more long-term health conditions and disabilities entered the process.

11. In January 2013, the Department reinforced the policy intent behind several WCA descriptors and made changes to how the WCA assesses people with cancer, expanding the categories of cancer treatments under which a person may be treated as having limited capability to undertake work-related activity. This now includes individuals who are awaiting, receiving or recovering from treatment by way of chemotherapy, irrespective of route; or awaiting, receiving or recovering from radiotherapy.

12. More recently the ‘Appeals Reform’ programme saw the introduction of the mandatory reconsideration process for ESA claims in October 2013. This process had already been implemented across a range of working-age benefits, including Personal Independence Payment.

13. The overall effect of these and numerous smaller changes to policy, legislation and process, is that the WCA being delivered today is significantly different from that designed in between 2006-2008.

14. Additionally, changes made to ESA have arguably impacted on perceptions of the WCA process and increased the significance of being placed in one group over the other. For example the introduction of time limiting[12] for those claiming contributory[13] ESA in 2012. Time limiting applies only to those placed in the WRAG and therefore increases the existing financial incentive for individuals to be placed in the Support Group, if they need to remain on the benefit beyond 12 months.

15. Continuous improvement is a desirable feature in any system but the seemingly constant change to the WCA may have had unintended consequences. The system has never really had time to bed down so that people could get used to it and each change serves to resurrect public interest and reinforce what are generally negative perceptions.

16. There is an additional concern that many individual changes may, over time, have caused the overall practice to deviate substantially from the original policy intention. The Fourth Independent Review recommended that proposed adjustments to accepted recommendations should be fully considered in advance by both policy officials and operational staff to ensure harmonisation. This approach should be applied if any further material changes are being considered for the WCA.

Recommendations from previous reviews

17. A driver for changes to the WCA since 2010 has been recommendations from the four Independent Reviews to date. The previous review examined the 49 recommendations made in years one to three by Professor Harrington. [14] Of these recommendations, the Department accepted 35 in full and 10 more in principle. The Fourth Independent Review found that of those accepted in full, 29 had been fully implemented, 3 had been partially implemented and 3 were in progress. Of those accepted in principle, 5 appeared to have been fully implemented, 2 partially implemented and 3 were in progress. Highlights of progress on those recommendations not fully implemented at the point of the Fourth Independent Review from the first three years, and the 37 recommendations made in the Fourth Independent Review are set out below, with more detailed tables in **Annexes 2 and 3**.

[12] Time limiting means that people placed in the WRAG who are in receipt of contributory-based ESA are entitled to a maximum of 12 months of payments before they are means tested for eligibility to continued payments.
[13] Contributory ESA benefits is paid to those who have paid enough National Insurance to qualify for benefits even though their personal assets would otherwise disqualify them from claiming income-related benefits.
[14] 3 of the recommendations from the first independent review fell within the remit for the First-tier Tribunal rather than the DWP and are, therefore, out of scope of this review. Recommendation 5 from year 3 concerned future Independent Reviews exploring the quality of training outcomes.

18. The Reviewer has been asked on numerous occasions about ongoing scrutiny of the WCA after this final statutory Independent Review. Specific concerns have centred on oversight of progress on the implementation of recommendations made as part of this Fifth Independent Review and those from previous years that have not been fully implemented.

    "As this is the final of the five independent reviews of the Work Capability Assessment, CAS would like to see an ongoing process for scrutinising the implementation of ESA and the WCA in the future, particularly given the level of change still ongoing within the ESA assessment process and the uncertainty about future contractors." Citizens Advice Scotland

19. The Reviewer agrees that this is a valid point, and would therefore encourage DWP to ensure that its response to this Review sets out how it will monitor its implementation of recommendations that it accepts.

Recommendations from years one to three

20. A number of the recommendations from the First, Second and Third Independent Reviews have been superseded by recommendations made in the Fourth Independent Review. There has been mixed progress in fully implementing the remaining outstanding recommendations from years one to three and full details are given in **Annex 2**. Progress on certain of these recommendations is highlighted below.

21. Recommendation 14 from year 2 was to consider tightening the provider's target for C-grade assessment reports. DWP has informed the Reviewer that the contract with the new assessment provider, due to commence on 1 March 2015, sets the minimum target for C-grade reports at the same level of 5% during the first two years of the contract but that this tightens to 4% for year three. **This recommendation is therefore considered fully implemented**.

22. Recommendation 3 from year 3 was for DWP to continue working with the Tribunals Service regarding feedback on overturned decisions. DWP has informed the Reviewer that the Tribunal Service now routinely provides DWP with a summary of reasons for their decisions on appeals against ESA. This summary of reasons is shared with the relevant Decision Makers responsible for the mandatory reconsideration and appeal response. Analysis of the feedback is currently being undertaken by the Department with a view to incorporating it into continuous improvement activity. **Therefore good progress is being made but the recommendation is not yet fully implemented**.

23. Recommendation 9 from year 2 related to regular audit of Decision Maker performance. Commentary in the year 4 report highlighted the differences between the Department's creditable quality activities in following process and an assessment of the outcomes of Decision Makers' activity which was an apparent deficiency. The Reviewer has found no evidence of further progress in this area and believes that it

remains a significant shortcoming in delivering a service that "does the right thing" for both individuals making a claim and the society that funds the benefits. **This recommendation therefore remains partially implemented**.

Recommendations from year four

24. It is clear that there has been a considerable amount of activity within DWP in implementing those recommendations from the Fourth Independent Review that were accepted. The Reviewer has identified some of the key recommendations where it is felt that DWP has made sufficient progress to consider them fully implemented.

25. The Reviewer recommended that the ESA50 be amended to make clear that clinical nurse specialists and consultants can complete it in cases where the individual is undergoing cancer treatment. The Reviewer was pleased to note that the changes were made rapidly and that this amended form has been in use since April 2014. Furthermore, the Reviewer notes that the ESA50, and other letters and forms, are currently undergoing review in line with other recommendations, and that a further updated ESA50 is due to be in place by early January 2015.

26. Both recommendations regarding post-appeal reassessment have been implemented. DWP has issued guidance to ESA Decision Makers clarifying that (a) following a successful appeal, they should apply the recommendation of the Tribunal with regard to when the next WCA should take place, from the date of the original decision, unless the Tribunal specifies otherwise, and (b) an 8 month review period should be set as a minimum between a successful appeal hearing and a subsequent WCA, unless the Tribunal has recommended a longer period.

27. There are also a number of recommendations where DWP has demonstrated encouraging progress, though they cannot yet be considered fully implemented.

28. The Reviewer was minded in year 4 to reiterate a year 2 recommendation, to share WCA information with Work Programme providers because of the slow pace of progress. This was endorsed by the Work and Pensions Select Committee in their report on ESA and the WCA in July 2014.[15] The Reviewer notes that DWP has developed a process to capture and share information from the WCA with Work Programme providers and has garnered some positive feedback from Work Programme providers. However, this recommendation has still not yet been implemented and funding has yet to be agreed before it can be taken forward.

29. It was recommended that the rates at which Decision Makers go against HCP recommendations should be monitored on an individual basis and that exceptionally low or high rates be investigated. DWP has confirmed

[15] House of Commons Work and Pensions Committee, 2014, Employment and Support Allowance and Work Capability Assessments (HC 302).

that they are able to monitor the rates at which Decision Makers go against HCP advice at site and group level and, if team leaders have particular concerns about an individual Decision Maker's overturn rate, they can obtain the relevant lower level Management Information. This does not seem to be an adequate response to the Reviewer. Monitoring outliers is a standard practice in a wide range of activities and has been shown to improve consistency.

30. There are some recommendations where progress appears to have stalled, or it appears that DWP will not be implementing them as originally envisaged.

31. The Reviewer recommended that the person being assessed is able to see what is being written during the assessment. This appears to be a simple remedy to a common complaint that testimony is recorded inaccurately. It is understood that, having originally accepted this recommendation in principle, DWP is now concerned it could increase the length of time it would take to complete assessments. The Reviewer would comment that this is unlikely if what is recorded is indeed what is said and that time spent remedying inaccuracies at the point of capture both leads to better decisions and saves time in subsequent disputes. The Reviewer therefore trusts that DWP will honour its previous acceptance in principle and work with the new Provider to overcome any practical difficulties.

32. The Reviewer recommended a full impact assessment to test a process where Decision Makers triage cases. This recommendation was also endorsed by the Work and Pensions Select Committee in their report on ESA and the WCA. DWP has informed the Reviewer that it has been looking at how best to balance the responsibilities of Decision Makers and HCPs as part of the feasibility work into this recommendation. They report that results from initial tests have not been conclusive, that it is considering alternatives and that it will continue to look into the options for earlier decision-making. The Reviewer is disappointed that a full impact assessment of Decision Maker triage appears not to have taken place and would encourage DWP to keep this under consideration as it looks at options for earlier decision making.

Mandatory reconsideration

33. Mandatory reconsideration was extended to the WCA process in October 2013, following its implementation in Personal Independence Payment and Universal Credit in April 2013. Mandatory reconsideration is the process whereby a person wishing to appeal against their WCA decision must first ask the DWP to reconsider and revise its original decision. An appeal cannot be made with Her Majesty's Court and Tribunal Service (the Tribunal) until this process has been completed. Previously, this stage was optional.

34. The stated intention of mandatory reconsideration was to enable disputes to be resolved at the earliest stage in the process, and to

provide a clear explanation for decisions. The intention was that people would then be able to make an informed decision on formally appealing to the Tribunal.

35. The change appears to have had a substantial impact in this first year. In the first quarter of 2014 the volume of ESA appeals lodged dropped by 92%, compared to the same quarter in 2013.[16] Similar falls in appeal rates are apparent in other benefits. Whilst there is no robust data to assess the impact of mandatory reconsiderations on the number of appeals lodged, the Tribunal highlights the process as one of a number of changes made by DWP since early 2013 that is likely to have contributed to recent trends. It remains to be seen whether appeals have simply been deferred or whether a fall in the appeal rate will be sustained.

36. The Review visited three Benefit Centres in order to gather evidence and observe the mandatory reconsideration process in action and also met with the Tribunal Chamber President. In addition, questions specific to the WCA mandatory reconsideration process were included in the Call for Evidence, to allow a range of individuals and organisations to provide information and evidence on how the process is working in practice.

The mandatory reconsideration process

37. If an individual wishes to dispute a WCA decision, they are entitled to ask for a mandatory reconsideration by telephone or in writing to the Department. If a request is made by telephone, the individual receives a brief explanation of the decision from the Contact Centre operative. If the person still wishes to proceed with the reconsideration, the case is referred to the Decision Maker who originally made the decision or someone working in the same team. This Decision Maker will telephone the individual to discuss any points of contention; to clarify the decision; and establish if they have further evidence. This is called the 'Explanation Call'. If the Decision Maker establishes that a decision should be revised, they are able to do so at this point.

38. If the individual remains dissatisfied, the case is referred to the disputes resolution team with notes detailing the discussion and any points of contention. The disputes resolution Decision Maker considers this information and reviews the case file and any new evidence submitted. Normally they will telephone the individual to clarify any points on which they are uncertain or to ask if they have any further evidence they would like to be considered; for the purposes of this report, this telephone call is referred to as the 'Reconsideration Call'. The Decision Maker then considers whether the original decision was justified and whether any new evidence should alter the decision.

39. If the Decision Maker feels that the wrong decision was made or new evidence necessitates a revision of the original decision, they are able to change the decision with immediate effect. If the original decision is

[16] Ministry of Justice, 2014, Tribunals Statistics Quarterly April to June 2014.

upheld, and/or an individual does not agree with the revised decision, they are then able to lodge an appeal with the Tribunal.

The process in practice

40. It has been evident that the Department has taken steps to improve delivery of the mandatory reconsideration process since its introduction. Changes include the enhancing of training by allocating in-house coaches to each dispute resolution office and the implementation of 'Quality Every Single Time' (QUEST).

41. QUEST allows dispute resolution Decision Makers to send feedback to the original Decision Makers responsible for the mandatory reconsideration and appeal response when a decision is made. This has since been extended to also allow 360° feedback to dispute resolution Decision Makers.

42. 360° feedback is a recognised method of improving quality but only if it is used and then acted upon. The staff survey conducted as part of the Fifth Independent Review indicated that feedback to Decision Makers is occurring in less than half of cases and that where it is given it is not considered useful.

43. Use of this feedback and its impact on improving the quality of decision making at all stages of the WCA process should be monitored over time. Trends should be reported to the appropriate level ensuring that training needs are met and unintended consequences are addressed. This should operate alongside work undertaken to make best use of feedback received from the Tribunal.

44. The Review noted duplication in the process which appears not to add value. For instance, during both the telephone call received by the Contact Centre requesting a reconsideration and the Explanation Call, points of contention are discussed. Information is often poorly recorded and does not currently inform the dispute resolution Decision Maker's consideration as well as it should.

45. Evidence seen by the Review shows that repeated telephone contacts with the person requesting a reconsideration rarely results in a more complete process as information collected is not comprehensively recorded and shared. This elongates the process, as the disputes resolution Decision Makers must spend additional time identifying potential areas of contention prior to calling the individual requesting the reconsideration. This was reflected in feedback received as part of the Call for Evidence:

    "The process appears long and arduous as the claimant appears to need several explanations of the decision before they are allowed to be put forward for a mandatory reconsideration", An individual response

46. Though the review has not had access to data demonstrating the impact of Explanation Calls, observation and documents reviewed bring the value of these calls into question. The Reviewer recommends that the

Explanation Call is removed from the process, and that information on the points of contention are collated and included in the referral to dispute resolution teams where possible.

47. An unintended consequence of numerous telephone calls about the same issue is that an individual has to go over the same information on multiple occasions. Some of the information is of a very personal nature and the process itself is considered stressful by many people.

48. As with Decision Assurance Calls reviewed in the Fourth Independent Review, the first attempt by a Decision Maker to make a Reconsideration Call is not pre-arranged. This “cold calling” is inevitably associated with a high failure rate, in part because people are otherwise occupied and in part because it is now common practice for people to screen calls using caller display technology. The Department withholds its number when making calls and the reasons for this are understood. However, it must be recognised that this will cause them to be blocked by some systems or to remain unanswered by many people.

49. SMS messaging is used following a failed attempt at a Reconsideration Call. The SMS message notifies the individual that the Department will try to call them again, providing either a date and time or stating that the Decision Maker will call within 3 hours. This activity not only improves the chances of getting through to the person seeking mandatory reconsideration but also gives them time to consider their responses when called.

50. Responding to a ‘cold call’ is particularly difficult for those with mental health conditions or learning disabilities, and does not allow a person who requires the support of a representative to arrange to have them present. Dispute resolution Decision Makers are conscious of the need to make allowances for those requiring formal representation (an appointee) and will arrange appointments at a mutually agreed time. However, many of those who would find a Reconsideration Call difficult without support or time to prepare their responses will not have appointees.

51. The Department should explore options for displaying a geographical telephone number when making outbound telephone calls to individuals engaged in the process. Furthermore, SMS messaging or an appropriate alternative method should be used to provide advance notice in all instances where a Reconsideration Call will be made. As with face-to-face assessments, requests to have a supporting representative on the call should be accommodated where possible.

52. An additional cause of delay in the mandatory reconsideration process is logistical. Due to the dispute resolution teams not being located in the areas that they serve, case files have to be requested from other offices and posted across the UK using secure postal services. The reason provided to the Review for this was that it evolved following the abolition of the Social Fund where existing teams with decision making skills required new work. Though significant training in ESA and the WCA process was required, mandatory reconsideration broadly fitted with the

skill set of this group of staff and therefore the work was divided amongst the teams regardless of geographic location.

53. The Review accepts that such arrangements can be necessary; however, this arrangement is not without difficulties. The time taken to recall cases and send files from other Benefit Centres across the UK adds to delays in the total time taken to process a mandatory reconsideration. There is also a perception issue in that, if staff have markedly different regional accents to the people making a claim, the view that this is a remote system lacking in empathy may be reinforced.

54. The Department should review its geographical allocation of Mandatory Reconsideration casework taking account of both perception issues and practical considerations for avoiding unnecessary delays.

Perceptions of the mandatory reconsideration process

55. Perceptions of the mandatory reconsideration process are mixed. When visiting Benefit Centres, the Reviewer noted the strong desire amongst Decision Makers to make high quality decisions and to use the mandatory reconsideration process to improve the experience of an individual going through the WCA. To gain a wider sense of Decision Makers' perceptions of how effective the process is, the Reviewer included several questions relating to it in a small survey of DWP staff perceptions.

56. A large majority of Decision Makers perceived themselves to have a fair to excellent understanding of the reconsideration process. However, when asked about its effectiveness, approximately only half of dispute resolution Decision Makers perceived the process to be effective, with even fewer original Decision Makers sharing the view. Mandatory reconsideration is still in an early stage of implementation and is subject to ongoing monitoring and improvement. Nevertheless, this finding does indicate that considerable work is required to refine the process and to demonstrate to staff that it is a worthwhile activity.

57. Whilst on the face of it, the introduction on mandatory reconsideration is a positive step that will reduce the need for individuals to go through unnecessary appeals, it is not perceived as such by many people. In the Call for Evidence, individuals and organisations were invited to comment on their experience of the process and its effectiveness. The dominant features of negative feedback from individuals were that they found the process stressful, it took too long and there was no guidance on when consideration might be completed. These aspects were also highlighted by organisations.

" … a nightmare as you do not know how long it is going to take …", Individual response

"It was a long drawn out process that made me feel belittled and unimportant!", Individual response

"There should be a maximum time frame in which mandatory reconsideration is carried out", Disability Benefits Consortium

58. However, the principal criticism from organisations representing a wide range of stakeholders was that people do not continue to receive ESA payments during the time it takes for a mandatory reconsideration to be completed whereas they did under the previous system.

"Claiming JSA while undergoing mandatory reconsideration can also be problematic, as people can be informed by Jobcentre staff that they are too unwell to start a claim. This can in turn leave people without support at a time when they need it most. Given a JSA payment is the same as the ESA assessment rate, the DWP should explore whether the ESA assessment payment could be continued through mandatory reconsideration as it is through the appeals process." Macmillan Cancer Support

59. Although the policy relating to ESA payments is outside of this review's scope, the Reviewer feels that it is important to flag this as a contextual issue. The reasoning underpinning the policy is understood by the Reviewer but those going through the process have not had the benefit of such careful explanation. Improving communications on this topic may not shift the opinions of many affected but at least their understanding would be improved.

60. The Reviewer also considers that some of the concern and dissatisfaction relating to mandatory reconsideration could be reduced by simplifying the process, reducing the elapsed time for the resolution of cases and publishing target turnaround times.

The Evidence Based Review

61. The Fourth Independent Review referenced publication of the Evidence Based Review (EBR). The EBR was a result of Recommendation 3 in the Second Independent Review, conducted by Professor Malcolm Harrington. The recommendation stated:

> A 'gold standard' review be carried out, beginning in early 2012. Future decisions about the mental, intellectual and cognitive descriptors should be based on the findings of this review.

62. DWP led the review with support from a group of representative organisations and the findings were published in December 2013.[17] The Reviewer was unable to consider the findings as part of the previous

[17] DWP, 2013, Evidence Based Review of the Work Capability Assessment: a study of assessments for Employment and Support Allowance. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/331582/wca-evidence-based-review.pdf.

review, but did commit to examining both the findings and the Department's response as part of the Fifth Independent Review.

63. The Reviewer met with the representative groups who developed the alternative assessment (AA), the test against which the WCA was compared. The representatives group included members from the MS Society, Arthritis Care, Crohn's and Colitis UK, Forward ME, the National AIDS Trust, Parkinson's UK, Mind, Mencap and the National Autistic Society.

The Evidence Based Review methodology

64. The EBR was a well-resourced study, with many observations. However, it was also a pragmatic field investigation, limited scientifically by a number of constraints. Chief among these was the need to limit the burden placed on participants of collecting additional independent information. Thus, for example, it was not feasible for the expert panel to assess people making claims independently of, and in addition to, the face-to-face assessments that were a normal part of the WCA. This is not intended as a criticism but simply a reflection of the difficulties that any "real world" study faces when compared to investigations conducted in the controlled environment of a laboratory. Those difficulties should be taken into account when interpreting the results of the EBR.

65. The stated purpose of the EBR was to assess how well the current WCA and the AA identified individuals who were considered fit for work or fit for work-related activity and how dependably. The AA collected additional information to the WCA on whether a person's ability to undertake certain activities could be sustained and repeated, or was prone to fluctuate, and if so, for how much of the time. The EBR specifically excluded those people who were placed in the Support Group on the basis of the WCA.

66. 600 people undergoing the WCA consented to take part in the study, although some analyses were based on 560 subjects and others on a smaller sub-sample. The study group was selected to try and represent the main presenting conditions with an emphasis on those likely to experience fluctuating capability. As a result, the sample included people with a range of disabilities and health conditions and over 76% had a mental health condition either as a primary or a secondary issue. The intent behind this weighting of the study group is understood but it deviates from the more usual random sampling or consecutive case selection; the impact on the results cannot be determined.

67. The study group were assessed for benefit in the usual way, but with a second HCP sitting in as an observer. The observer subsequently re-interviewed the claimant, to collect further information, and completed the AA and the comparator WCA documentation. This approach tends to favour agreement between the different forms of assessment and absolute independence of judgement would have required different assessors completing each part. The practical difficulties of implementing this more complex design are understood.

68. Expert panels, each consisting of 3 healthcare professionals with a range of skills, reviewed 560 of the claims. 49% of these were reviewed on more than one occasion. The judgement of the panels provided the benchmark, termed by the EBR the 'gold standard', against which the results of the two assessments were evaluated.[18]

69. It should be noted that in assessing fitness for work there is inevitably an element of subjectivity and judgement. Any comparison of expert opinion will produce a degree of disagreement. Nevertheless, the approach taken of using the judgement of the expert panel as a proxy for the "truth" was a reasonable one in the circumstances.

70. The methodology for the EBR is consequently not ideal in scientific terms and does impact on both the scope (the Support Group were excluded) and the strength of the conclusions. Nevertheless, it remains a useful piece of work when considered within those constraints.

Findings of the Evidence Based Review

71. The expert panel agreed with the results of the WCA (fit for work, suited for the WRAG) in 77% of claims, as compared to 65% agreement with the results of the 19-activity AA.[19] Of particular interest are the results of the two assessments against measures of sensitivity[20] and specificity[21] for not being fit for work-related activity. When measuring the specificity of the two assessments, the WCA performed better, scoring 87% in comparison to 63% for the 19-activity AA. However, when considering sensitivity, the AA was found to perform better, scoring 72% in comparison to 44%.

72. The differences between sensitivity and specificity are important in that they measure the assessments for accuracy by putting emphasis on different outcomes. High specificity would indicate a good capacity to identify those who are able to work while high sensitivity would reflect a good capacity to identify those with limited capability for work.

73. The WCA was a stronger performer than the AA in terms of specificity, meaning that the WCA better identified those who were capable of working. For each person deemed fit for work by the expert panel, a specificity of 87% implies that the WCA reaches the same conclusion in 87% of cases and does not for 13%; this compares with 63% and 37% respectively for AA-19.

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[18] Five measures were used to assess validity relative to the gold standard: Agreement, Sensitivity, Specificity, Positive predictive value and Negative predictive value.

[19] Agreement measures the extent to which the outcomes of assessments corresponded with the expert panel. The calculation is (True positive + True negatives) / Total cases. "True" means according to the judgement of the panel, as the gold standard.

[20] Sensitivity in this context measured the ability to correctly identify people who had limited capability for work. The calculation is True positives /(True positives + False negatives), where "true" is judged by the gold standard.

[21] Specificity in this context measured the ability to correctly identify people who did not have limited capability for work. The calculation is True negatives /(True negatives + False positives), where "true" is judged by the gold standard.

74. Conversely, the results show the WCA to have lower sensitivity than the AA when measured against the findings of the expert panel. This means that the AA is better at identifying people fit only for work related activity. For each person deemed fit only for work-related activity by the expert panel, a sensitivity of 44% implies that the WCA agrees with that judgement in 44% of cases and does not for 56%; this compares with 72% and 28% for the AA-19.

75. Overall a review of the results from the EBR supports the published conclusion that there is no strong case, according to the evidence presented, for replacing the WCA with an alternative such as the AA-17 or AA-19. However, it also highlights potential areas of improvement that could be reflected in any redesigned assessment.

Semi-structured interview

76. The WCA has often been criticised for having an interview format that is too rigid with a perception that it is computer driven. As part of the EBR, a semi-structured interview was trialled to allow for a more discursive assessment style and feedback was obtained from people experiencing the two approaches. A semi-structured format has already been adopted for Personal Independence Payment face-to-face assessments.

77. The results showed a preference for the semi-structured assessment using the AA: 74% of people felt that the AA with the semi-structured interview had allowed for a ‘good’ or ‘very good’ discussion of how their condition affected their capability to carry out the activities in the descriptors. This compares to 66% for the WCA with its more tightly structured interview.

78. When asked specifically about the interview style, 38% of people preferred the semi-structured interview, compared to 24% who preferred the WCA interview. Main reasons attributed to the preference for the semi-structured approach were that it allowed for a more personalised approach and encouraged better rapport between the person and the HCP.

79. It would appear that a semi-structured interview format may improve people’s perception that they have had a better opportunity to discuss their capability and help to build better rapport with the HCP. This in turn may help to improve perceptions of the process as being a fair one and the approach should be considered in further developments of the WCA. The EBR makes no comment on the practical impact of adopting a semi-structured approach but, clearly, any operational issues, such as lengthening the time it takes to conduct an assessment should be balanced against potential benefits.

Response to the Evidence Based Review findings

80. The DWP published its response to the findings of the EBR in March 2014 in Chapter 3 of the response to the Fourth Independent Review of the WCA:

> DWP will explore practical improvements to the assessment process in light of the EBR findings, in particular the feasibility of healthcare professionals using prompts from a semi-structured topic guide for WCA discussions.
>
> DWP will also explore the scope to further review healthcare professional training and guidance on considering and recording fluctuation during assessment discussions without placing undue burden on claimants.
>
> On the whole, the EBR results do not suggest that changes to the descriptors would improve the effectiveness of the WCA.

81. As has been stated, the EBR has been a useful piece of work that has improved the understanding of both the content of the WCA and the way in which it is applied. The methodology used means that it has its limitations but overall the Department's response appears to this Reviewer to be a reasonable one based on the conclusions that can be drawn.

82. There are findings from the EBR that were not explored as fully as they might have been in the report; in particular the somewhat complex issues relating to sensitivity and specificity. There is probably limited scope to apply the lessons learned in the context of the current assessment but they should certainly feature in the design of any future system. This point is explored further in Chapter 8.

83. There is probably greater scope to apply learning in relation to a semi-structured approach and the Department is encouraged to explore this further as a means of improving the perception of the WCA as a fair assessment. The issues around fluctuating conditions were an important driver for the development of the AA and the opportunity should not be lost to use a semi-structured approach to capture better the impact of variable capability. This approach may also improve the quality and ambience of interviews with people experiencing cognitive or intellectual difficulties. Training for any new approach should pay particular attention to this group and, specifically, address the issue raised in the Fourth Independent Review of inferences from indirect questioning being reported as factual statements of capability.

    "The semi-structured interviews should be developed immediately and implemented by the new provider in early 2015", National Autistic Society

Summary

84. Since its introduction in 2008 the WCA has been in a constant state of change. A number of drivers have underpinned those changes, including amendments to government policy, recommendations from independent reviews and operational service delivery issues. The scale and scope of those changes may have had unintended consequences.

85. Mandatory reconsideration was introduced to the WCA process in 2013, following its implementation on several other working age benefits. A step which might have been expected to receive a favourable reception has become associated with much negative perception. Some of this sentiment appears to be related to the impact on benefit payments but unnecessary complexity, the length of the process and the lack of published turnaround targets undoubtedly contribute.

86. The Fourth Independent Review referenced publication of the EBR. The methodology used was not ideal in scientific terms but it is, nevertheless, a useful piece of work that has improved the understanding of both the content of the WCA and the way in which it is applied. Overall, the published conclusion that there is no strong case, according to the evidence presented, for replacing the WCA with an alternative such as the AA-17 or AA-19 is supported. There is learning about the use of semi-structured interviews that could improve perceptions of fairness and more complex issues relating to sensitivity and specificity that should be taken into account in the design of any future assessment.

87. Changes made to ESA have arguably impacted on perceptions of the WCA process and increased the significance of being placed in one ESA group over the other. Continuous improvement is a desirable feature in any system but the seemingly constant change to the WCA may have had unintended consequences. The system has never really had time to bed down so that people could get used to it and each change serves to resurrect public interest and reinforce what are generally negative perceptions.

Recommendations

88. **Therefore, the Reviewer recommends that:**

- Any further material changes to the WCA should be fully considered in advance by both policy officials and operational staff to ensure that policy intent and practical considerations are harmonised.
- Use of 360° feedback and its impact on driving up the quality of decision making at all stages of the WCA process should be monitored over time and trends reported to the appropriate level to ensure that training needs are met and unintended behaviours are addressed. This work should be seen in parallel to feedback received from Tribunal services.

- The Explanation Call is removed from the mandatory reconsideration process, and that information on the points of contention are collated and included in the referral to dispute resolution teams where possible.
- Options for displaying a geographical telephone number when making a Reconsideration Call should be explored. Additionally, SMS messaging or an appropriate alternative method should be used to provide advance notice in all instances. As with face-to-face assessments, requests to have a supporting representative on the call should be accommodated where possible.
- The Department review its geographical allocation of Mandatory reconsideration casework taking account of both perception issues and practical considerations for avoiding unnecessary delays.
- The Department give specific consideration to how it improves the overall perceptions of the mandatory reconsideration process. This should include publishing target turnaround times and being clear on the reasons behind ceasing payment of the assessment rate of ESA.
- Further work to develop and implement a semi-structured interview should continue. This should be developed in conjunction with a small number of representative groups. Particular attention should be paid to interview practices for those with mental health conditions, learning disabilities and autism, and this should be reflected in the guidance and training developed.

Chapter 3: The Support Group

1. The Work Capability Assessment (WCA) aims to identify and place people making a claim for Employment and Support Allowance (ESA) into one of three categories; those who are fit for work; those who have limited capability for work (WRAG); and those who have limited capability for work-related activity (Support Group).

2. People in the WRAG are required to have regular interviews with a Jobcentre Plus adviser or organisations providing services on behalf of the Department in order to prepare them for the job market, whereas those placed in the Support Group have no such "conditionality" attached to their benefit payment, though they can volunteer for employment related support. The levels of benefit also differ between the groups. At the time of writing, an individual in the WRAG could be eligible for to up to £101.15 a week, whereas someone in the Support Group may receive up to £108.15 a week.

3. The general expectation is that people in the Support Group will be more severely incapacitated than those in the WRAG. The Fourth Review focussed particularly on the WRAG and this Fifth Review has examined the Support Group in greater detail.

Support Group Criteria

4. Having determined that someone is not fit for work, the WCA is used to match people against 16 descriptors (Schedule 3) designed to identify whether a person is able to participate in work-related activity. These descriptors address a range of physical and mental capabilities and many are similar to those used to make the initial fitness for work assessment. However, responses are not graded and assigned points but are binary – either someone can / cannot complete a given activity or they do / do not display a particular characteristic. If someone is deemed incapable of any one of these 16 descriptors they are assigned to the Support Group.

5. A person may also be placed in the Support Group on the basis of a series of exemptions, more commonly referred to as the 'treat as' regulations. These exemptions are set out in Regulation 35 (1), and include people who are terminally ill[22] and certain circumstances where a person is undergoing treatment for cancer.

[22] Terminally ill is defined by DWP as someone who has a diagnosis that they are likely to die within 6 months. Cases where someone is terminally ill under this definition are treated as urgent cases.

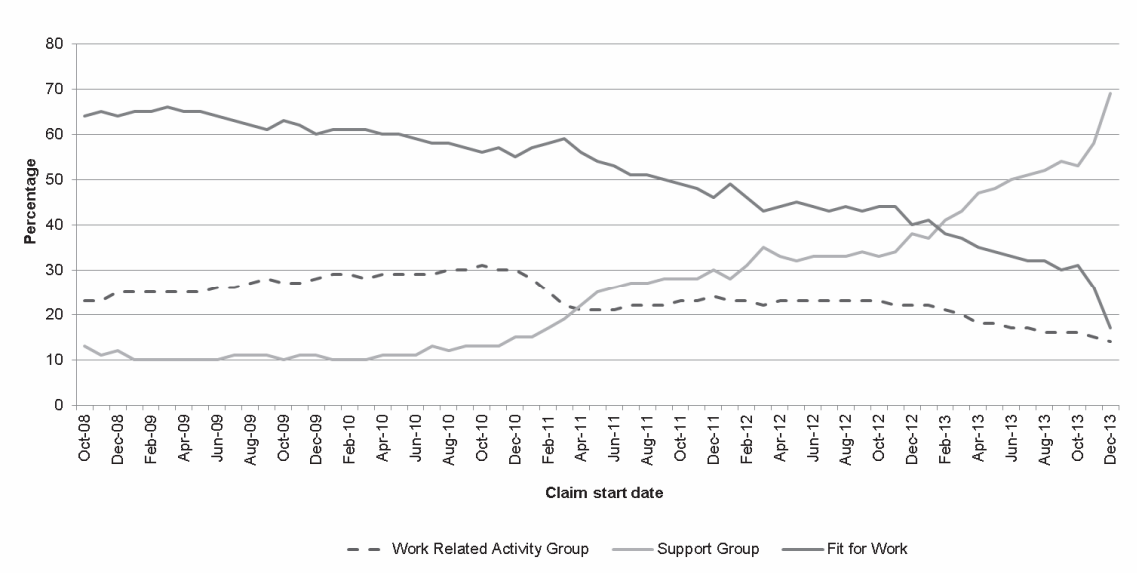
6. If someone does not meet any of these criteria they may still be placed in the Support Group by the application of Regulation 35 (2) (b). This is appropriate where the Decision Maker, based on the assessment of a Healthcare Professional (HCP) and any other evidence provided, believes that there would be a substantial risk to the mental or physical health of any person, if the individual was found not to have limited capability for work-related activity.

7. Although no projections of likely numbers for the Support Group could be found by the Reviewer, it seems clear that the original belief was that this would constitute the least likely outcome of the WCA and that Regulation 35 (2) (b) would only be used in exceptional circumstances.

Trends over time

8. There have been significant changes in outcomes following a WCA since its implementation. In 2009 63% of people were found fit for work with 26% being assigned to the WRAG and a further 10% to the Support Group.[23] The WRAG outcome has been the most stable with a small reduction to 18% in 2013. However, the proportion of people found fit for work has dropped significantly to 34% and that for the Support Group has increased markedly to 47%. Allocation to the Support Group is now the most likely outcome of the WCA for new claims by a considerable margin. This shift has been a steady process and trend data is shown in Figure 3.1.

Figure 3.1 – The proportion of people making a new claim to ESA placed in the Support Group, Work-Related Activity Group or found fit-for-work



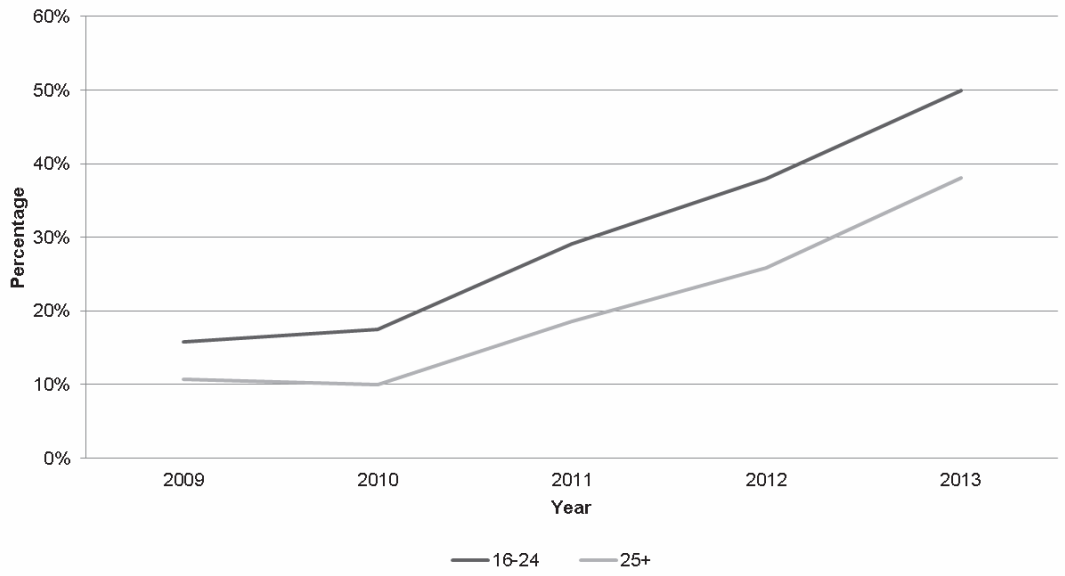
9. Figure 3.1 highlights a recent spike, from October 2013, in the proportion of individuals who are placed in the Support Group (reaching just under

[23] DWP, September 2014, ESA WCA Published Statistics. All figures rounded to the nearest 100 and nearest percentage point. Figures exclude ESA and IB reassessments.

70% in December 2013), with a corresponding dip in fit for work decisions (under 20% in December 2013). This spike is likely to be a feature of the way in which the WCA backlog was addressed by the Department and the Provider. Nevertheless, even if this recent anomaly is disregarded, the trend towards finding fewer people fit for work and assigning more to the Support Group is material and substantial.

10. Examining this data in greater detail reveals a particularly worrying trend in the proportion of young people (ages 16-24) that are being assigned to the Support Group. In 2009, 16% of young people making a new claim to ESA were placed in the Support Group, compared to only 11% for other age groups combined.[24] By 2013, that proportion had risen to 49%, compared with 38% for all others. Again, this rising trend is consistent over time and the gap between young people and their elders appears to be widening. These features are shown graphically in Figure 3.2 and related issues are addressed later in this chapter.

Figure 3.2 - Proportion of 16 to 24 years olds and 25+ year olds making a new claim placed in the Support Group



Developing a deeper insight

11. Since the introduction of ESA in 2008, the total number of individuals placed in the Support Group has steadily increased. However, the Review notes that there has also been a shift in the reasons behind a Support Group decision.

12. Between 2009 and 2013, the proportion of people being placed in the Support Group as a result of the Schedule 3 functional descriptors has increased slightly from 34% in 2009 to 41% in 2013.[25] The proportion of

[24] Table 5..DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.
[25] Table 6. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.

those being placed in the Support Group as a result of Regulation 35 (1), which includes people who are terminally ill and certain circumstances where a person is undergoing treatment for cancer, has decreased. However, to place this latter point in context, the number of individuals placed in the Support Group as a result of Regulation 35 (1) has steadily increased since 2009 and the declining proportion is a feature of greater increases in other categories.

13. Of particular interest to the Reviewer has been the substantial increase in the proportion, as well as the number, of individuals placed in the Support Group as a result of Regulation 35 (2) (b). This is where there is deemed to be a substantial risk to the mental or physical health of any person. The use of this Regulation has increased from 17% in 2009 to 38% in 2013.[26] It is pertinent to note that there have been no amendments to this Regulation during that time.

14. The information reported routinely by the DWP is not sufficiently granular to allow a deeper analysis of the reasons underpinning the choice of these various routes into the Support Group. Consequently, as part of this Review, a small data gathering exercise was conducted over two weeks in June 2014 at seven benefit centres across Great Britain to supplement the available information. The sample had a similar age profile to the general population of people making claims for ESA and only a small proportion (5%) were reviews of Incapacity Benefit.[27] In total, 1732 cases were allocated to the Support Group of which the split of totally new claims to re-referrals was 40/60 and two thirds were undertaken without a face-to-face assessment ("papers only" or "scrutiny"). There was some variability between centres in the use of the different routes, but not to a significant degree, and overall 53% of Support Group allocations were on the basis of the descriptors and 40% by application of Regulation 35 (2) (b). Whilst the use of the Functional Descriptors is slightly higher than those figures reported for the Department, the use of Regulation 35 (2) (b) was broadly similar.

15. Comparison of recommendations made by HCP and Decision Makers showed that there was close concordance and less than 2% of those allocated to the Support Group had originally been recommended for another group. This concordance is very different to the pattern reported in the Year 4 Review in relation to WRAG decisions which showed a significant overturn rate by Decision Makers of those recommended as fit for work by HCP.

16. In examining the use of Regulation 35 (2) (b) to place people in the Support Group it emerged that 86% were attributed to risk of harm resulting from an identified mental health condition.

[26] Table 6. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.
[27] Unpublished data gather exercise. Data has not been quality assured to National Statistics or Official Statistics publication standard. It should therefore be treated with caution.

Potential drivers of changes

17. It is not within the scope of this Review to make a judgement on whether the numbers of individuals being found fit for work, placed in the WRAG or in the Support Group is the right one. That is a matter for the Department and ultimately for society. However, the very substantial shift in outcomes since 2008, highlighted by Figure 3.1, inevitably raises the question of whether the WCA is still meeting the policy intent.

18. The Review has not been able to analyse the information to a level of detail which might fully explain the observed shifts. However, some lines of enquiry are suggested in relation to the impact that changes may have had on WCA outcomes, some specific reasons behind the increase in use of Regulation 35 (2) (b) and the higher proportion of young people with a Support Group outcome.

Changes that may be relevant

19. As discussed in Chapter 2, there have been many changes to the WCA and ESA since their introduction in 2008. Some of those changes have a temporal association with altered patterns of WCA outcomes described above. It is not possible conclusively to prove a causal link between these elements but seems likely that they have contributed to altering trends.

20. The revision of the descriptors in 2011 following the Department-led Review constituted a significant change to the WCA. Up to that point there had been a slow but steady rise in the proportion of people being assigned to the WRAG rather than being found fit for work. However, around this time there was a sharp drop in WRAG entry numbers and a proportionate increase in those directed to the Support Group; DWP officials have confirmed that this broadly matched their expectations of the impact of the changes.

21. The migration of people from Incapacity Benefit (IB) to ESA began in earnest in 2011. This resulted in the WCA being applied to large numbers of people, many of whom had been on benefit for extended periods of time. In 2013 some 59% of individuals going through the IB reassessment process were placed in the Support Group.[28] It is understandable that this group, many of whom had long term incapacity, would have a relatively high propensity to be assigned to the Support Group. However, the issue flagged here and shown graphically in Figure 3.1 relates only to new claims.

22. Changes were also made in 2013 to regulations to expand the categories of cancer treatments under which a person may be treated as having limited capability to undertake work-related activity and which would result in them being placed in the Support Group. This appears to

[28] Table 8. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.

have had the desired effect, though Departmental evaluation is not yet complete. However, the numbers are small in relation to the overall increase in the Support Group and cannot explain the sustained rise that has occurred.

Regulation 35 (2) (b)

23. As already stated, there has been a significant increase in the number of people making a new claim to ESA who are placed in the Support Group as a result of Regulation 35 (2) (b). In 2013 this amounted to 38% of Support Group entrants.[29]

24. The use of Regulation 35 (2) (b) is appropriate where the Decision Maker, based on the assessment of a Health Care Professional (HCP), believes that there would be a substantial risk to the mental or physical health of any person, if the individual were found not to have limited capability for work-related activity. This includes individuals deemed to be at risk of suicide or self-harm.

25. The data gathering exercise indicated that 10% of all those in the Support Group were placed there as a result of either risk of suicide or self-harm; 7% were felt to be at risk of suicide, and 3% at risk of self-harm. The numbers of people placed in the Support Group as a result of risk of both suicide and self-harm is higher in young people and declines with age.[30]

26. This provision is an important safety net and the issue of correctly identifying individuals at risk of self-harm and suicide was highlighted in the Mental Welfare Commission for Scotland's investigation report into the death of Ms DE in early 2014.[31]

27. There are a number of reasons why the use of Regulation 35 (2) (b) might be higher than expected. These may include:

    - Higher levels than anticipated of people at significant risk of harm that do not meet the descriptors
    - An anomaly in the processing of cases and recording of reasons
    - A change in use of the regulations by either HCPs, Decision Makers or Tribunal Service

28. The Reviewer has been unable to identify any anomaly in processing that would lead to a change on this scale. Similarly, although rates of self-harm have increased somewhat since the economic downturn, it seems implausible that this could account for a more than doubling of this outcome. Consequently, the shift since 2009 would appear to reflect a change in which the Regulation is being used.

[29] Table 6. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.
[30] Unpublished data gather exercise. Data has not been quality assured to National Statistics or Official Statistics publication standard. It should therefore be treated with caution.
[31] Mental welfare Commission for Scotland, 2014, Investigation Report: Who benefits? The benefits assessment and death of Ms DE.

29. Regulation 35 (2) (b) must only be applied once a HCP has fully considered whether any of the descriptors in Schedule 3 apply to the person. The descriptors are considered at the paper-based stage. If these do not apply then the HCP must consider whether to refer the person for a face-to-face assessment or, where there is sufficient evidence of 'significant risk of harm', apply Regulation 35 (2) (b).

30. Between January 2013 and December 2013, 34% of people placed in the Support Group as the result of 'Mental and Physical risk' were placed there following a face-to-face assessment.[32] In other words, some two thirds of people placed in the Support Group as a result of Regulation 35 (2) (b) are identified on a papers only basis. The Reviewer understands from personal clinical experience how difficult it is to arrive at a sound judgement in this type of situation and is surprised that so many colleagues feel able to offer a professional opinion without the benefit of a face-to-face assessment. This would appear to be an area that warrants early further investigation by the Department and its provider.

Young People

31. 49% of all young people making a new claim were placed in the Support Group in 2013, meaning that they are not expected to undertake work-related activity.[33] Evidence shows that spells of inactivity and a lack of work experience compound difficulties in entering employment and are often indicators of low future earnings. The Reviewer is extremely concerned that such a high proportion of young people are placed in the Support Group and worries about the longer term consequences for them and for society.

32. Some of the factors underpinning the difference in outcome for people aged 16–24 and those over 25 have been examined. A larger proportion of young people are placed in the Support Group as a result of severe functional descriptors than in any other age category: 51% in comparison with an average of 36% for other age groups.[34] However, the use of this descriptor has been in gradual decline since 2009 from 59% to 48% in 2013. Meanwhile, the proportion placed in the Support Group as a result of 'Mental and Physical risk' has gradually risen from 21% in 2009 to 44% in 2013.

33. The majority of young people placed in the Support Group, have mental health as a primary condition. Mental health conditions account for 54% of all Support Group outcomes for 16-24 year olds since 2008.[35] Of that, a 'depressive episode 'or 'other anxiety disorders' account for 39%.[36] However, the proportion of individuals placed in the Support Group with depression or anxiety disorder is on the increase; accounting for 47% of all young people with a mental health condition in 2013.

[32] Table 12. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.
[33] Table 5. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.
[34] Table 6 & 7. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.
[35] Table 13. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.
[36] Table 14. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.

34. Another factor contributing to this pattern is young people who have long-term conditions or disabilities leaving education or training and transitioning into employment or income-related benefits. Advances in medical science have resulted in more children with chronic conditions and severe disabilities reaching adulthood but the pace of that change cannot explain the significant increases outlined above.

Summary

35. There have been significant changes in outcomes following a WCA since its implementation. In 2009 63% of people newly assessed were found fit for work with 26% being assigned to the WRAG and a further 10% to the Support Group. By 2013 this had switched with 47% entering the Support Group, 18% to the WRAG and only 34% being found fit for work. Allocation to the Support Group is now the most likely outcome of the WCA for new claims by a considerable margin and evidence suggests that the trend continues.
36. There have been a number of drivers for this shift and some are likely to be transient but the change is remarkable and, in particular, the growing number of young people being placed in the Support Group is of concern.
37. The number of people being assigned to the Support Group on the basis of Schedule 3 descriptors has increased significantly but only slightly as a proportion.
38. Use of the 'treat as' regulations, for terminally ill people and those undergoing cancer treatments, has increased slightly but now represents a much smaller proportion of Support Group cases than in 2009.
39. The main driver for the increase appears to be the use of Regulation 35 (2) (b), where an individual is considered to constitute a substantial risk of harm. This category has increased substantially in both numerical and proportionate terms – some 38% of new Support Group cases now enter on those grounds.[37] Surprisingly, two thirds of these decisions are made on a papers only basis.
40. Various changes to both ESA and the WCA appear to have contributed to this shift in outcomes. However the significant increase in the use of Regulation 35 (2) (b) and the high proportion of young people assigned directly to the Support Group cannot be explained on this basis.
41. The issues identified here warrant further investigation to ensure that the application of the WCA is meeting the policy intent and that individuals are placed in the most appropriate group.

[37] Table 6. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.

Recommendations

42. **The Reviewer therefore recommends that:**

- The Department investigates the substantial increase in the proportion of Support Group outcomes as a matter of urgency to determine whether the WCA is being applied correctly.
    - In particular, the use of Regulation 35 (2) (b) should be subject to close scrutiny with a particular focus on decisions made on a papers only basis.
    - The drivers for the high rate of young people (16-24) being assigned to the Support Group should be examined not only to ensure that benefit decisions are correct but also to help provide the type of support that will avoid the creation of a “lost generation”.

Chapter 4: Perceptions

1. The Fourth Independent Review highlighted the importance of perceptions of objectivity surrounding the Work Capability Assessment (WCA). To be a credible test, the WCA needs not only to be fair but to be perceived as such across a wide spectrum of opinion. As a result a series of recommendations relating to perceptions of the assessment process were made.
2. The Reviewer recognises that some people will criticise process when they do not achieve the result they are seeking. Focussing on perceptions of the process, and the sense of fairness associated with it, is therefore essential.
3. Previous reviews have rightly examined in some detail the perceptions of people being assessed and the groups that represent them. This review sought to gather information from a wider group and, in particular, to capture unfiltered perceptions from the general public and staff administering the process on behalf of the Department for Work and Pensions (DWP).
4. Effective communication is key to improving the perception of fairness, both for people going through the WCA and for staff administering the system. A particular focus for this Review has therefore been the way that the Department communicates with individuals making a claim for Employment and Support Allowance (ESA) and those undergoing a WCA, perhaps for the first time. Similarly, understanding the views of staff supporting the delivery of ESA and the WCA is critical to the framing of messaging.

Social media

5. This Review has tried to use a wider range of sources to gauge public perception of the WCA. Engagement with stakeholder organisations and individuals who put themselves forward having navigated the WCA process remains central to the review process, but it was felt that tapping into other channels might add richness and improve insight.
6. Social media have become an important means of both sharing information and of shaping opinion in recent years. For some people they have become a primary source of information, while for many others they are used to supplement more traditional alternatives. In order to try and broaden input to the review process the Call for Evidence was advertised on Twitter and YouTube for the first time. In addition, the Review commissioned a trend analysis of social media to provide insight into wider public opinion beyond that captured by traditional means. The analysis tracked data between January 2013 and January 2014.
7. Social media content, including that drawn from Twitter and Facebook, was analysed by correlating the term “WCA” with other key words and

making an assessment as to whether the association indicated either a positive or a negative perception. Over 90,000 'mentions' were recorded during the period of analysis. Negative mentions consistently outweighed positive ones. On average, around 11% were categorised as 'negative', compared to only 3% 'positive'. The remaining 86% were recorded as neutral.[38]

8. There are some limits to the conclusions that can be drawn from this type of analysis, not least difficulties in classifying 'mentions' as positive, negative or neutral. However, the volume of social media comments and the degree of negativity is perhaps telling given that the data was collected more than six years after the introduction of ESA and the WCA. This is despite all the work that has been undertaken to capture concerns relating to the assessment and to address perceived issues. One might have expected that views would have softened over time as people became used to the new system and saw that efforts were being made to improve it but that would seem not to be the case.

9. There are likely to be a number of reasons underpinning this persistent disquiet in parts of society. It may be that the efforts to explain the policy intent and the various improvement measures have been ineffective. It may be that the many changes described in Chapter 2 have served to keep the issues in the limelight and to refresh public interest on a regular basis. It may be that a sufficient number of people feel disadvantaged by the introduction of ESA and the use of the WCA and believe that the changes can be reversed by lobbying.

10. The regular changes to the assessment would certainly appear to influence negative perceptions. Not only do they keep the WCA in the public eye but each change may reinforce the view that the assessment is flawed. Some changes will always be required but the assessment should now have reached a stage of maturity where these should be minor adjustments rather than fundamental alterations. Bundling such minor changes into packages launched once or twice a year would reduce the "noise" in the system as well as providing staff and those advising people making a claim with some welcome stability. These measures may help in addressing negative perceptions but, if they persist it raises the question of the future of the WCA which is addressed in Chapter 8.

11. The Fourth Independent Review made several recommendations geared to improving the perception that the WCA is a fair test. This included the recommendation that the DWP should specify an assessment format that facilitates better rapport, that the person being assessed should be able to see what is being written during an assessment and that guidance on companions should be made clearer and applied more consistently. Improving the way that assessments are delivered will be important to improving the overall perception of the WCA process. However, the analysis indicates that further work is required to address negative perceptions.

[38] Data is derived from unpublished information. Created using Radar to run searches on real-time social media information.

"An important part of effectively disseminating information regarding the WCA, is that claimants will receive the correct information rather than potentially fear-inducing or incorrect information disseminated by online forums, media outlets and social media. This could potentially help to reduce fear and anxiety associated with the assessment …", Joint response from the mental health sector

Staff perceptions

12. The Independent Review sought to gain a better understanding of the way in which those DWP staff supporting the delivery of the WCA and making decisions about eligibility to ESA perceived the process. A survey was therefore undertaken of over 1400 Departmental staff, representing groups that will interact with people throughout the process of claiming ESA and beyond into seeking work (where appropriate).[39] The survey sought to gain an insight into their understanding of the purpose of the benefit; the processes underpinning its delivery, including the new process of mandatory reconsideration; the training they undertake; and their understanding of support available following the WCA.

13. The results showed that, in general, staff understanding of the purpose of the benefit and its processes, including mandatory reconsideration, was good. However, there remains a significant minority of staff who are closely involved with people claiming ESA and who reported having had little training on the WCA process, including mandatory reconsideration. Most staff indicated that they found training useful but there would appear to be a greater need for follow-up support or guidance to aid learning. The Department should review the mechanisms in place for monitoring levels of understanding amongst staff involved in the ESA process and consider appropriate means of following up this training to ensure levels of knowledge and understanding remain high.

14. Perhaps related to this apparent training gap was the finding of variable perceptions of effectiveness of the WCA across staff groups. In general, there appears to be a somewhat higher level of confidence in allocation to the Support Group than to the WRAG. This may be linked to the findings in the Fourth Independent Review regarding overturn rates by Decision Makers. An additional, and perhaps unsurprising, finding was that confidence in the system was highest among those implementing it and lowest among those exposed only to people who have been denied benefit.

[39] Unpublished staff survey to inform Fifth Independent Review

Messages to people in advance of a WCA

15. The Fourth Independent Review made several recommendations relating to the way in which the Department communicates with those individuals making a claim to ESA and going through the WCA process. This included ensuring, amongst other things, that all letters and forms meet Plain English standards; information is presented at the right point in the process; and that the person making a claim is clear about their rights and responsibilities at each stage of the process.

16. These remain important elements in improving the overall perception of the WCA and, as such, merit repetition especially in the context of first contact with the system. Responses to the Call for Evidence raised particular concerns about the level of information provided by the DWP at this stage in the process. In consequence, the Reviewer has sought to gain a better understanding of the information the Department provides.

    "Those I have supported tend to feel there is not much information provided that they can easily understand. If they fail to understand the letter you have sent then their benefits are being stopped. More direct contact i.e. phone calls or face to face question points say in the Jobcentre Plus would help people's understanding and possibly help prevent the number of 'failed to attend' assessments", Individual response

17. There are numerous contact points between the individual and both the Department and Provider. Following receipt of a claim to ESA, DWP issue the individual with a leaflet (ESA40) that explains the purpose of ESA, a brief outline of how eligibility is assessed and what to expect following a WCA. This is followed by a letter (ESA35) sent in advance of the Limited Capability for Work Questionnaire (ESA50) to explain its importance to the assessment process and a high-level overview of the WCA process. The Limited Capability for Work Questionnaire is itself accompanied by a cover letter advising the individual to complete and return the form and explaining that they may be asked to go for a face-to-face assessment. If there is a need to attend a face-to-face assessment, a leaflet (WCA AL1C) accompanies the appointment letter. This is provided by the Provider and contains details such as how to claim travel expenses, the length of the assessment and what people need to bring with them when they attend.

18. Whilst the information supplied in these letters and forms is clearly useful, this Reviewer is concerned that there appears to be little specific information on what an individual can expect from a WCA, what they may be asked by the Healthcare Professional or what they may be expected to do when taking part in an assessment. This lack of information is likely to act as a source of anxiety amongst people invited to attend, particularly those who may be undergoing a WCA for the first time.

19. The Department should work with the Provider to improve communications sent in advance of an individual attending a WCA and ensure that it explains the nature of the WCA, including a description of what they can expect when they attend.

20. Written material is available on request in several alternative versions, some of which appear to be lightly used, but this does not currently include Easy Read. The Reviewer has received many representations by and on behalf of people with learning disabilities for the Easy Read format to be offered by the Department. Chapter 6 explores the importance of ensuring that the WCA process effectively supports people with learning disabilities. People with learning disabilities represent a significant proportion of the people undertaking the WCA and can often struggle to engage with standard communications. Producing easy read materials can improve accessibility for this vulnerable group and help empower them as individuals.

21. With this in mind, the Department should review its portfolio of alternate formats, prioritised by need and uptake and should seek to provide in as many forms as is reasonably practicable.

22. The Department and the current Provider appear to have made far less use of communication channels other than written materials to disseminate their message than those with negative views of the system. The Reviewer was surprised to note when doing a brief search on YouTube that films about the WCA made by small charitable organisations seemed much slicker and more persuasive than the stilted offerings from “the establishment”. This is particularly surprising given the respective resources of DWP and the Provider and would seem to be an obvious deficiency to remedy.

23. The Department should work with the new Provider to review the existing material available to improve the range, the quality and the content of online resources relating to the WCA. They should consider working with representative organisations to ensure that the information is both clear and accessible.

Summary

24. To be a credible test, the WCA needs not only to be fair but to be perceived as such across a wide spectrum of opinion. Effective communication is key to improving the perception of fairness, both for people going through the WCA and for staff administering the system.

25. Analysis of social media confirms that perceptions of the WCA are overwhelmingly negative. The degree of negativity is perhaps telling given it is more than six years since the introduction of the WCA. One might have expected that views would have softened over time as people became used to the new system and saw that efforts were being made to improve it but that would seem not to be the case.

26. A survey of DWP staff supporting the delivery of the WCA demonstrated a generally good level of satisfaction with training in the purpose of the benefit and its processes. However, there is a perceived need for additional follow-up support and there are differing levels of confidence in the effectiveness of the assessment between staff groups.

27. Responses to the Call for Evidence raised particular concerns about the level of information provided by the DWP in advance of a WCA. There are particular concerns that there appears to be little specific information on what an individual can expect from a WCA, what they may be asked by the HCP or what they may be expected to do when taking part in an assessment. The reliance on traditional written communications works to the disadvantage of the Department and an investment in better quality multi-media resources appears indicated.

Recommendations

28. **Therefore, the Reviewer recommends that:**

- The Department bundles future necessary changes into packages delivered no more than bi-annually to provide greater stability and avoid the perception of constant change to the WCA.
- The Department reviews the mechanisms in place for monitoring levels of understanding amongst staff involved in the ESA process and consider appropriate means of following up this training to ensure levels of knowledge and understanding remain high.
- The Department work with the Provider to improve communications in advance of WCA attendance ensuring that it explains the nature of the WCA and what people can expect when they attend.
- The Department review its portfolio of alternate formats with specific reference to the use of Easy Read and then prioritise provision by need to create as many forms as is reasonably practicable.
- The Department work with the new Provider to improve the range, quality and content of online resources relating to the WCA. They should consider working with representative organisations to ensure that the information is both clear and accessible.

Chapter 5: Decision Making and processes

1. In the Fourth Independent Review of the Work Capability Assessment (WCA), the Reviewer examined several aspects of the WCA process and of decision making within the Department for Work and Pensions (DWP).
2. This chapter considers both the training and quality assurance in decision making in more detail, as well as the way in which information flows and is shared more broadly following a WCA, including with Work Programme providers. The Review also considers the re-referral periods that individuals placed in either the Support Group or Work-Related Activity Group (WRAG) are allocated and their suitability of both long- and short-term awards.

Decision Making

3. The Department operates a system whereby two levels of Decision Maker are responsible for making eligibility decisions for individuals applying for Employment and Support Allowance (ESA). More junior Band B (AO grade) Decision Makers process "non-complex" decisions – where people assessed by the Healthcare Professional (HCP) meet the criteria for benefit - whereas more senior Band C (EO grade) Decision Makers review the evidence for people assessed as not meeting the criteria for benefit.
4. The previous review indicated that this process is not functioning as effectively as it might. It showed that Decision Makers amend HCP recommendations to move around 15% of people originally considered fit for work into the WRAG but only 0.1% from the WRAG were considered fit for work.[40]
5. As a result, the Fourth Independent Review recommended that the Department re-engineer the case-mix for the two levels of Decision Maker so that more senior staff consider "borderline" cases (e.g. 6 –21 points) and more junior staff process all others.
6. This Review has returned to this issue, specifically with reference to the Support Group. The findings for 2014 were essentially the same as for those reported in the Fourth Independent Review and, in the same way as for the WRAG, where a Support Group recommendation was made by a HCP, this recommendation remained unchanged in almost 100% of cases.[41]

[40] Table 1. DWP, 2013. Statistics to support the Fourth Independent Review of the WCA.
[41] Table 11. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.

7. Decision Makers have rightly been empowered to make decisions on eligibility for benefit, making use of the reports provided by the HCP and any further evidence provided by the individual. The overturn rate of HCP recommendations in relation to the Support Group is not as high as for the WRAG and, because of the binary nature of the decision making process, there is not the worrying gradation which was commented on last year. However, it is implausible that in any system changes would only occur in one direction if a balanced view was being taken. The way that the Department organises work flows introduces an inevitable bias towards shifting the caseload into a higher benefit level. If this is the policy intent then it is operating effectively – if, however, it is not what is intended then the Department needs to address the issue with some urgency.

Information flow

8. The DWP gathers a large amount of information about people making a claim as part of the WCA process. In the Fourth Independent Review, the Reviewer called for the Department to make better use of this information and to share relevant material on capability for work with Work Programme providers. This reinforced the eighth recommendation of Professor Harrington's 2011 review. The DWP's progress against delivery of recommendations of previous independent reviews is summarised in Chapter 2. **Annexes 2 and 3** summarise the position of the progress made against all on-going recommendations.

9. The WCA is by no means the only context in which the DWP gathers information on people's health status and capability for work. As of February 2014, 46% of individuals in receipt of ESA were also in receipt of Disability Living Allowance.[42] In addition one can expect there will be a number of people receiving ESA that are also in receipt of Personal Independence Payment (PIP) and Industrial Injuries Disablement Benefit (IIDB) though figures for these were not available to the Reviewer. All of these benefits require an assessment of need conducted either face-to-face or through scrutiny of paper-based evidence. The introduction of Fit for Work in late 2014 adds a further assessment to the mix. Making use of a supportive occupational health assessment, Fit for Work will provide general health and work advice to employees, employers and GPs, to help individuals stay in or return to work.

10. At present, there is very little sharing of information between the different assessment processes and this appears inefficient. The Reviewer spoke to someone undergoing an assessment who had, as part of the same episode of disability, been through not only the WCA but also the PIP and the IIDB processes. Their perception was that the various assessment processes involved much duplication and that the lack of integration of the processes resulted in delay and inefficiency. The Reviewer accepts that ESA, PIP, IIDB and Fit for Work are different

[42] DWP Tabulation Tool (May 2014).

assessments with different criteria and objectives but there is a significant commonality between these assessments and the type of information gathered.

11. It is understood that DWP has made a start in sharing such information across different benefits and assessments. Where people are terminally ill with very limited life expectancy, the Department does share information between the PIP and ESA processes. This is clearly the right thing to do but it also begs the question why, if it can be done in extremis can it not be done in more routine cases. There may well be process or systems issues that render more sharing difficult but such barriers should be broken down and not accepted as reasons for tolerating inefficiencies that benefit no-one.

    "Many claimants are under the impression that the DWP has information on them gathered over many years (perhaps of claiming IB or DLA). Many claimants do not realise that Atos will not have seen, and will never see, any information that the DWP has", Individual response

12. The Reviewer believes that the Department's strategic direction should be towards effective communication between these systems. Potential benefits include improving the experience of individuals, improving the efficiency and speed of the assessment process and reducing unnecessary face-to-face assessments. Chapter 8 looks at the future of the WCA and considers this issue further.

13. In the meantime, the Department should explore options for an improved flow of relevant information between DWP assessments, including Personal Independence Payment, Disability Living Allowance, Industrial Injuries Disablement Benefit, Fit for Work and the Work Capability Assessment.

14. Moving beyond the issue of benefits assessments, the information that the Department gathers could be used to enhance the healthcare of some people in the system. It is well recognised that early therapeutic intervention, particularly for those with mental health or musculoskeletal conditions, can have a significant impact on both health and employability. Fast tracking people identified as having such health barriers to employment into services such as Improving Access to Psychological Therapies (IAPT) and physiotherapy could produce significant benefits to both them and to society.

15. The Department should work with the Department of Health and other appropriate government departments to explore how DWP can make use of the WCA and the evidence gathered to ensure individuals are sign posted to appropriate support.

Re-referral periods

16. When the decision is made to award a person ESA, their award duration is also set. Currently a person may be granted ESA for as short a period as 3 months or as long as 3 years. The period of time specified is referred to as either the 're-referral period' or informally as the 'prognosis period'.

17. The duration of the benefit award period is determined by the departmental Decision Maker, based on the available evidence and the advice provided by the HCP. Re-referral periods may be 3, 6, 12, 18 or 24 months. In some instances a person may be given a re-referral period of more than 24 months, which equates to 3 years in practice.

18. It should be noted that the Fourth Independent Review recommended that the Department consider extending the re-referral period to five years in the Support Group for people who have severe incapacity resulting from brain disorders that are degenerative or which will not realistically improve.

19. Usually, 8 weeks prior to the end of an individual's ESA award, the person claiming benefit will be contacted to start the process of repeat assessment. However, in March 2014, the Department decided to suspend repeat assessments for those in the WRAG and Support Group until further notice. The decision was taken to provide DWP with an opportunity to focus on reducing waiting times for individuals going through the WCA process. Individuals who report a change in their condition may still be referred for reassessment.

20. Reassessment involves a repeat of the WCA process. Where possible, a decision will be made on the basis of the paperwork collected but a person may still be called in for a face-to-face assessment.

21. Usually everyone on ESA is reassessed without exception, and the frequency of these is determined by the re-referral period.

22. The Reviewer wanted to understand the thinking underpinning re-referral periods and how they are applied. Re-referral periods are afforded great importance by people claiming ESA as it determines the regularity with which they must undertake a WCA (a stressful process for many) and the length of time for which they receive payment of benefit.

    "I have a degenerative disease. I am never going to get any better, in fact I am only ever going to get worse … Why waste money and time reassessing me over and over (3 times in 5 years)? It is common sense that people with certain illnesses, diseases, disabilities are never going to be fit for work and the stress of reassessments for these people is not needed", Individual response

    "I have a constant underlying anxiety that today may be the day that I am called for reassessment and I have to go through the whole nightmare process again," Individual response

Terminology

23. Terminology used in processes has the potential to significantly affect perceptions and the understanding of those delivering a service and those going through the processes. The Reviewer made reference to the importance of terminology and communication in the Fourth Independent Review, and would like to emphasise it again.

24. The period specifying the time that an individual will be in receipt of ESA payments, before being reassessed is referred to as the 're-referral period'. However, it is also commonly referred to as the 'prognosis period' by those delivering the WCA and by charity and other representative groups in particular.

25. The term 'prognosis period' is likely used because it appears as a heading in the reports produced by the HCP. 'Prognosis' is used commonly in medicine and is linked to the term 'diagnosis' to predict the probable course and outcome of a disease. However, in this context it relates simply to the period in which either a HCP or a Decision Maker anticipates some change in the person's capability for work, or the period in which they feel it would be sensible to hold a reassessment.

26. Use of the term 'prognosis period' should be discouraged and documentation should be amended accordingly. It perpetuates the erroneous view that the WCA is based on a medical model of disability and undermines the intent of using an assessment of functional capability.

Support Group re-referral periods

27. The Support Group is intended for people who are so severely ill or disabled that it would be unreasonable to require them to engage in work-related activity. It is logical therefore to expect that individuals in the Support Group are given longer re-referral periods. Indeed, approximately 64% of people placed in the Support Group are given a re-referral period of 12 months or more. However, some 36% of people in this group have short re-referral periods of 3 or 6 months.[43] While recognising the need for the Department to keep people close to the labour market, this seems counter-intuitive for this severely incapacitated group.

28. The original intention was that these short re-referral periods in the Support Group would be used sparingly for people unable to engage in work-related activity for a limited period of time, such as those undergoing chemotherapy. The more extensive use of these short re-referral periods for the Support Group merits further investigation since rapid reassessment is stressful for individuals, burdensome for the DWP and expensive for the taxpayer.

[43] Table 9. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA. For all ages up to December 2013. Note – This excludes terminally ill people and claims for which a re-referral is unknown.

29. Chapter 3 highlighted the worryingly high proportion of people aged between 16 and 24 that are placed in the Support Group. The majority of these young people are placed there as a result of severe functional impairment caused by a mental health condition. 63% of young people with a mental health condition as a primary condition who were placed in the Support Group were given re-referral periods of 12 months or less.[44] It therefore seems that many young people placed in the Support Group as a result of mental health conditions may be suffering from acute, and generally self-limiting, periods of illness from which they are expected to recover within the near future. Using the Support Group for this purpose may cause more harm than good and the current application of the system in relation to young people with acute mental health problems should be explored fully.

Work-Related Activity Group

30. The WRAG is intended for those individuals who are assessed as having limited capability for work after their WCA and do not satisfy the Support Group criteria, with the aim of ensuring that they are able to find and sustain employment, if and when they are able. People in the WRAG are expected to undertake work-related activities, such as CV writing or attending appointments with a Jobcentre Plus adviser. The purpose is to ensure that when the person is capable of returning to employment, they have the skills and support to do so.

31. For people who may be required to look for work in the relatively near future, it is logical that they undertake reasonable work-related activities to prepare them for this. Up to December 2013 72% of people in the WRAG were given re-referral periods of 3 or 6 months and a further 20% of individuals were given re-referral periods of 12 months.[45] This appears appropriate for a group that is intended as a means of supporting people into employment.

32. However, the remaining 8% of people were given a re-referral period of 18 months or more, and yet were placed in the WRAG and expected to undertake work-related activity. Although this is only a small group, it seems odd to ask people to engage in work-related activity when there is no expectation that they will be fit to return to work for perhaps two or more years.

33. The Department should review its policy and processes around applying short re-referral periods in the Support Group and longer re-referral periods in the WRAG, with a view to ensuring that resources are allocated in the most efficient and appropriate places and that policy intentions are met in practice.

[44] Table 10. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA. Note – This excludes terminally ill people and claims for which a re-referral is unknown.
[45] Table 9. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA. Note – This excludes terminally ill people and claims for which a re-referral is unknown.

Summary

34. Decision Makers have rightly been empowered to make decisions on eligibility for benefit, using the reports provided by the HCP and any further evidence provided by the individual. The overturn rate in moving people into the Support Group is not as high as for the WRAG, which was commented on last year, but the almost total lack of movement in the opposite direction is the same. It is implausible that in any system changes would only occur in one direction if a balanced view was being taken.

35. At present, there is very little sharing of information between the different assessment processes undertaken by the Department which appears inefficient. Although ESA, PIP, IIDB and Fit for Work are different assessments with different criteria and objectives, there is a significant commonality between them and the type of information gathered. This is potentially a rich source of information that could be used much more effectively in order to reduce the burden placed on the Department and individuals going through the process.

36. Terminology used in processes has the potential to significantly affect perceptions relating to them. Use of the term 'prognosis period' instead of 're-referral period' is not only misleading but also reinforces the erroneous view that the WCA is based on a medical model of disability rather than functional capability. Its use should therefore be discouraged.

37. When the decision is made to award a person ESA, their award duration is also set and this may be for as short a period as 3 months or as long as 3 years. Setting re-referral periods of 6 months or less for those so severely incapacitated as to be allocated to the Support Group in more than one third of cases appears counter-intuitive.

38. The majority of young people assigned to the Support Group have mental health problems and some two thirds of them are given re-referral periods of 12 months or less. Using the Support Group for young people with acute, and generally self-limiting, conditions may cause more harm than good.

39. A small group of people are placed in the WRAG for prolonged periods which seems to be at odds with the policy intent for this group.

Recommendations

40. **Therefore, the Reviewer recommends that:**

- The Department examines its work flow system, which appears to introduce an inevitable bias towards granting higher benefit levels, to ensure that the policy intent is being met.
- The Department should explore options for improved information flow between DWP assessments, including Personal Independence

Payment, Disability Living Allowance, Industrial Injuries Disablement Benefit, Fit for Work and the Work Capability Assessment.

- The Department should work with the Department of Health and other appropriate government departments to explore how DWP can make use of the WCA and the evidence gathered to ensure individuals are sign posted to appropriate support.
- Use of the term ‘prognosis period’ should be discouraged and documentation should be amended accordingly.
- The Department should review its policy and processes around applying short re-referral periods in the Support Group, particularly for young people with mental health problems, and for longer re-referral periods in the WRAG.

Chapter 6: Groups meriting special attention

1. The Fourth Independent Review focussed particularly on individuals with mental health conditions. The data continue to show that mental health conditions represent the primary cause of incapacity in 40% of cases going through the Work Capability Assessment (WCA).
2. The issue of mental health therefore remains a key one for this Fifth Independent Review but other vulnerable groups also merit special attention. Of these, people with learning disabilities have been considered especially. According to the Family Resources Survey 2012 – 2013, there are 1.4 million people in the UK with a learning disability and only a small proportion of these are in employment.[46] The complexity of the WCA process has been commented on previously and the Review therefore sought to explore the challenges people with learning disabilities face in navigating the system and how that journey might be eased for them.
3. Whilst some individuals or groups are vulnerable because of their disability or health condition, there are other people or groups that are vulnerable by virtue of their position in society. With this in mind, the Review has also looked at the support available to those individuals leaving the armed forces, spending extended periods in hospital and being liberated from prison.

Mental health

4. Previous reviews have, quite rightly, focussed on the way in which people with mental health conditions are supported as part of the WCA process. According to the Family Resources Survey 2012 – 2013, there are 1.9 million people in the UK with a mental health condition.[47] Indeed, people with mental health conditions make up 40% of individuals going through a WCA and 41% of the Support Group.[48]
5. Chapter 7 of the Fourth Independent Review set out the difficulty in assessing impaired capability associated with mental health conditions and how diagnostic labels can be unhelpful in understanding the impact of functional capacity.
6. The Reviewer made a number of recommendations, including that the Department review the training undertaken by both DWP Decision Makers and Healthcare Professionals (HCP), as well as strengthening

[46] DWP, 2014, Family Resources Survey, United Kingdom, 2012/13.
[47] Ibid.
[48] Table 2. DWP, 2014, Statistics to support the Fifth Independent Review of the WCA.

the requirement for HCPs delivering WCAs to have suitable and sufficient previous experience in dealing with people with mental health conditions.

7. Chapter 2 examines DWP's progress in implementing recommendations from the Fourth Independent Review, including those concerning mental health training and experience for HCPs.

8. However, during the course of the Fifth Independent Review, the Reviewer was made aware of a number of additional concerns relating to the experiences of people with mental health conditions undertaking the WCA. These included:

    - Difficulty in answering questions on the ESA50 questionnaire
    - A perception that some HCPs did not listen properly to what was being said
    - An undue focus on physical conditions when mental health was the prime cause of incapacity
    - Lingering doubts about HCPs' qualifications or experience of working with people that have mental health conditions
    - Residual concerns from some about the applicability of the WCA to mental health.

Learning disabilities

9. As stated above, people with a learning disability represent a significant and rising proportion of the UK working age population.

10. The Department for Health[49] has defined a learning disability as:

    - A significantly reduced ability to understand new or complex information, to learn new skills (impaired intelligence), with;
    - A reduced ability to cope independently (impaired social functioning);
    - which started before adulthood, with a lasting effect on development.

11. Employment levels amongst those with a learning disability is low in comparison to people with other health conditions or disabilities. In a response to the Call for Evidence, it was reported that:

[49] Department for Health, 2001, Valuing People: A new strategy for learning disability for the 21st century.

"Very few people with a learning disability are in work, while the majority are able to work. We know that less than 1 in 5 people with a learning disability are in work, compared to 1 in 2 disabled people generally, but the real figure is likely to be much less", Mencap

12. Of those in employment with a learning disability in England, only 30% are working more than 16 hours a week. 36% are working between 4 and 16 hours a week and 27% between 0 and 4 hours a week.[50].

13. The figures available to the Reviewer are not sufficiently detailed to state with confidence the numbers of individuals in receipt of ESA with a learning disability as a primary condition. Furthermore, since it is common for people with learning disabilities to suffer other conditions, numbers are likely to be higher than any reported figures.

14. The Review received a great deal of feedback as part of the Call for Evidence regarding the barriers that individuals with a learning disability face when engaging with and navigating the WCA process.

15. While visiting Northern Ireland, the Reviewer learned of formal arrangements with special schools whereby students with a learning disability, their parents and their teachers are briefed by the Department on the world of work and the support available to them. More detail of these arrangements can be found in Chapter 7.

"People with severe Learning Difficulties should be caught whilst still in the education system and helped from very early on", Individual response

16. The Reviewer sees advantages to such a joined up approach. The evidence examined suggests that arrangements in England, Scotland and Wales are less formalised and more dependent upon local initiatives. This appears to be a missed opportunity to provide comprehensive information, including but not limited to the issue of benefits, to vulnerable people (and those who support them) at a particularly vulnerable point in their lives. The Department should work with the Department for Education and the devolved administrations to explore how it could provide information at this point to individuals with long-term needs leaving education. Any such briefing should certainly include information about the WCA and how it works since this is a complex aspect of the system for people to negotiate.

17. Chapter 4 has highlighted the importance that effective communications play in improving perceptions of the WCA. People with learning disabilities can find engaging with standard forms of communication, such as the letters sent to individuals in advance of a WCA, challenging, often having to rely on others to support them through the process.

18. The Department offers to make communications available in a range of alternate formats. These include large print, braille and audio. However,

[50] NASCIS, 2014, Social care data: ACS-CAR (L1). Retrieved from https://nascis.hscic.gov.uk/Tools/Olap/Asccar/AsccarL1.aspx

these alternate formats are generally no more accessible for an individual with a learning disability than the standard.

19. Several parties made strong representations during the course of the Review that Easy Read is the preferred format for communications with people with a learning disability.

20. The Reviewer examined a number of documents that have been produced in this way and understands how shorter sentences, simpler wording and explanatory pictures make material far more accessible to this group of people. It is recognised that there may be some material that cannot be formatted in this way, for example when there are statutory issues to cover, but much of the information relating to the WCA process would seem suitable for simpler explanation.

21. This group of people is so large and so vulnerable in terms of experiencing difficulties with official communications that it seems incumbent on the Department to address the stated need. Resource constraints are ever present but a prima facie examination of the groups of people likely to experience disability related communication problems suggests that current practice may have become misaligned with current needs. The Reviewer therefore recommends that the DWP reviews its provision of alternate formats of communication with a view to adopting Easy Read wherever practicable.

22. It was clear from the Call for Evidence for the Fifth Independent Review that there is a general perception that the WCA is an adversarial process. This perception was reported particularly strongly by people with learning disabilities and the organisations that support them. The process, and particularly the face-to-face assessment, is not seen as offering effective support to this group of people.

    "Claimants with learning difficulties often do not feel their needs are fully taken into consideration. Example: A claimant with learning difficulties applied for ESA and was sent for a WCA, he was found fit for work however he did not understand many of the questions and struggled to make himself understood. He was unaware that he could ask for a MR so he applied for JSA. While he was awaiting benefit payment he and his partner were without income and were referred to a food bank. His partner who also has learning difficulties has been helped to apply for ESA and PIP, she is awaiting assessment but is very frightened of the assessment process as a result of her partner's experience", Nottingham City Council

23. A particular issue relates to the overstatement of capability in response to questioning. Many people with learning disabilities will answer questions literally and neither understand nor express subtleties of interpretation. An example experienced during the Review was an affirmative response to the question "can you cook your own meals" – in practice that person was able to press the start button on a microwave for a meal prepared by another and with the settings adjusted by someone else. Similarly, a number of people with learning disabilities will wish to please someone asking them questions and will consequently

give the responses that they think are wanted rather than those which most accurately reflect reality.

24. The inaccuracies in assessment that can be introduced by these common features of the way that people with learning disabilities interact and communicate with others are easily overcome if those undertaking the assessment are aware of the issues. The Department should therefore review the training given to its own staff and those of the Provider in relation to learning disabilities to ensure that the risk of overstatement of capability is fully understood.

25. The most common source of additional evidence sought as part of the WCA is the person's GP. This reflects the weighting towards a medical model of disability in the system and that issue is discussed further elsewhere. People with a learning disability are often not ill and may not see their GP for extended periods. Consequently GPs may well not be the best people to approach for evidence in assessing such claims relating to this group.

    "My daughter has a learning disability, however you ask for a medical certificate. Is this appropriate? A report by a social worker or consultant would be better to understand why the person cannot work", Individual response

26. The Department has made some welcome improvements in recent years by giving examples of other types of information that people can submit with a claim, including Hospital Passports and care or support plans. This thinking should be extended to when further evidence is sought on behalf of the Department; for people with learning difficulties the options should be considered in each case rather than defaulting to a GP report.

Other groups

27. Vulnerability can be situational as well as intrinsic to the person. Health conditions and disabilities may create particular vulnerabilities but there are also groups of people who become vulnerable because of their place in society. The Review has focussed on groups that might encounter problems with the WCA because of potential difficulties in accessing medical information about them and that involve interaction between Government Departments.

28. The three groups that have been examined are; those leaving the armed forces, those spending extended periods in hospital and those being liberated from prison. All are likely to have key gaps in their NHS GP records and are the responsibility of, respectively, the Ministry of Defence (MOD), the Department of Health (DH) and the Ministry of Justice (MOJ).

Those leaving the armed forces

29. Between 2009/10 and 2013/14 approximately 9000 Service personnel were medically discharged from the UK Armed Forces.[51] Musculoskeletal disorders and injuries represent the principal cause of incapacity and account for about 57% of these cases. The second most common cause of medical discharge is mental and behavioural disorders which accounts for around 13%. The DWP does not record the number of service personnel who subsequently make a claim for ESA and therefore undertake a WCA, but the Reviewer believes it safe to assume a significant portion may be eligible.

30. Service personnel who are going to be discharged on medical grounds do not need to wait until they have left the Forces before applying for ESA and may make a claim up to three months in advance. This also applies to claims made for Jobseeker's Allowance.

31. The Reviewer was pleased to learn that when a Service Medical Board decides a severely disabled person can no longer be employed in the Armed Forces and should be discharged, DWP are able to use the Service Medical Board evidence to determine eligibility to ESA. The Department has informed the Review that claims received from members of the Armed Forces who have been assessed by a MOD medical panel to be in their highest disability category are, wherever possible, assessed to consider whether the individual meets the limited capability for work related activity criteria based on the MOD medical report (F Med 23) and without the need for a face-to-face assessment. If the person is deemed to meet the criteria they will be placed in the Support Group.

32. In addition every Jobcentre district has a named "Armed Forces Champion". These Champions work closely with the MOD Career Transition Partnership, and create links with other providers and charities giving specialist support, such as the Royal British Legion.

33. These systems and processes put in place for the sharing of information between the DWP and MOD are encouraging. However, the Reviewer does have concerns if either a MOD medical report is not sufficient or a service person leaves on non-medical grounds. In such cases the Department will issue an ESA113 to the person's civilian GP. Primary care for Armed Forces personnel is provided by the MOD and it may take some time for information to reach NHS staff. NHS GPs may well therefore only have available records with an extensive gap which will compromise their ability to provide meaningful evidence.

34. The Department should continue its good work with the MOD to ensure that suitable and sufficient evidence for ex-Service personnel who make an application for ESA can be accessed as simply and speedily as possible.

[51] Ministry of Defence, 2014, Annual Medical Discharges in the UK Regular Armed Forces 2009/10 – 2013/14.

Those in hospital or other care facilities

35. Individuals in receipt of medical or other treatment as an inpatient, including those detained under the Mental Health Act, are entitled to claim ESA for a period as long as they continue to satisfy the usual conditions. This also includes individuals that are recovering from such treatment. People in receipt ESA and in hospital for over 12 months will move on to the basic rate of benefit.

36. Individuals remain in the group to which they were assigned when they go into hospital. If they are in the WRAG but feel that they are now entitled to be placed in the Support Group they will need to request a re-assessment. There is no automatic lifting of ESA conditionality though the Reviewer has been assured that Jobcentre Plus advisers do make appropriate adjustments on a case by case basis.

37. Extended hospital admissions are uncommon these days but may be more likely for those with severe mental health conditions. If an individual wishes to claim ESA for the first time on discharge or if a reassessment is due then, as with service personnel, there may be a paucity of information in GP records. At present, discharge summaries are not routinely requested by the Department in such circumstances and the onus is on the individual to obtain and submit such evidence in support of a claim. This appears to be an area where improvement may be possible and links to the points made in Chapter 5 about the importance of making effective use of a wide range of information from across Government to support a WCA.

38. The Department should work with the DH to make more effective use of information gathered by the NHS, where appropriate, that will inform an individual's reassessment following a long-term stay in hospital.

Those in prison or other custodial institutions

39. Unlike those who are admitted to hospital, eligibility for ESA stops when an individual goes to prison. Those in receipt of contribution-based ESA and who are in prison for 6 weeks or less can ask for their benefit to resume once they are released. However, those in receipt of contribution-based ESA and who are in prison for more than 6 weeks, and all of those in receipt of income-related ESA, have to make a new claim for ESA when they are liberated. The claim is processed as normal and the expectation is that a WCA will be undertaken regardless of the reassessment period under a previous claim.

40. If the individual is released within 12 weeks of their previous claim then they can make a new claim in the form of a lighter touch rapid reclaim, as long as there are no changes in their circumstances. If more than 12 weeks has elapsed since their previous claim, then a full new claim will need to be made.

41. Published evidence shows that more than 70% of the prison population has two or more mental health disorders.[52] Exact numbers of people with a learning disability in the prison population appears to be unknown, although estimates place it at between 5 and 10%[53] [54] The Reviewer was unable to ascertain the number of people committed to prison while in receipt of ESA but it seems likely that the number is material. Compelling oral evidence was presented about the difficulties that people face when liberated from prison with incapacities that predate their sentence. A number of examples of hardship were described and the way that the system is currently administered was cited as a factor in reoffending for some. The rationale is not understood for routinely requiring people to submit a new application when they are in the Support Group with a long term award for which the reassessment period postdates the end of their sentence.

42. This situation appears to be different to that applied for Personal Independence Payment. In that case payment ceases once an individual is imprisoned for more than 28 days but eligibility remains and, as long as the person is still within their award period and still meets the criteria, payment of benefit will commence upon their release, without the need for further assessment. It would seem sensible for the Department to adopt this approach for ESA, reducing the need for unnecessary assessments and ensuring that individuals have access to the support they need earlier.

43. Before release, all prisoners are offered an initial discussion with an Employment and Benefit Adviser. At this point individuals can be offered information about DWP benefits and signposted to support offered by other Government Departments. However, claims for ESA cannot be made in advance of a prisoner's release date. This is different to the situation described earlier for those leaving the Services and the rationale for the difference is not understood.

44. The Prison Service, like the Armed Forces, provides healthcare within its own facilities. Information may be passed to an individual's GP on discharge but, as with the Services, there can be a considerable delay and there appears to be no process in place for obtaining Further Medical Evidence in support of an individual's ESA claim from the prison healthcare providers. The Prison Service does have a process for sharing information relating to employment, training and education with the Department but not for health, even with the consent of the individual. There would seem to be scope for improvement in this aspect of the process relating to ex-prisoners making a claim for ESA.

45. The Department should work with the MOJ to ensure that suitable evidence for people leaving prison who make an application for ESA, or

[52] Social Exclusion Unit, 2004, quoting Psychiatric Morbidity Among Prisoners In England And Wales, 1998

[53] Prison Reform Trust, 2012, Fair access to justice?: Support for vulnerable defendants in criminal courts.

[54] HMI Probation, HMI Constabulary, HM Crown Prosecution Inspectorate and the Care Quality Commission, 2014, A joint inspection of the treatment of offenders with learning disabilities within the criminal justice system – phase 1 from arrest to sentence.

are undergoing reassessment, can be accessed as simply and speedily as possible.

Summary

46. People with mental health conditions continue to constitute a significant proportion of those undergoing the WCA. A number of concerns about the experiences of this group have again been reported to the Reviewer. These include:

    - Difficulty in answering questions on the ESA50 questionnaire
    - A perception that some HCPs do not listen properly, an undue focus on physical conditions
    - Lingering doubts about HCPs' qualifications or experience of working with people that have mental health conditions and residual concerns from some about the applicability of the WCA to mental health.

47. A great deal of feedback was also received concerning the barriers that individuals with a learning disability face with the WCA process. This includes, in particular, difficulties with the Department's standard communications which are written in a way that many people with these challenges find impossible to comprehend without support.

48. The face-to-face assessment is also a particular area of difficulty for many people with a learning disability. It is often the case that they will interpret questions literally, give the responses that they think are those wanted and overstate their capability. If those undertaking the assessment are aware of these issues then difficulties can be overcome.

49. Vulnerability can be situational as well as intrinsic to the person. The Review has looked at those leaving the armed forces, those spending extended periods in hospital and those being liberated from prison. Each group faces its own barriers to interacting with the WCA process and have in common non-standard health record arrangements.

Recommendations

50. **Therefore, the Reviewer recommends that:**

    - The Department should work with the Department for Education and the devolved administrations to develop improved mechanisms for providing information about the world of work, including the WCA, to those with learning disabilities at the point of leaving education.
    - The Department reviews its provision of alternate formats of communication with a view to adopting Easy Read wherever practicable.
    - The Department reviews the training given to its own staff and those of the Provider in relation to learning disabilities to ensure that the risk of overstatement of capability is fully understood.

- The Department ensures that it seeks the most appropriate evidence for people with learning disabilities, including Hospital Passports and care or support plans. The Department should consider options in each case rather than defaulting to a GP report.
- The Department should continue its good work with the MOD to ensure that suitable and sufficient evidence can be accessed as simply and speedily for ex-Service personnel who make an application for ESA.
- The Department should work with the DH to ensure that suitable and sufficient evidence can be accessed as simply and speedily as possible for long stay hospital patients who make an application for ESA or require reassessment.
- The Department should review its practice of routinely repeating the WCA for people liberated from prison who were in receipt of ESA with a reassessment period that is still extant on release.
- The Department should work with the MOJ to ensure that suitable and sufficient evidence can be accessed as simply and speedily as possible for people leaving prison who make an application for ESA or require reassessment.

Chapter 7: Northern Ireland

1. In March 2014, the Minister for Social Development requested the Independent Reviewer for Great Britain to conduct the independent review of the Work Capability Assessment (WCA) for Northern Ireland. This is in accordance with Section 10 of the Welfare Reform Act (Northern Ireland) 2007, which places a duty to independently review the WCA in Northern Ireland.
2. As with the fourth year review, the Reviewer was pleased to be able to visit Northern Ireland and that occurred in July 2014. During the visit, the Reviewer witnessed the delivery of aspects of the process and collected evidence from:
    - The Minister for Social Development
    - The Social Development Committee
    - Officials from both the Department for Social Development and the Department for Employment and Learning, working on the policy and operational delivery of the WCA and Employment and Support Allowance (ESA)
    - A range of representative groups
    - The President of the Appeals Tribunal for Northern Ireland.
3. This Review continues the work undertaken last year which looked at the implementation and impact of previous recommendations and perceptions. In addition, this year the Reviewer has spent time understanding trends in the Support Group, new processes and information sharing across organisations involved in the WCA process. Time has also been spent further exploring how the WCA supports people with mental health conditions and those with learning disabilities.

Context

4. Responsibility for the delivery of the WCA in Northern Ireland lies with the Social Security Agency (SSA), which is an executive agency of the Department for Social Development (DSD). Principles of parity state that Great Britain and Northern Ireland should seek to administer the same range of benefits, paid at the same rate and subject to the same conditions. However, there are significant differences to Great Britain.
5. During the period in which this Review was conducted, the Welfare Reform Bill (NI) 2012 had not been passed by the Northern Ireland Executive. For this reason, some of the changes introduced in Great Britain have not been implemented in Northern Ireland. Most significantly this includes Appeals Reform, which sees the introduction of mandatory

reconsiderations, the direct lodgement of appeals and time limiting for those claiming contributory ESA.

6. There is scope for variation in the operational delivery of the WCA in Northern Ireland by virtue of the different legislation, different structures and separate contracts with the Health Assessment Provider (the Provider). Key differences include the role of the Health Assessment Adviser (HAA), who approves healthcare professionals (HCP) and provides in-house quality assurance of the Provider. Furthermore, unlike Great Britain, the contract with the current Provider delivering the WCA is set to continue.

7. Another significant difference when considering the context for the WCA is that, in Northern Ireland, employment-related support does not fall within the remit of the DSD. The Department for Employment and Learning (DEL) commission and deliver the support provided to those who receive Jobseeker's Allowance (JSA) or ESA following a WCA decision.

8. Finally, there are differences in the groups of people currently going through the WCA. In March 2014, the DWP decided to suspend repeat assessments for those in the WRAG and Support Group until further notice, whereas repeat assessments are still underway in Northern Ireland. DSD has now completed the process of reassessing individuals in receipt of Incapacity Benefit (IB) whereas that activity is still underway in Great Britain.

The implementation and impact of previous recommendations

9. In the Fourth Independent Review, the Reviewer commented on the implementation of recommendations from years one to three. Whilst DSD accepted many recommendations in line with Great Britain, they had implemented several of them differently, which reflected either the different context in Northern Ireland or different conclusions on the best way forward following the results of pilots. Two of the previous recommendations were again raised with the Reviewer during the course of this Review.

10. The issue of sharing information with Work Programme providers has to be viewed in a different context to Great Britain, as highlighted in the Fourth Independent Review. The Work Programme is not in place in Northern Ireland and sharing of information regarding the outcome of the WCA therefore takes place between the SSA and with the DEL. This is discussed in more detail in the section titled 'Information Sharing'.

11. The right of an individual to request that their face-to-face assessment be audio recorded was also raised again with the Reviewer. The SSA has a clear policy that people are entitled to bring their own recording equipment to record their face-to-face assessment if they have prior agreement with the Provider to do so.

12. The benefits to allowing people, especially the most vulnerable, to record their face-to-face assessment is not disputed and it is the practical issue of who provides the equipment. The Reviewer considers that there are a number of practical disadvantages for all parties in placing the responsibility for recording on the person making a claim rather than the Provider. The provision of this equipment by the Provider is now standard in Great Britain and, presumably, it will mostly become surplus to requirements at the end of the current contract. The Reviewer therefore recommends that the SSA revisit this policy with a view to requiring the Provider to make recording equipment available when requested.

The Department for Social Development's response to the Fourth Independent Review

13. DSD responded positively to the majority of the recommendations in the Fourth Independent Review, falling broadly in line with the response by the Department for Work and Pensions (DWP). However, like DWP, DSD did reject the recommendation to only apply decision assurance calls in "borderline" cases.

14. Many of the recommendations common to Great Britain were accepted on the basis of further feasibility work being conducted and the lead Department for that is rightly the DWP. In many cases the SSA is therefore awaiting feasibility study outcomes before determining whether to implement recommendations.

15. In addition to the 32 recommendations made in the main body of the Fourth Independent Review, the Reviewer made five recommendations that were specific to Northern Ireland.

16. Recommendation 33 advised a review of the HAA role with input from a senior occupational professional. The Reviewer met with the HAA during his visit and was provided with evidence of the work to revise the remit of the HAA. The Reviewer was presented with the new auditing process and it was noted that good progress had been made.

17. Recommendation 34 proposed that the SSA begin to capture and monitor data on Decision Maker overturns of HCP recommendations to track future trends. Evidence that this recommendation has been taken forward was provided during the Reviewer's visit. Since April 2014, the SSA has collected data on Decision Maker overturn rates. This data shows that overturn rates are broadly in line with those found in Great Britain between 2012 and 2013. The SSA has indicated that it will continue to collect this information over a period of time and assess the need for any further work as a result.

18. Recommendation 35 advised extending the feedback loop from Tribunals to ensure that learning is communicated to the Provider as well as Decision Makers. Evidence was received of the work by the HAA to ensure that feedback on the quality of work provided by the Provider is communicated back to them in a timely manner.

19. The Reviewer received a description of the way that the HAA and the Provider work together which showed positive progression towards building a strong and mutually beneficial working relationship. Whilst it is predominantly the HAA that feeds back to the Provider when the quality of a report could be improved, an assigned Provider medical manager also reviews cases highlighted by the HAA. Where there are differences of opinion, discussions take place, ensuring that a two way feedback loop is maintained. This way of working ensures mutual benefits to both parties and is an additional means of maintaining a strong relationship between the SSA and the Provider.
20. Recommendation 36 reinforced the importance of maintaining the Mental Function Champion advice line for Decision Makers. The SSA and the Provider continue to operate this support service.
21. The final recommendation (37) advised DSD to give careful consideration to any further adjustments to the HCP skill mix with particular reference to mental health issues. Since the Fourth Independent Review, DSD has altered the WCA contract to allow physiotherapists to conduct WCAs as is the case in Great Britain. Some cases are allocated only to medical practitioners but otherwise physiotherapists in Northern Ireland assess the same cases as other HCPs. It is understood that this decision was made after due consideration and it remains to be seen what the impact will be on public perception in Northern Ireland.
22. The Reviewer therefore considers that good progress has been made on all the Northern Ireland specific recommendations from the Fourth Independent Review. Further information is given in Annex 3.

Call for Evidence

23. The Call for Evidence in Northern Ireland received 41 responses and there were many similarities to the issues raised in Great Britain.
24. The great majority of respondents perceived the process as a negative experience and this was particularly true for those with mental health problems:

    "My experience of my first WCA was very negative. There were details which weren't recorded properly, and some which weren't recorded at all. And it seemed that, all the while, the advice from my GP to not return to work was entirely ignored", Individual response

    "I suffer from anxiety and depression and found the whole process a complete nightmare", Individual response

    "I was asked to attend a face-to-face interview in January 2013 where a young female doctor listened to what I had to say and treated me with quiet dignity and respect", Individual response

25. A particular issue commented on was communication and a number of respondents indicated that improvements were warranted:

"Once the system starts you get locked out. It is impossible to contact anyone and when I tried I was passed from pillar to post. I received conflicting information. I believe my health suffered as a result", Individual response

"I feel that the information is there, if you search for it. A simple flow-chart would be enough to explain how the process works, and what happens in the next stage of your claim. At the least, it would give a visual description of how the process works, and what the next step is for yourself", Individual response

26. Responses suggested that some people do not understand the difference between the WRAG and the Support Group, and the responsibilities placed on them:

"Advisers report that clients don't understand what group they are in. They think that if they are getting ESA that's a good thing, without realising that they should be in the higher group. They don't understand their obligations and the implications if they are placed in the WRAG", Citizens Advice Northern Ireland

27. Furthermore, the reasons that individuals are placed in the Support Group or the WRAG do not always appear to be clear:

"Applicants are placed in the WRAG or Support Group on the basis of meeting certain point thresholds in the WCA. However, there does not appear to be a clear connection between these thresholds and the support and conditionality that people will receive in the different groups", Niamh (Northern Ireland Association for Mental Health)

28. The Call for Evidence was supplemented by a seminar with advice sector and other organisations, hosted by the Law Centre (Northern Ireland). Other organisations that participated in the seminar included the North Belfast Advice Partnership, Mencap Northern Ireland, STEP (South Tyrone Empowerment Programme) and Magherafelt Independent Advice Centre, amongst others.

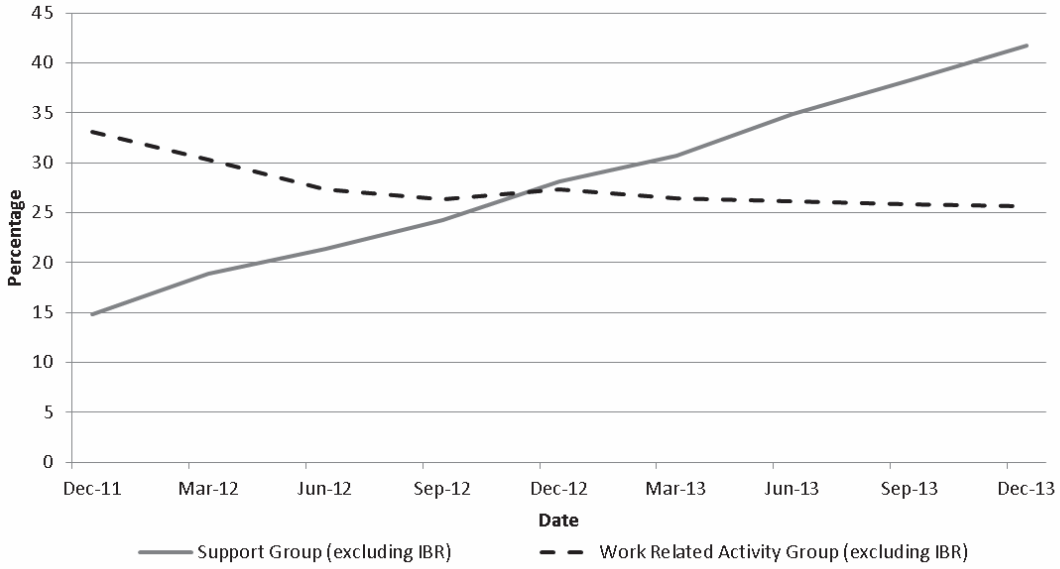
Support Group

29. The Reviewer was keen to look at the Support Group in Northern Ireland as part of the Fifth Independent Review. As in Great Britain, there is a rising trend for people to be placed in the Support Group. In late 2011, the Support Group accounted for 14.8% of the liveload (excluding IBR cases) and by the end of 2013, this had risen to 41.7%.[55] It is important to note that whilst the trends are similar, it is not possible to directly

[55] DSD Analytical Services Unit MIDAS Liveload data.

compare outcomes in Northern Ireland with those in Great Britain because of key differences in the data collected. Whilst repeat assessments are suspended in Great Britain, they continue in Northern Ireland and are included in the figures quoted. Figure 7.1 illustrates the growth in the Support Group as a percentage of the liveload over time and not the outcome at WCA.

Figure 7.1 – The Support Group and Work Related Activity Group as a proportion of the liveload (excluding IB reassessment)



30. The changes to the system described in Chapter 3 that appear to be associated with the shifts in Great Britain also apply in Northern Ireland. It is therefore not surprising that trends should be similar.

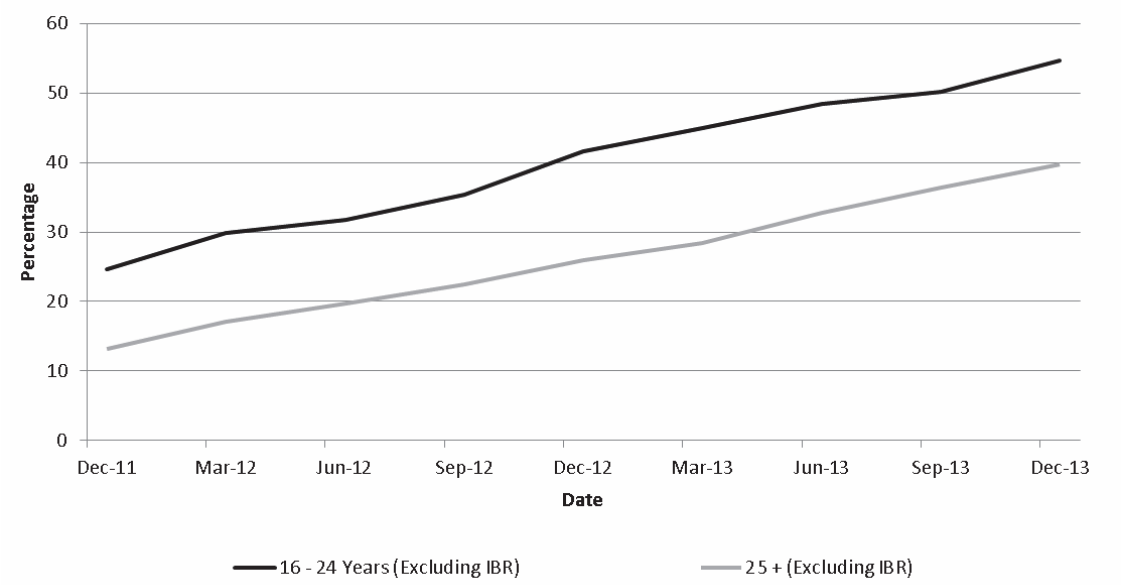
31. The SSA does not hold information on the reasons individuals are assigned to the Support Group and therefore the depth of analysis undertaken for Great Britain could not be replicated. However, some 60% of HCP Support Group recommendations are currently made on the basis of Regulation 35. Approximately 40% specifically relate to the use of Regulation 35 (2) (b), which is similar to that the picture in Great Britain.[56]

Young people

32. The picture with regard to young people (ages 16 – 24) being placed in the Support Group in Northern Ireland is very similar to Great Britain. During 2013, on average some 48% of young people making a claim for ESA were assigned to the Support Group (excludes IBR cases).[57]

[56] DSD Analytical Services Unit Atos cleared referrals data – unpublished.
[57] DSD Analytical Services Unit MIDAS Liveload data.

Figure 7.2 - The proportion of young people in the Support Group as a % of the Liveload compared to those aged 25+ (excluding IB reassessment)



33. The long term consequences of this trend are at least as worrying as for Great Britain, and perhaps more so given the greater competition for jobs in Northern Ireland than in many other parts of the UK. Again, almost half of young people in the Support Group had a 'Mental Health Condition' recorded as their main medical condition.[58] It is recommended that DSD works with DWP to better understand the general issues relating to young people but that consideration is also given to issues which may be specific to Northern Ireland.

Re-referral periods

34. The Reviewer has not been able to analyse the re-referral periods awarded to individuals by Decision Makers as the SSA does not routinely keep this data. Instead the Review has had to look at the re-referral periods recommended by the HCP. Although this does not provide the final outcome of a decision it is a reasonable surrogate measure.

35. A high proportion of short-term re-referral periods are applied in those instances where a HCP has made a Support Group recommendation, replicating findings in Great Britain. In Northern Ireland, during 2013, HCPs recommended that around half of those placed in the Support Group following an initial claim be given a re-referral period of 12 months or less. [59] The result of this is that roughly half of those in the Support Group will be called for a reassessment within a year of their initial assessment.

[58] Data source DSD Analytical Services Unit ESA MIDAS scan (date of extract 27th December 2013).
[59] DSD Analytical Services Unit Atos cleared referrals data – unpublished.

36. This finding had already been flagged to the SSA as a result of the work of the HAA and this is a tangible manifestation of the value of the enhanced role. The HAA is currently conducting a further investigation into the allocation of re-referral periods for people placed in the Support Group and this should help inform decision making in both Northern Ireland and Great Britain.

Processes

37. There have been fewer changes than in Great Britain to the delivery of the WCA in Northern Ireland since its introduction. In the past year the decision to continue the contract with the current Provider and the lack of progress of the Welfare Reform Bill has led to more process stability. Nevertheless, there have been some developments that are worthy of comment.

Enhanced reconsideration

38. Mandatory reconsideration has not been introduced in Northern Ireland pending approval of the Welfare Reform Bill. However the SSA has looked at the mandatory reconsideration process in place in Great Britain and has, as a consequence, reviewed reconsideration practices. In January 2014, the SSA introduced 'Enhanced Reconsiderations' into the ESA disputes process.

39. Enhanced reconsideration is different to mandatory reconsideration in a number of ways. The first is that a person in Northern Ireland who disputes the WCA decision can still choose to appeal. Secondly, a person who undertakes an enhanced reconsideration in Northern Ireland remains on the ESA assessment rate. The ESA assessment rate is the rate that a person is paid while they await their WCA decision, and is equivalent to the JSA rate.

40. An enhanced reconsideration is a thorough reconsideration of the original claim decision. Similarly to mandatory reconsideration in Great Britain, it includes calling the person making a claim to discuss the points in question and obtaining any further evidence they may have. Unlike the process in Great Britain, there is no explanation call made to the individual. However, a Decision Assurance Call is carried out by the Decision Maker who made the original decision. During this call the person is asked if they want to provide any other information before a decision is made.

41. The absence of the explanation call does not appear to be having a detrimental impact on the overall reconsideration process in Northern Ireland. This finding further supports the Reviewer's recommendation that this step is removed from the Mandatory Reconsideration process in Great Britain.

Presenting Officers

42. The great majority of claims overturned by the Tribunal Service in Northern Ireland are as a result of additional or oral evidence given during the appeals process, rather than the original decision being considered defective.

43. Unlike Great Britain, Presenting Officers represent the agency at a high proportion of hearings. This is a resource intensive activity and the SSA is reviewing its policy as part of the appeals reform programme. Underpinning this review is a study of cases in which particular types of decision appear to have a higher overturn rate by a Tribunal. On the basis of this analysis, a set of criteria will be established to assess the likely benefit of sending a Presenting Officer to an appeals hearing. This risk-based approach appears to the Reviewer to be a sensible use of resources and the initiative is welcomed.

44. It has been suggested by the President of the Appeals Tribunal that in the most difficult cases it would be useful for the examining HCP to attend a hearing. There would clearly be a number of practical and contractual issues to address in implementing any such system but it would seem sensible for the SSA to consider the issue as part of its overall appeals review.

Information sharing and feedback loops

45. The importance of good information sharing has been highlighted on a number of occasions. When visiting Northern Ireland the Reviewer took particular note of issues around sharing information between the SSA and other organisations involved in the ESA and WCA process.

The Department for Employment and Learning

46. The DSD does not administer work-related support and this activity is undertaken by DEL, predominantly through Jobs and Benefits offices. This division of responsibilities potentially exacerbates information sharing problems which exist even when staff work for the same Department, as in Great Britain. The Reviewer's findings, from speaking with the various parties concerned, suggest that there is indeed room for improvement.

47. DEL has developed a sophisticated Job Readiness Indicator tool administered at the front line, which assesses five domains including capability. On the basis of this an individual's distance from employment is assessed and an action plan is formulated. Currently the only information provided from the WCA to DEL is the outcome of the assessment and a medical diagnosis. The absence of any information about capabilities means that the DEL adviser has to revisit these issues before being able to identify appropriate goals and training for the person concerned. This is not only inefficient and potentially less comprehensive

than WCA data but it also serves to medicalise what should be a capability focussed interaction.

48. The Reviewer was pleased to hear that work is underway to consider how information could be better shared with Personal Advisors and work providers. DEL and the SSA should continue to work together to identify the information gathered during the WCA process that would be of greatest use to advisers at the Job and Benefit offices. Mechanisms to facilitate the effective sharing of this information with DEL should then be developed as a priority.

The Tribunal Service

49. In Northern Ireland, the Tribunal Service does not provide summaries of their decisions when a case is overturned. Instead a score sheet highlighting all of the descriptors against which a person scored is completed. This does allow for discrepancies in the scoring between the SSA and the Tribunal Service to be made clear but it does not provide reasoning as to why the person scored differently at appeal.

50. The resource constraints on the Tribunal Service and the related concerns about the impact of providing reasoning to the SSA are understood. It is also accepted that in many cases the reason for overturning a decision will be self-evident from examining the score sheet and that few appeals succeed on the basis of a poor initial SSA decision. Nevertheless, the principle of using feedback for continuous improvement is an established one and should be applied at every stage in the WCA process. How that principle is translated into practice is a matter for the various parties concerned.

51. The SSA and Tribunal Service should continue working together to better define the information that would be most conducive to improving decision making without placing an undue burden on either organisation. Any enhanced feedback system should be extended to the Provider so that the performance of HCPs can also be improved.

Learning disabilities

52. Northern Ireland has developed a structured approach to support young people leaving school or college with severe learning disabilities. Regional forums have been established with the head teachers of special schools and inter-agency events are organised. Events aim to equip school leavers and their families with a better understanding of their options, the services and support available to them including advice on benefits. Referrals to the SSA's Outreach Service can also be made, to provide follow-up support to students, families and schools. For those applying for ESA, the Department liaises with schools to ensure that all appropriate information is collated and forwarded to the Provider in support of conducting a WCA.

Summary

53. The legislation in Northern Ireland is different to that in Great Britain though principles of parity apply. At the time of writing the Welfare Reform Bill (NI) 2012 had not been passed and therefore Appeal Reform changes have not been implemented in Northern Ireland. Other key differences to Great Britain include a separate contract with the Provider, who is therefore remaining, and the role of DEL in providing support to those who receive benefits following a WCA decision.

54. The data collected routinely in Northern Ireland and Great Britain differs so many direct comparisons are not possible. Nevertheless, there is a rising trend for people to be placed in the Support Group in both jurisdictions and a significant driver appears to be the increasing use of Regulation 35 (2) (b), relating to a substantial risk to mental or physical health. The number of young people being assigned to the Support Group is high (48%) and rising; this also mirrors the trend in Great Britain. Almost half of the young people in the Support Group have a mental health condition. These features have worrying potential long term consequences for society.

55. Presenting Officers represent the agency at a high proportion of hearings. This is a resource intensive activity and the SSA is reviewing its policy as part of the appeals reform programme. Underpinning this review is a study of cases in which particular types of decision appear to have a higher overturn rate by a Tribunal. On the basis of this analysis, a set of criteria will be established to assess the likely benefit of sending a Presenting Officer to an appeals hearing.

56. The DSD does not administer work-related support and this activity is undertaken by DEL, predominantly through Jobs and Benefits offices. Currently the only information provided from the WCA to DEL is the outcome of the assessment and a medical diagnosis. The absence of any information about capabilities means that the DEL adviser has to revisit these issues before being able to identify appropriate goals and training for the person concerned. This is not only inefficient and potentially less comprehensive than WCA data but it also serves to medicalise what should be a capability focussed interaction.

57. In Northern Ireland, the Tribunal Service does not provide summaries of their decisions when a case is overturned. Instead a score sheet highlighting all of the descriptors against which a person scored is completed but this does not provide any reasoning. The principle of using feedback for continuous improvement is an established one and should be applied at every stage in the WCA process. How that principle is translated into practice is a matter for the various parties concerned.

Recommendations

58. **The Reviewer recommends that:**

- The policy on audio recording face-to-face assessments be reviewed, with a view to requiring the Provider to make recording equipment available when requested in advance.
- DSD works with DWP to better understand the general issues relating to the high numbers of young people being assigned to the Support Group and that consideration is also given to issues which may be specific to Northern Ireland.
- The SSA considers as part of its overall appeals review the issue of HCPs being available at Tribunals for the most difficult cases.
- DEL and the SSA should continue to work together to identify the information gathered during the WCA process that would be of greatest use to advisers at the Job and Benefit offices. Mechanisms to facilitate the effective sharing of this information with DEL should then be developed as a priority.
- The SSA and Tribunal Service should continue working together to better define the information that would be most conducive to improving decision making without placing an undue burden on either organisation. Any enhanced feedback system should be extended to the Provider so that the performance of HCPs can also be improved.

Chapter 8: The future direction of the Work Capability Assessment

1. As this is the fifth and final statutory independent review of the Work Capability Assessment (WCA), it seems appropriate to reflect on the evolution of the WCA since its introduction and to consider some of the issues that the Department for Work and Pensions (DWP) might need to consider in the years to come.
2. The Work and Pensions Select Committee published its report *Employment and Support Allowance and Work Capability Assessments* in July 2014, in which it called for a 'fundamental redesign of the structure of ESA outcomes'.[60]
3. At the time of writing, the Department has yet to respond to the Select Committee's report. It may therefore be helpful for this Reviewer to contribute to the debate in relation to the structure of the WCA and its application in determining eligibility for benefits in the future.
4. The Minister invited the Reviewer to contribute to the debate on future reform of the WCA.

The development of the Work Capability Assessment

5. The WCA now is very different to the assessment implemented in 2008. Some of the key changes have been discussed in detail in Chapter 2.
6. These changes have arisen either because of amendments to policy or from attempts to improve the current system. Although the changes have been incremental they have not necessarily been integrated and tested to evaluate their impact on the assessment as a whole. The fundamental philosophy of basing benefit eligibility on an assessment of work capability has not changed though the outcomes, as described in Chapter 3 have altered significantly over time.

[60] House of Commons Work and Pensions Committee, 2014, Employment and Support Allowance and Work Capability Assessments (HC 302).

The changing landscape

7. The WCA was designed in the middle of the first decade of this century as a replacement for the Personal Capability Assessment used to assess eligibility to Incapacity Benefit. The assessment represented a shift towards a more functional assessment of capability and away from a condition based approach. Major changes to the nature of work in the United Kingdom and the demographics of the workforce were already occurring at that time and since then they have accelerated and magnified, in part because of the effects of the global financial crisis. For instance, in the UK there has been a 13% decline in employment across primary and manufacturing industries in the decade to June 2014. Over the same period, the UK labour market has seen a 12% rise in service sector employment.[61] Rapid advances in digital and information technology combined with more agile ways of working are helping to contribute to this shift.

8. These changes govern the type of work that is available and the capability that people need in order to undertake it. The shift from manual labour reduces the importance of some physical attributes and the relevance of mental and psychological capacity becomes greater. Technology can be an important enabler for working by making a much wider range of adjustments (such as the need to travel for work) possible. However, it can also be a barrier in that so many jobs now require the use of IT as standard and those unable to master the skills may be rendered virtually unemployable.

9. The workforce is also changing rapidly. The removal of a default retirement age together with changes in pension provision have contributed to nearly 2 million more people over the age of 50 remaining in active employment since 2004 and this trend looks set to continue. The steady rise in female employment, that has been evident for some decades, has continued and the UK workforce now comprises some 47% women.[62] The fall in the birth-rate of the 1970s and 1980s has contributed to a smaller proportion of young people in the workforce and, to some extent, that gap has been filled by higher levels of immigration. The net result of these various changes is that the demographic of the UK workforce is substantially different to when the WCA was originally designed.

10. These demographic changes have altered, and will continue to alter, the pattern of illness and disability in the workforce. The majority of non-communicable diseases have an increasing prevalence with age and generally start to impact on capability from mid-life onwards. Public health improvements, particularly in relation to smoking, diet and exercise, will have a favourable impact on this trend but will not prevent

[61] Office for National Statistics (November 14). Workforce jobs by industry (Jobs02).
[62] Office for National Statistics (November 14) Labour Force Survey (A02 & A05).

an increasing disease burden as the age of the working population increases.

11. The incidence of mental health conditions has been rising world-wide for a number of years and there is no sign of this abating. The World Health Organisation has estimated that depression will become the second leading cause of disease burden worldwide by 2020.[63] Unlike most non-communicable diseases, mental ill health is evident across all age groups in roughly similar proportions, though the incidence of depression is 50% higher for women than men.[64] The current trend for mental health to represent an increasing cause of incapacity from work therefore also looks set to continue.

12. Consequently, there is a long term shift among those claiming health related employment benefits towards incapacity resulting from chronic disease (physical and mental) and away from other causes of disability. One feature of this shift, that impacts on any assessment of work capability, is that incapacity resulting from illness is more likely to be fluctuating in nature than that related to disabilities. This suggests that there will be an increasing requirement for any system to be more flexible in categorising incapacity and to be more dynamic in responding to changes in an individual's condition.

13. The current assessment model, though founded on capability rather than diagnosis, retains a strong medical flavour. Modern thinking favours a biopsychosocial model of disability, which considers not just capability but also other factors such as skills and readiness for the labour market. Integrating these various factors is more complex than a simple capability assessment, such as the WCA, but the power of modern computing facilitates the integration of multiple sources of data quickly and cheaply. The WCA is often viewed as being machine driven but the assessment is one that could easily be conducted using pencil and paper. We would therefore seem to have the worst of both worlds at the moment with a perception of automation without the benefits of comprehensive data analysis to inform decisions.

14. The Department has introduced a number of new health related assessments in the past few years and, while each addresses different issues, there is a commonality of core information. In addition to the WCA, people may undergo assessments on behalf of the Department for Personal Independence Payment, Industrial Injuries Disablement Benefit and Fit for Work and an individual may well be considered for several of these in relation to the same condition. At present, there is very little sharing of information between the different assessment processes and this appears inefficient. Particularly with the benefit of more flexible IT systems, it should be possible to develop a core data set that could be

[63] Murray CJL, Lopez, AD, eds. (1996a). The global burden of disease: a comprehensive assessment of mortality and disability from diseases, injuries and risk factors in 1990 and projected to 2020. Global Burden of disease and Injury Series, Vol. 1. Cambridge: Harvard University Press.
[64] World Health Organisation, 2008, The global burden of disease: 2004 update.

reused to the benefit of the individual making a claim and society as a whole.

International approaches

15. The demographic issues outlined above are by no means unique to the UK. The Review has therefore examined the approach taken in some other parts of the world to support people of working age who have incapacitating health conditions and disabilities.

16. There have been a number of common developments in recent years. Many countries have moved from systems based on health conditions and disabilities to ones that assess functional capability. In parallel there has been a shift from the use of people's own doctors as the "gatekeepers" to benefit eligibility and towards the use of independent assessors. Some countries have separated the issues of benefit eligibility from work capability and gear assessment of the latter towards the definition of adjustments that might allow reintegration into the workforce. It is beyond the scope of a review such as this to provide a detailed analysis of different social security systems but the Reviewer found developments in the Netherlands, Denmark, Australia and New Zealand of particular interest.

17. In the Netherlands, most people's capacity for work is assessed by an insurance company using a 'Functional Capability Checklist', which is based on an individual's capability and not health condition or disability. The examining doctor assesses the probable duration of incapacity as well as the likelihood of recovery. If the individual is found to have some prospect of employment, an ergonomist will review appropriate jobs and make a calculation of salaries to determine if loss of earnings is significant enough to award benefit, on either a temporary or permanent basis.

18. Denmark has a system which maps closest to a pure biopsychosocial model of disability. Eligibility for benefit is assessed against a 'Resource Profile' which consists of 12 components addressing an individual's education and work history, cognitive and mental fitness and social circumstance. Only one component of the profile is health-related. This principle of taking a wider range of factors than simply functional capability is already applied in Northern Ireland through the Job Readiness Indicator tool referred to in Chapter 7. Systems such as this have been considered overly complex in the past but developments in information technology make their operational use practicable.

19. Australia has had some success with focussing its assessment on identifying and overcoming barriers to work in its dual role as assessing eligibility for benefit and referring individuals to service providers. An assessment of functional impairment is made against 'Impairment Tables' and individuals point-scored against a range of descriptors that include physical exertion, stamina, mental health function and functioning

related to substance abuse. The assessment is then used to identify barriers to work an individual may face and refer for appropriate support.

20. New Zealand has taken a fundamental approach which the Reviewer was able to explore in some detail with the assistance of the New Zealand Government. Reforms have recently been introduced with the aim of simplifying the benefits system. There are many similarities with the UK system but also some key differences. The new system amalgamates sickness benefit and several other benefits with unemployment benefit as Jobseeker Support. A self-assessment focusses on the type of work an individual could undertake currently or in the future and the support they might require to do so. There are differing levels of obligation (analogous to UK conditionality) but benefit payments do not differ. A case management approach is taken to assist people into work with specific additional support for those with mental health problems. Independent capability assessments may be undertaken but are sited at the very end of the process, if required at all, and relatively few had been undertaken at the time of writing.

21. The New Zealand reforms are at an early stage of implementation and it is not yet possible to determine their impact. However, the approach of uncoupling levels of benefit eligibility from work capability and focussing on overcoming barriers to employment has appeal and merits further exploration.

Principles for any redesign

22. The WCA has now been the subject of five independent reviews as well as, perhaps unprecedented, external scrutiny. The Independent Reviews have concluded that broadly it fulfils its remit but that it is far from perfect and there has been considerable scope for improvement.

23. The EBR has examined the current descriptors against an alternative set and has highlighted a number of strengths and some weaknesses. Substantial changes have been made to the assessment since its introduction and those may, at least in part, explain the significant shift in outcomes described in Chapter 3; it is unclear whether those outcomes now reflect policy intent. There have been many changes in the world of work, an evolution of thinking in relation to work related benefits and a step change in the capacity to handle complex information since the WCA was designed. The Work and Pensions Select Committee has called for “a fundamental redesign” and it is questionable whether that can be achieved by further tailoring of the current tool.

24. It may therefore be that policy makers will choose to initiate a comprehensive overhaul of the system. If so, it would seem prudent to look more widely than the WCA and to revisit the basic assumptions for ESA so that any assessment is properly aligned to what is required of it. Consideration should then be given to whether an assessment of functional capability is the most appropriate means of determining eligibility for benefit or whether that decision is better uncoupled from

activity geared to helping disadvantaged people finding employment. The Reviewer would counsel in the strongest terms that sufficient time and suitable expertise be allocated to design, develop and test any new assessment as part of drawing on the learning from the WCA.

25. If it is decided to undertake a fundamental redesign of the WCA, the Reviewer would recommend that there are a number of key principles that the Department should take into account.

26. As has been stated in this review and its predecessor, there is an overriding requirement for any assessment not only to be fair but to be perceived as such. That perception must be broadly shared by those experiencing the process, those administering it and society at large. There remains widespread disquiet about the WCA and the way that any replacement is designed will be critical to building trust in it. The Department should therefore give careful consideration to how this would be best achieved but transparency and consultation will be critical.

27. The independent reviews and the EBR have highlighted problems in the design and implementation of the WCA that might have been avoided if best practice in questionnaire and survey design had been built in from the start. The Department should ensure, as a minimum, the involvement of appropriate external scientific experts in any redesign and consider commissioning the production of the entire assessment from an academic body.

28. There must be clarity of purpose and the current twin objectives of determining eligibility for benefit and signposting to employment outcomes may not be compatible. The Department should consider uncoupling these elements so that there are not perceived disincentives to being found fit for work.

29. Residual elements of the medical model of disability should be eradicated as far as possible. Adopting a biopsychosocial model will require capturing additional information to that currently sought which will, in turn, drive process changes. The current system is overly complex despite having a relatively simple assessment at its centre. Complexity should be enshrined in the assessment of unique human beings and not in the bureaucratic “wrap”.

30. Departmental staff are, and should be, at the heart of the assessment. The recommendation from the Fourth Review is reiterated - DWP Decision Makers should triage cases so that they, rather than any HCP, decide what further information is required and how to best obtain it.

31. The various assessments undertaken by the Department gather a great deal of common information. Any revised assessment should be designed to exploit information already provided to the DWP or its agents rather than duplicating effort and incurring unnecessary expense.

32. It should be recognised that face-to-face assessments by a health professional are both resource intensive and potentially stressful for people making a claim. Systems should therefore be designed to restrict their use to circumstances in which they will add most value and to

ensure that assessments are geared to human interaction and are not perceived as being machine driven.

33. Decision Makers have a difficult task and any new system should be geared to making that easier. Ensuring that they see a representative range of cases and have appropriate training in the capability impact of the common conditions they are likely to encounter, such as mental health and learning disabilities, will be essential. Ensuring that their decisions are perceived as being fair is challenging but critical; good quality communication and personal interactions should be seen as priorities.

Summary

34. The WCA was designed in the middle of the first decade of this century and has been subject since that time to multiple changes. It represented a shift towards a more functional assessment of capability but retains a strong medical flavour. Modern thinking favours a biopsychosocial model of disability which considers not just capability but also other factors such as skills and readiness for the labour market. Changes to the nature of work and the demographics of the workforce have been substantial since that time. They have altered, and will continue to alter, the pattern of illness and disability in the workforce with greater fluctuations in individual capability. There will therefore be an increasing requirement for systems to be flexible in categorising incapacity and dynamic in responding to changes in an individual's condition.

35. The Review has considered a number of international approaches to incapacity benefits. There have been a number of common developments in recent years, with many countries moving away from systems based on health conditions and disabilities to ones that assess functional capability. Some countries have separated the issues of benefit eligibility from work capability and gear assessment to facilitating workforce reintegration. In particular developments in the Netherlands, Denmark, Australia and New Zealand have been considered.

36. If it is decided to undertake a fundamental redesign of the WCA, the Reviewer would recommend that there are a number of key principles that the Department should take into account:

    - Any assessment should not only be fair but be perceived as such. That perception must be broadly shared by those experiencing the process, those administering it and society at large.
    - There must be clarity of purpose and the current twin objectives of determining eligibility for benefit and signposting individuals to employment outcomes may not be compatible.
    - Residual elements of the medical model of disability should be eradicated as far as possible. Adopting a biopsychosocial model will

require capturing additional information but the inherent complexity is manageable with modern IT.

- Departmental staff should be at the heart of the assessment and should drive information requirements.
- Any revised assessment should be designed to exploit information already provided to the DWP or its agents rather than duplicating effort and incurring unnecessary expense.
- Decision Makers and HCPs should see a representative range of cases and have appropriate training in the capability impact of the common conditions they are likely to encounter, such as mental health conditions and learning disabilities.

Annex 1: List of recommendations

Chapter 2: The development of the Work Capability Assessment since 2008	
1.	Material changes to the WCA should be fully considered in advance by both policy officials and operational staff to ensure that policy intent and practical considerations are harmonised.
2.	Use of 360° feedback and its impact on driving up the quality of decision making at all stages of the WCA process should be monitored over time and trends reported to the appropriate level to ensure that training needs are met and unintended behaviours are addressed. This work should be seen in parallel to feedback received from Tribunal services.
3.	The Explanation Call is removed from the mandatory reconsideration process, and that information on the points of contention are collated and included in the referral to dispute resolution teams where possible.
4.	Options for displaying a geographical telephone number when making a Reconsideration Call should be explored. Additionally, SMS messaging or an appropriate alternative method should be used to provide advance notice in all instances. As with face-to-face assessments, requests to have a supporting representative on the call should be accommodated where possible.
5.	The Department review its geographical allocation of Mandatory reconsideration casework taking account of both perception issues and practical considerations for avoiding unnecessary delays.
6.	The Department give specific consideration to how it improves the overall perceptions of the mandatory reconsideration process. This should include publishing target turnaround times and being clear on the reasons behind ceasing payment of the assessment rate of ESA.
7.	Further work to develop and implement a semi-structured interview should continue. This should be developed in conjunction with a small number of representative groups. Particular attention should be paid to interview practices for those with mental health conditions, learning disabilities and autism, and this should be reflected in the guidance and training developed.

Chapter 3: The Support Group	
8.	The Department investigates the substantial increase in the proportion of Support Group outcomes as a matter of urgency to determine whether the WCA is being applied correctly.
9.	The use of Regulation 35 (2) (b) should be subject to close scrutiny with a particular focus on decisions made on a papers only basis.
10.	The drivers for the high rate of young people (16-24) being assigned to the Support Group should be examined not only to ensure that benefit decisions are correct but also to help provide appropriate support.
Chapter 4: Perceptions	
11.	The Department bundles future necessary changes into packages delivered no more than bi-annually to provide greater stability and avoid the perception of constant change to the WCA.
12.	The Department reviews the mechanisms in place for monitoring levels of understanding amongst staff involved in the ESA process and consider appropriate means of following up this training to ensure levels of knowledge and understanding remain high.
13.	The Department work with the Provider to improve communications sent in advance of an individual attending a WCA and ensure that it explains the nature of the WCA, including a description of what they can expect when they attend.
14.	The Department review its portfolio of alternate formats with specific reference to the use of Easy Read and then prioritise provision by need to create as many forms as is reasonably practicable.
15.	The Department work with the new Provider to review the existing material available to improve both the quality and content of online resources available to those individuals about to go through a WCA. They should consider working with representative organisations to ensure that the information is both clear and accessible.
Chapter 5: Decision Making and Processes	
16.	The Department examines its work flow system, which appears to introduce an inevitable bias towards granting higher benefit levels, to ensure that the policy intent is being met.
17.	The Department should explore ways and options of improved information between DWP assessments, including Personal Independence Payment, Disability Living Allowance, Industrial Injuries Disablement Benefit, Fit for Work and the Work Capability Assessment.

18.	The Department should work with the Department of Health and other appropriate government departments to explore how DWP can make use of the WCA and the evidence gathered to ensure individuals are sign posted to appropriate support.
19.	Use of the term 'prognosis period' should be discouraged and documentation should be amended accordingly.
20.	The Department should review its policy and processes around applying short re-referral periods in the Support Group, particularly for young people with mental health problems, and for longer re-referral periods in the WRAG.
Chapter 6: Groups meriting special attention	
21.	The Department should work with the Department for Education and the devolved administrations to develop improved mechanisms for providing information about the world of work, including the WCA, to those with learning disabilities at the point of leaving education.
22.	The Department reviews its provision of alternate formats of communication with a view to adopting Easy Read wherever practicable.
23.	The Department reviews the training given to its own staff and those of the Provider in relation to learning disabilities to ensure that the risk of overstatement of capability is fully understood.
24.	The Department ensures that it seeks the most appropriate evidence for people with learning disabilities, including Hospital Passports and care or support plans. The Department should consider options in each case rather than defaulting to a GP report.
25.	The Department should continue its good work with the MOD to ensure that suitable and sufficient evidence can be accessed as simply and speedily for ex-Service personnel who make an application for ESA.
26.	The Department should work with the DH to ensure that suitable and sufficient evidence can be accessed as simply and speedily as possible for long stay hospital patients who make an application for ESA or require reassessment.
27.	The Department should review its practice of routinely repeating the WCA for people liberated from prison who were in receipt of ESA with a reassessment period that is still extant on release.
28.	The Department should work with the MOJ to ensure that suitable and sufficient evidence can be accessed as simply and speedily as possible for people leaving prison who make an application for ESA or require reassessment.

Chapter 7: Northern Ireland	
29.	The policy on audio recording face-to-face assessments be reviewed, with a view to requiring the Provider to make recording equipment available when requested in advance.
30.	DSD works with DWP to better understand the general issues relating to the high numbers of young people being assigned to the Support Group and that consideration is also given to issues which may be specific to Northern Ireland.
31.	The SSA considers as part of its overall appeals review the issue of HCPs being available at Tribunals for the most difficult cases.
32.	DEL and the SSA should continue to work together to identify the information gathered during the WCA process that would be of greatest use to advisers at the Job and Benefit offices. Mechanisms to facilitate the effective sharing of this information with DEL should then be developed as a priority.
33.	The SSA and Tribunal Service should continue working together to better define the information that would be most conducive to improving decision making without placing an undue burden on either organisation. Any enhanced feedback system should be extended to the Provider so that the performance of HCPs can also be improved.

Annex 2: Review of year one to three recommendations

Based on the information available to the Reviewer, this annex offers a view of progress made by DWP on the implementation of outstanding recommendations from the years one to three WCA Independent Reviews since the Review in the year four report.

Yr	No	Recommendation	DWP Response	DWP Action since year four report	Implemented?
Claimant experience					
1	1	DWP Operations (formerly Jobcentre Plus) manages and supports the claimant during the course of their benefit claim and identifies their chosen healthcare adviser.	Accepted in full.	No further action reported.	Partially – support appears to be more limited than envisaged in the original review and no further updates since year four.
Descriptors					
2	7	As and when changes to the descriptors are made, DWP and other relevant experts should monitor the impact of these changes to ensure both that they are working and that they are not causing any unintended consequences.	Accepted in full	DWP has commissioned analysis of the impact of the changes in January 2013 to the provisions for cancer treatment but the results are not yet available. No other changes to descriptors have been made.	Partially – monitoring of the cancer changes is in progress. No further changes to the descriptors have taken place.
Health Assessment Provider (HAP)					
2	14	Given the importance of the quality of assessments (especially with Incapacity Benefit reassessment fully underway) DWP should consider tightening the target for C-grade reports.	Accepted in principle	MAXIMUS will take over from Atos Healthcare from 1 March 2015. The target for C-grades during years 1 and 2 of the new contract are the same as they were for Atos, i.e. no more than 5% C-grades calculated on a rolling 3 month average. That target tightens to 4% for year 3.	Yes – to take effect in year 3 of the new contract.

Yr	No	Recommendation	DWP Response	DWP Action since year four report	Implemented?
Decision Making					
2	9	DWP undertake regular audit of Decision Maker performance.	Accepted in full	Limited progress since year 4. Focus has been on process checks rather than audit e.g. QAF reviewed in 2014; Team leaders required to check 2 Decision Assurance Calls per month per DM as part of Call Quality Management.	Partially – QAF is not a full audit tool as it does not capture rates at which Decision Makers go against HCP advice (see Year 4 recommendation 24). No compulsory audit of Decision Maker performance.
3	1	Decision Makers should actively consider the need to seek further documentary evidence in every claimant's case. The final decision must be justified where this is not sought.	Provisionally accepted	DWP is developing a pilot to test approaches to gathering further evidence.	In progress – ongoing discussions with the Provider.
Reconsideration and appeals					
3	3	DWP should continue to work with the First-tier Tribunal Service, encouraging them to, where appropriate, ensure robust and helpful feedback about reasons for decisions overturned by the First-tier Tribunal.	Accepted in full	The Tribunal now routinely provide DWP with a summary of reasons for their decision on appeals against ESA, which is incorporated in the decision notice issued to the Department and the appellant. This is sent to the Dispute Resolution Team who, in turn, share feedback on an individual basis with the relevant Decision Makers responsible for the mandatory reconsideration/ appeal response. The Department is now exploring ways of sharing this feedback with the Provider on a regular basis.	Partially.

Data					
2	1	Implementation of the Review's recommendations should be monitored over time and on a regular basis, including focus on 7 specified indicators.	Accepted in full	Reconsideration has been superseded by the mandatory reconsideration process. DWP collects data on mandatory reconsideration through operational delivery.	Partially – DWP statisticians are working on improving data quality to produce robust statistics on mandatory reconsiderations. DWP aims to release some statistics on mandatory reconsiderations by the end of 2014.
2	15	To improve the transparency of the face-to-face assessment, data on Atos performance and quality should be regularly published.	Accepted in principle	This will not happen for Atos. MAXIMUS will take over from Atos on 1 March 2015 - discussions about what data will be published following the start of the new contract are ongoing.	In progress – under consideration for the new Provider (but did not happen for Atos).
Training and guidance					
2	17	Where appropriate, there should be sharing of knowledge and training between the various groups involved in the WCA.	Accepted in principle	Lobby organisations and professional bodies provide input to some HCP training materials. There is not a systematic approach to deciding what is shared.	Partially – Scope of examples of where knowledge and training have been shared outside DWP is limited.
Into work					
2	8	DWP consider ways of sharing outcomes of the WCA with Work Programme providers to ensure a smoother claimant journey.	Accepted in principle	See recommendation 1 from year 4 which restated the earlier recommendation.	In progress – see recommendation 1 from year 4.

Wider communications					
3	4	DWP must take the initiative and highlight the improvements that have been made where they exist, as well as being open about where problems remain and their plans to address these.	Accepted in full	DWP engaging with external stakeholders on perceived issues with ESA/WCA – e.g. ESA Customer Journey Workshop in June 2014, arranged in response to feedback from partner organisations. Evidence of joint communications activity with current provider and planning for activity with the new provider. Engagement with DWP and provider staff, and external stakeholders.	Yes - this is an area which will require continued attention even though the specific action has been discharged.

Annex 3: Review of year four recommendations

Based on the information available to the Reviewer, this annex offers a view of the implementation by DWP of recommendations made in the Fourth Independent Review.

No	Recommendation	DWP Response	DWP Action	Implemented?
Implementation of years one to three recommendations				
1	Sharing information from the WCA on capability for work with Work Programme Providers should be addressed as a priority.	Accepted subject to the outcome of further work on feasibility.	DWP has developed a process to capture and share information with Work Programme providers which has been discussed with them. The process is currently being quality assured. Funding has yet to be secured in the Department and the process has not yet been implemented.	In progress.
2	The Evidence Based Review and the actions taken by the Department as a result of its findings should be evaluated as part of the Year 5 Independent Review.	Accepted.	Year 5 Independent Review evaluated the Evidence Based Review, and DWP's response.	Yes.
3	The Department should build on the improvements for the people with cancer by amending page 20 of the ESA50 to make it clear that Clinical Nurse Specialists and consultant may also complete that section of the form.	Accepted and will be implemented in spring 2014.	ESA50 was amended as recommended; has been in use since April 2014.	Yes.
Implementation of year four recommendations				
4	Give due consideration to whether piloting is required for interventions and, if so, to design pilots with particular attention to the means of evaluation. There should be suitable and sufficient analytical input to any pilots at the design, implementation and evaluation stages.	Accepted.	DWP has not yet run any pilots based on Year 4 recommendations.	In progress.

5	Ensure that proposed adjustments to accepted recommendations are fully considered in advance by both policy officials and operational staff so that the intent and practical considerations are harmonised.	Accepted.	DWP Policy and Operations jointly considered recommendations from the fourth Independent Review and agreed the Department's response.	Yes. This is an area that will require continued attention.
Effectiveness of the WCA				
6	The Department reviews its use of WCA scores, places less emphasis on the final number attained and uses the calculation simply to determine whether the threshold for benefit has been reached.	Accepted subject to the outcome of feasibility work that will also address recommendation 13.	As part of its review of communications, DWP is specifically looking at how it presents WCA scores, in decision letters and scripts for Decision Assurance Calls.	In progress.
7	Any further changes to the descriptors as result of the EBR or otherwise should be considered in the light of their overall impact on the effectiveness of the WCA in achieving its purpose of discriminating between the different categories of people assessed.	Accepted.	DWP believe the EBR results do not suggest changes to descriptors would improve the WCA's effectiveness. No further changes to descriptors have been made since year 4.	In progress.
The face-to-face assessment				
8	The Department should specify an assessment format that facilitates better rapport, such as the HCP and person being assessed sitting side by side.	Accepted in principle.	MAXIMUS will take over from Atos on 1 March 2015. The new provider is open to discussion about room layout, with the caveat that they want to consider HCP safety.	No – no format has been specified. However, the provider's default position will be to enhance the experience of the person being assessed and put them at their ease.
9	The assessor should avoid reporting inferences from indirect questioning as factual statements of capability.	Accepted as part of work to examine the possibility of a semi-structured interview approach to assessment discussions to address recommendation 7.	DWP intends to pilot semi-structured interview. Background work is in progress developing the evaluation criteria, with plans to test this with the new provider from March 2015.	In progress.

10	The guidance on companions should be made clearer and applied consistently.	Accepted.	DWP has reviewed the guidance and is happy with its clarity. A reminder was issued for cascade to all HCPs in October 2014, stressing the importance of all HCPs adhering to this guidance at all times. HCP training was reviewed in November 2014 to ensure that it is in line with guidance on companions.	No – guidance has been reviewed but not amended. While a reminder was sent to HCPs, the Reviewer has seen no evidence of how consistent application of this guidance will be monitored.
11	The person being assessed should be able to see what is being written during the assessment.	Accepted in principle.	DWP has not progressed this as yet. Concerns that it might increase the time it takes to complete assessments, and have implications for some individuals – e.g. added difficulty for people with a learning disability.	No.
Staff Guidance and Training				
12	DWP should update documentation and training to ensure that: There is clear differentiation between the purpose statements for HCPs and DMs. A simple narrative explaining the differences is used consistently internally and externally. The distress that people can experience when things go wrong is recognised and acknowledged appropriately by staff.	Accepted.	Decision Maker guidance and training have been updated to better reflect the respective roles of Decision Makers and HCPs. An updated ESA51 (to be in use January 2015) also sets out the different roles. However, a simple narrative explaining the differences is not yet being used consistently internally and externally. . DWP will consider issue of distress people experience in line with recommendation 30 (mental health telephony training).	Partially

Written Communications				
13	The ESA50 and all letters and forms are comprehensively reviewed with the input of the Behavioural Insights Unit at the Cabinet Office, to ensure that: • all letters and forms meet Plain English standards. • information is presented at the right point in the process. • the person making a claim is clear about their rights and responsibilities at each stage of the process. • decision letters set out clearly what the outcome means for the person concerned ideally in the opening section: the period that will elapse before the receive the benefit; what they will need to do to continue to receive the benefit; and what they will not need to do.	Accepted.	DWP is conducting a review of its external communications. The team conducting the review includes Plain English experts but not the Behavioural Insights Unit.	In progress – DWP will have the updated ESA50, ESA51 (covering letter) and decision letters in use in January 2015, and aim to have other products – new claim letter, reminder letter to return ESA50, information and appointment letters – in use by July 2015.
Reassessment Post Appeal				
14	Apply any Tribunal recommendations on review periods as the default and should only be altered where there is strong justification.	Accepted in principle subject to the review of the policy.	DWP issued guidance to ESA Decision Makers stating that following a successful appeal they should apply the Tribunal recommendation from the date of the original decision unless the Tribunal specifies otherwise.	Yes.
15	Consider minimum period (e.g. 6 months) between successful appeal and recall notice.	Accepted.	DWP issued guidance to ESA Decision Makers stating an 8 month review period should be set as a minimum between a successful appeal and a subsequent WCA, unless the Tribunal recommends a longer period.	Yes.

Decision Making				
16	Give greater clarity about the role and parameters of Decision Makers with a particular focus on the meaning of "empowerment".	Accepted.	Linked to recommendations 12, 17 and 24. A reminder was issued to Decision Makers about processes for returning assessment reports that are not fit for purpose to the Provider. QUEST has been introduced, providing Decision Makers with feedback on their decisions form Tribunal Service.	In progress.
17	Review the QAF so that existing strengths in process adherence are supplemented by measures to examine other elements of Decision Maker quality. In particular, the outcome of decisions and the logic underpinning them should be monitored more closely.	Accepted subject to scoping work on monitoring of specific quality outcomes.	DWP has reviewed the QAF. A training event, about weighing evidence and making quality decisions, held with Decision Makers in June 2014 and content cascaded to all DMs. QUEST introduced summer 2014, providing feedback to DMs regarding Tribunal Service decisions.	No – additional quality measures related to outcomes have not been introduced.
18	Build a better relationship between HCPs and Decision Makers to engender more team spirit and to help Decision Makers view HCPs as their trusted advisers.	Accepted.	MAXIMUS will take over from Atos from 1 March 2015. The new service requirement specifies a case conference service to assist Decision Makers in making decisions efficiently and accurately, and a telephone case conferencing service.	In progress.
19	Improve the Decision Making training to recognise the strengths and weaknesses of further medical evidence and other information on capability to supplement the HAP report	Accepted.	DWP has updated training documents on use of evidence.	Partially – updated training has been delivered to new DMs; discussions between policy and operations to evaluate options for delivering it to existing DMs.

20	Re-engineer the case mix for the two levels of Decision Maker so that more senior staff consider “borderline” cases (e.g. 6 – 21 points) and more junior staff process all others.	Accepted subject to further feasibility work and future decisions on recommendation 26 and 27.	DWP still assessing feasibility work.	No.
21	Ensure the provider batches cases into point bands when they send to the Department to save the department admin / processing time.	Accepted subject to further feasibility work and future decisions on recommendation 26 and 27.	DWP still assessing feasibility work.	No.
22	Review the place of the Decision Assurance Calls and apply them only in “borderline” cases handled by Band C Decision Makers who should be up-skilled to make the intervention more effective.	Not accepted.	N/A	N/A
23	Review the guidance on the preparation of Reasoning and audit completed documents on a regular basis to further improve quality.	Accepted.	Linked to recommendation 17. QUEST introduced summer 2014, provides feedback to Decision Makers regarding Tribunal Decisions. Decision Maker reasoning can be cited as a reason that a decision is overturned. DMs are subject to QAF on at least 6 decisions per month.	Partially – Summary reasons are now being provided by the Tribunal Service. Further work necessary to ensure guidance is reviewed on a regular basis.
24	Monitor overturns rates on an individual basis. Investigate exceptionally high and low rates as part of performance.	Accepted subject to further feasibility work.	DWP has confirmed that individual Decision Makers overturn rates can be monitored but they are not as a matter of routine; overturn rates are monitored at site and group level, and if there are concerns the relevant lower level Management Information can be obtained.	No – DWP has made the information available to managers so that they can monitor overturn rates at an individual level but this is not monitored routinely.

Simplifying the Process				
25	**Immediately, the Reviewer recommends that:** DWP continues 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.	Accepted.	Limited progress. DWP has met with BMA, with regular, on-going communication on the design process; is working with BMA to review the clerical ESA113, with plans to explore an electronic version in 2015. But this is not co-design.	In progress.
26	**In the medium term, the Reviewer recommends that:** The Department carries out a full impact assessment on an alternative process whereby DWP Decision Makers triage cases; • DWP, rather than the HAP, issues the ESA50 and reviews the response with any supporting evidence supplied; • the Decision Maker determines (with the help of decision support materials) whether further evidence is required and, if so whether to obtain that by face to face assessment or other means; • where suitable and sufficient evidence is available on paper and a face-to-face assessment would provide no additional value, the Department should make a decision without referral to its HAP; • where a person is found Fit for Work on paper without a face-to-face assessment and subsequently disagrees with the decision, a second Decision Maker then reconsiders the need for a face to face assessment as part of the new mandatory reconsideration process.	Accepted.	DWP are looking at how best to balance the responsibilities of Decision Makers and HCPs in feasibility work for this recommendation. Results from initial tests have not been conclusive and DWP are considering alternatives. They will continue to look into options for earlier decision-making. The Reviewer accepts that this recommendation was “in the medium term”.	No – still awaiting a full impact assessment . DWP should consider this proposal further as it looks at options for earlier decision making.

27	**In the longer term the Reviewer recommends that:** The Department should carry out a full impact assessment on the feasibility of a DWP Decision Maker being collocated with the HCP undertaking a face-to-face assessment and either seeing the person making a claim jointly or separately.	Accepted.	DWP has carried out initial feasibility work into colocation and has plans to give further consideration in the longer term.	No – the Reviewer hopes that DWP will continue to consider this proposal in the longer term.
Mental Health				
28	Strengthen requirements for HCPs to have suitable and sufficient previous experience of dealing with people with mental health problems so that they can contextualise findings at assessment.	Decision deferred until completion of further work to understand whether DWP would accept or reject the principles underpinning this recommendation.	DWP understands 'suitable and sufficient experience' to include post-qualification experience, training, and on-going professional development. DWP are satisfied that HCPs do have 'suitable and sufficient' experience to perform their role. However, they are considering whether any additional requirements should be put in place, and have informed the Reviewer that the new provider intends to expand the number of HCPs that specialise in mental health.	In progress.
29	Current HCP training in mental health should be reviewed to ensure that it is adequate and the evaluation results for these and other key modules should be considered by the Department before approving any individual HCP. Approvals should be reviewed on a periodic basis and reaccreditation should be dependent upon effective refresher training in key subject matter areas.	Accepted subject to the outcome of further scoping work on the overall effects of changing current approvals and training approach.	HCP training has been reviewed, with input from the Royal College of Psychiatrists. The contract with the new provider states that DWP reserves the right to quality assure and sign off their training material and guidance, and that the provider will develop, deliver and evaluate a CPD programme on an annual basis, which all HCPs are required to undertake. If they do not, they have their approval to complete assessments revoked.	Partially – training has been reviewed but approvals are not reviewed on a periodic basis.

30	Mental health training for Decision Makers should include dealing with distressed people on the telephone, interpreting warning signs of self-harm and signposting to appropriate sources of help.	Accepted.	DWP is reviewing the current training, to identify gaps and consider how to embed regular reviews of mental health telephony training.	In progress.
31	The ESA50 is redesigned to make it clear that evidence, particularly in mental health cases, from CPNs, Support Works, Carers etc is valuable, and giving guidance on the functional aspects that will help Decision Makers.	Accepted.	DWP is reviewing its external communications. The revised ESA50, incorporating this recommendation's advice on evidence, will be in use in January 2015.	In progress.
32	Consideration is given to a new reassessment period extending to five years in the Support Group for people who have very severe incapacity resulting from brain disorders that are degenerative or which will not realistically improve.	Accepted subject to the outcome of further scoping work.	DWP is exploring whether this should apply to specific conditions, and what the most appropriate review period should be.	In progress.
Northern Ireland				
33	Review the terms of reference, role profile and job description of the HAA with input from a senior occupational health professional to maximise the value of the position.	DSD Response – Accepted. The Department will seek the input of a senior occupational health professional to further enhance the role of the HAA.	A Steering Group has been established and includes input from a senior occupational health professional. A report is due by the end of November.	In progress.
34	Capture and monitor data on Decision Maker overturns of HAP recommendations to track future trends to give the Department a valuable source of management information.	DSD Response – Accepted. The Department will capture and monitor this data as a valuable information source.	Since April 2014 data is being captured and reported on a monthly basis.	Yes.
35	Extend the feedback loop to ensure that learning is communicated to the HAP as well as to Decision Makers.	DSD Response – Accepted. The Department will ensure that Tribunal feedback is communicated to the HAA.	DSD is taking forward the issue of Tribunal feedback for other benefit decisions as well as ESA, and is progressing this issue with the Tribunal Service.	In progress.

36	Maintain the arrangement whereby a Mental Function Champion is available to Decision Makers via the advice line.	DSD Response – Accepted. This arrangement is in place.	This arrangement has been in place for some time and there are no plans to adjust the arrangement.	Yes.
37	Give careful consideration to both the public perception as well as the objective evidence relating to understanding of mental health issues before agreeing to any further adjustment of the HCP skill mix.	DSD Response – Accepted. The Department will give careful consideration before agreeing to any further adjustment of the HCP skill mix.	DSD introduced a change to the HCP skill mix, allowing physiotherapists to carry out WCAs. In considering this the HAA reviewed and approved the proposed training. HCPs are approved and subject to audit by the HAA.	Yes.

Annex 4: Acknowledgements

1. Although this has been my second review of the Work Capability Assessment (WCA), I have had a great deal more to learn about its application and I am most grateful to all those who have graciously given their time to help me.

2. I am particularly grateful for the advice and support given to me by the Independent Scrutiny Group - Neil Lennox, Keith Palmer, Hugh Robertson, and Ciarán Devane under the leadership of David Haslam. They have been diligent in commenting on material, often at short notice, and their wise counsel has been of immense value.

3. I would also like to thank officials in the DWP and the DSD at all levels for supporting me and my team, as well as providing information and clarification on complex benefit issues. In particular the views that fed in to the staff perception survey were gratefully received and enlightening.

4. ESA Decision Makers, dispute resolution teams, operational managers and other staff at Stratford, Bridgend and Balham Benefit Centres were very welcoming during my visit - I would like to thank them all for sharing their views on WCA with me.

5. I want to thank Working Links in Cardiff and staff at Stratford Jobcentre for their warm and friendly welcome when I visited them and for helping me better understand the role they play in supporting individuals going through the WCA process.

6. I received an excellent response to the WCA Call for Evidence request from organisations and individuals, providing valuable insights into how WCA is working and suggestions and recommendations that have influenced my thinking. Some organisations also attended the seminars and other meetings I held to feed into the Call for Evidence. I want to thank all who contributed for their input to this review.

7. I want to specifically thank DWP officials including Jeremy Moore, Bill Gunnyeon, James Bolton, Justin Russell, Mary Hipkin and Sandra Maughan, as well as Daniel Foster, Leoni Belsman, Connor Barnes and others in the analytical team who provided excellent support to the Review.

8. I would also like to thank the Scottish Government, Minister Burgess and Roderick Duncan, as well as the then Minister for Communities and Tackling Poverty, Jeff Cuthbert, and officials in the Welsh Government for their contributions which were important in developing a Great Britain wide understanding of the WCA.

9. I visited Northern Ireland where I met the then Minister for Social Development, Nelson McCausland, the Chief Executive of the Social Security Agency, Tommy O'Reilly and a range of other officials, including some from the Department for Employment and Learning. My meeting

with the President of the Appeals Tribunal in Northern Ireland, and a roundtable discussion with a range of stakeholders was most useful. The warmth of my reception in Northern Ireland was exceptional and merits comment.

10. I would also like to thank officials at the Ministry of Social Development in New Zealand – particularly Sacha O'Dea, Anne Hawker and Dr David Bratt – for providing invaluable insight into the challenges they are facing and the reforms being made into how incapacity for work is assessed.

11. My meeting with Judge Aitken — President of the Social Entitlement Chamber of the First-tier Tribunal, Her Majesty's Courts & Tribunals Service was valuable and provided feedback on the Tribunals Service to DWP following the overturn of ESA decisions.

12. Finally I want to thank my Review team Emma Varley, Stephanie Harvey, Nick Smith, Kieran Devlin, Reshma Kunverji and Rasila Parmar for all their hard work and patience throughout the Review.