

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

Professor Malcolm Harrington

November 2011

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# Foreword

I was very pleased to be asked to undertake a second Independent Review of the Work Capability Assessment (WCA).

As I pointed out in my Foreword to the first Review, society and its citizens have responsibilities to each other. The citizen is expected to earn their own living, and, as a consequence of that, to pay taxes to support society. In turn society has responsibilities to the citizen, including supporting those who are unable to earn a living for themselves.

Assessing a person's fitness for work through the WCA is part of that: determining who can work and who needs state support. The WCA is the right concept. The first year Review showed that the process of administering it was not working as well as it could or should. Revisions at all stages of that process were required to make it fairer and more effective. The reassessment of Incapacity Benefit claimants from April 2011 has greatly increased the workload of all those involved: Department for Work and Pensions (DWP) Operations<sup>1</sup>, Atos Healthcare, the claimant's chosen healthcare adviser and, not least, the claimant, who may not have had any health and work assessment for many years. This increases the imperative for the process to keep improving.

Even without Incapacity Benefit reassessment, the changes I proposed to the WCA system would have presented a big challenge for two large and complex organisations, namely DWP Operations and Atos. DWP rapidly adopted my proposals as policy and DWP Operations set about the necessary changes with energy and commitment. Atos, who are contracted to DWP for their part of the WCA, fulfilled their contractual requirements.

I have seen these improvements in the day-to-day running of both DWP Operations and Atos. This has taken time and some observers have told me that they have seen no change. I advise patience. The process of improvement is happening, but is not yet in evidence everywhere. It will take time to have the desired impact and the year three Review will closely monitor the impact of the changes and ensure there is continuing progress in improving the assessment.

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<sup>1</sup> From October 2011 the formal agency status of Jobcentre Plus ceased to exist. For clarity and consistency throughout this document the work of Jobcentre Plus before October 2011 and anything after then are both referred to as DWP Operations.

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

Whilst real progress has been made this year, I would not for one minute claim that things are perfect. Much criticism about the assessment – particularly from individuals – remains. This criticism should certainly not be ignored and the Call for Evidence this year was particularly helpful in getting views about the assessment and how it could be improved.

The major charities and the clinicians who support their work have a considerable wealth of knowledge at their disposal relating to the disabilities and illnesses that they represent. Their assistance in making recommendations for improvements to the descriptors has, I believe, been a successful process. Their involvement in developing and updating guidance and support materials for those undertaking the assessments would also be helpful.

No real progress has been made with recommendations relating to the appeals process, particularly around feedback from Tribunals to Decision Makers about reasons for overturn of appeals. This is very disappointing. I have had a lot of positive feedback from a lot of people about this idea, and I am certain that it would improve the WCA process – and performance within it – if implemented. However, the First-tier Tribunal President has informed me that judicial matters are outside my remit.

Communications before, during and after the WCA also remains problematic. Messages about the WCA and what a ‘fit for work’ decision means need to improve within DWP Operations. There is a need to move away from the view of the assessment as something that people either ‘pass’ or ‘fail’. And finally there appears to be a need to improve communications between DWP Operations and the Work Programme providers to ensure that people who can work are given the opportunity to do so at the earliest opportunity.

Aristotle is reputed to have said: “If we believe that men (sic) have any personal rights as human beings, they have an absolute right to such measure of good health as society, and society alone, is able to give them”. Today we would argue that people have responsibilities for their own health as well, but society does have a role and the WCA is part of that.

A handwritten signature in black ink, appearing to read 'Malcolm Harrington', with a horizontal line underneath.

Professor Malcolm Harrington

November 2011

# Executive Summary

1. The Work Capability Assessment (WCA) was designed to assess an individual's eligibility for Employment and Support Allowance (ESA). It aims to distinguish between those people who could work; those people who could work at some point with the right support; and those people who cannot work and, therefore, need State support.
2. The first Independent Review, published in November 2010, found that the WCA was the right concept for achieving this aim but that it could be impersonal and mechanistic and that there was a lack of transparency in the process with poor communication between the various parties. This led to poor decision making and a high rate of appeals, many of which were successful.
3. A series of recommendations designed to improve the fairness and effectiveness of the WCA were proposed and were immediately accepted by the Government.

## Implementation of year one recommendations

4. I am pleased to say that all the year one recommendations have been, or are being, implemented. The Department for Work and Pensions (DWP) moved swiftly to make the recommendations Departmental policy and **DWP Operations<sup>2</sup> and Atos Healthcare have enacted these policy changes.**
5. **The WCA has, in my view, noticeably changed for the better.** However there is still further to go. Some of the improvements from my first Review have not reached all parts of DWP Operations.
6. To those who feel nothing has happened, I say: be patient. It is happening. The process is not yet perfect, but **it is improving and will continue to do so over the course of the five Independent Reviews.**

## Key findings and themes from this Review

7. Whilst the year one Review, and associated recommendations, considered the WCA process and how that could be improved, the year two Review has focussed on a number of more specific issues which the first Review did not have time to consider in detail and which will support the recommendations from year one.

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<sup>2</sup> From October 2011 the formal agency status of Jobcentre Plus ceased to exist. For clarity and consistency throughout this document the work of Jobcentre Plus before October 2011 and anything after then are both referred to as DWP Operations.

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

8. In this Review I propose **a number of more detailed recommendations to improve further the process of the WCA and the criteria used to determine eligibility for ESA.**

9. This Review sets out a series of recommendations which complement – and build on – the recommendations from the year one Review. They aim to improve the fairness and effectiveness of the assessment by:

- **Better communications and sharing of information between all parts of the system**

This will mean that everyone involved knows their roles and responsibilities and that the purpose of the WCA and the reasons for decisions are better understood. This is particularly the case between Decision Makers and Personal Advisers within DWP Operations so that reasons for reaching a decision and what that decision actually means are clear. Although there is no clear evidence that ‘employability’ should feature in the WCA, Decision Makers and the Work Programme providers should liaise more closely so that the latter are better able to help people back into work.

Whilst the First-tier Tribunal President considers it to be outside the remit of the Review, better communication between the First-tier Tribunal and Decision Makers so that reasons for upheld appeals are clear would also considerably add to the fairness and effectiveness of WCA process.

- **Increasing and improving the transparency of the assessment**

DWP and Atos need to engage with representative groups and their clinical advisers to ensure that Decision Maker and healthcare professional guidance used during the WCA process is up-to-date and clinically sound; and the regular publication of Atos data will ensure consistency and that standards are not allowed to slip.

- **Ensuring quality decisions are made**

Regular audit of Decision Maker’s performance is needed to ensure they are making consistent, robust and evidence-based decisions and that – as newly empowered Decision Makers – they are accountable for their decisions.

- **Monitoring the impact of recommendations from the Independent Reviews**

This will help ensure, and provide evidence, that the changes are having the desired impact. This could be achieved by collecting indices for change on the rate and amount of progress made; and carrying out research into what happens to people who are placed in each group over time.



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- Further decisions need to be made on the proposals for new mental, intellectual and cognitive descriptors once further research has compared the proposed descriptors with the current ones. I hope that it will be possible to consider similar research for the recently submitted proposals for refining the fluctuating conditions descriptors, or for them to join this process.

### **Costs and benefits**

10. I recognise that, if adopted, these recommendations will have a cost implication attached to them.
11. However, as with the year one recommendations, seen in the wider context the proposed changes are likely to be cost saving or cost neutral in the medium- to long-term by ensuring that decisions are right first time and by ensuring that all parties understand why a particular decision has been reached and its implications.

# Chapter 1: The Review outline

## The Work Capability Assessment

1. The Work Capability Assessment (WCA) was introduced in October 2008. It assesses an individual's entitlement to Employment and Support Allowance (ESA), a benefit that provides support to people who are out of work and have a disability or health condition.
2. The WCA intends objectively to evaluate a persons' capability for work so that appropriate support can be provided to help them back to work or, if they cannot work, unconditional support is provided. As such, the assessment focuses on the claimant's functional capability rather than their diagnosis.
3. The three Groups into which a claimant can be placed and a broad outline of the WCA process were all described in more detail in the first Independent Review.<sup>3</sup>

## Independently reviewing the WCA

4. The Welfare Reform Act 2007 legislated for the introduction of the WCA. This law provides the basis for the Independent Reviews. Section 10 states that:  
*“The Secretary of State for Work and Pensions shall lay before Parliament an independent report on the operation of the assessment annually for the first five years after those sections come into force.”*
5. In November 2010, Professor Malcolm Harrington, an occupational health specialist, published his first Review. He found that the WCA is the right concept, but that improvements could be made to each stage of the process.<sup>4</sup> His Review made a number of recommendations all of which the Government accepted and most of which have now been implemented (see Chapter 2).

## This review

6. In November 2011, the Secretary of State for Work and Pensions re-appointed Professor Harrington to carry out the second Independent Review of the WCA.

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<sup>3</sup> Chapter 3, paragraphs 1-5 of “An Independent Review of the Work Capability Assessment”, Harrington, 2010.

<sup>4</sup> Executive Summary, paragraphs 3-4, *ibid*.

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

7. It aims to provide:

- a further examination of the system based on a series of recommendations made in the first Review;
- updates on progress implementing the year one recommendations and, where possible, their impact; and
- a future programme of work for year three.

The terms of reference for the Review:

- To provide the Secretary of State for Work and Pensions with an annual independent report evaluating the operation of the assessments of limited capability for work and limited capability for work-related activity;
- To evaluate the effectiveness of the limited capability for work assessment in correctly identifying those claimants who are currently unfit for work as a result of disease or disability;
- To evaluate the effectiveness of the limited capability for work-related activity assessment in correctly identifying those claimants whose disability is such that they are currently unfit to undertake any form of work-related activity;
- To take forward the programme of work identified in the year one report during years two and three;
- To monitor and report on the implementation of the recommendations in the year one report that are adopted by Ministers; and
- To provide independent advice to Ministers and the Department on any specific issues or concerns with the WCA that arise during the term of appointment, which the Government may seek your independent view.

8. The Secretary of State also re-appointed an Independent Scrutiny Group to oversee Professor Harrington's work and to provide him with advice and challenge during the course of his work. The group included experts from the medical profession, disability groups, occupational health and employers. The group was chaired by Professor David Haslam, a GP, National Clinical Adviser to the Care Quality Commission and current President of the British Medical Association. The three other members of the group were Paul Farmer, Chief Executive of Mind; Dr Olivia Carlton, President of the Faculty of Occupational Medicine and Head of Occupational Health, Transport for London; and Neil Lennox, representing the CBI and Head of Health, Safety and Fire at Sainsbury's.

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

9. The Group met with Professor Harrington on four occasions during the course of the Review. The Group used these meetings to challenge constructively Professor Harrington's findings, to ensure that the process by which the Review was carried out was fair and robust, and to ensure that it remained within the terms of reference given by the Secretary of State.

The terms of reference for the Independent Scrutiny Group:

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

### **The scope**

10. As the second of five annual reviews, the programme of work was largely determined by a series of recommendations in the first Review. These recommendations were that in year two the Review should:

- examine the mental, intellectual and cognitive descriptors and provide recommendations on refining them;
- examine the descriptors, in particular how they account for other fluctuating conditions and, possibly, generalised pain and provide any recommendations necessary;
- examine what happens to people who are found Fit for Work, people who are placed in the Work Related Activity Group, in the Support Group and people who do not complete their WCA;
- examine what happens to individuals who are found Fit for Work but are unable to claim Jobseeker's Allowance;
- undertake research understand whether the assessment could and should incorporate more "real world" or work-focused elements;

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

- examine the Atos computer system (LiMA) and how it can drive the right behaviours;
- explore the use of other healthcare professionals in the Atos assessments and to check consistency of assessments by different professions; and
- monitor the implementation of those recommendations in the year one report which have been adopted by Ministers.

11. In January 2011 a further piece of work was added to consider the wording of the descriptors used for claimants receiving treatment for cancer.

### **The process**

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

### **The Call for Evidence**

13. A considerable amount of information was gathered through a Call for Evidence. This exercise enabled anyone with an interest to submit their views and any evidence that related to the WCA.

14. The Call for Evidence was launched on 14 July 2011 and closed on 16 September 2011, although considerable leeway was afforded organisations and individuals who could not meet the deadlines involved. During this time, over 425 individuals, representative groups, unions, employers, employment support providers and healthcare professionals (HCPs) responded.

### **Stakeholder meetings and seminars**

15. The Review met with around 75 stakeholders through a series of one-to-one meetings, group meetings and seminars. At each, stakeholders and interested groups were given the opportunity to provide evidence.

### **Examination of all parts of the process**

16. The Review examined all, and visited many, parts of the WCA process during the course of the year.

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

17. The Review visited 5 Benefit Delivery Centres over the course of the year, including a number of unannounced visits.

18. These visits provided an opportunity to speak to managers and Decision Makers about recent and future changes and the impact which these changes might have.

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19. A dialogue was also maintained with DWP Ministers and senior officials from DWP.

### **Atos Healthcare**

20. The Review visited Atos Assessment Centres and spent time at an Atos Training Centre viewing the training provided to newly recruited nurses.

21. It also had access to Atos management information (even where this information was not in the public domain), training materials, spent time with the independent audit assurance team and was able to view first hand the LiMA computer system as well as organising three stakeholder seminars to look at this in more detail.

### **First- and Second-tier Tribunals and Work Programme Providers**

22. Finally, the Review had an ongoing dialogue with both the Tribunal Judges and several of the Work Programme providers during the course of the year.

### **Work and Pensions Select Committee**

23. The Reviewer gave evidence to the Work and Pensions Select Committee's investigation into the role of Incapacity Benefit reassessment in helping claimants into employment in May 2011.

## Chapter 2: Implementation of the year one recommendations

### Year one recommendation

1. In year two the Review should monitor the implementation of those recommendations in the year one report which have been adopted by Ministers.

### Background

2. The first Independent Review of the Work Capability Assessment (WCA) was published on 23 November 2010. It contained 25 recommendations of which:
  - seventeen related to the year one Review; and
  - eight concerned new work to be undertaken in year two.
3. The Government immediately accepted all of the recommendations.
4. In January 2011, a further piece of work was added. This additional task was initially assigned to Macmillan Cancer Support and addressed the wording of the provisions used for claimants receiving treatment for cancer.
5. The year one recommendations can be divided into four groups:
  - the customer experience;
  - the Atos face-to-face assessment;
  - the decision making process; and
  - the appeals process.

### Incapacity Benefit Reassessment and new Employment and Support Allowance (ESA) claims

6. In April 2011 the Government began reassessing all claimants claiming Incapacity Benefit for eligibility for Employment and Support Allowance (ESA) using the WCA.

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7. Given the size of this undertaking the Government decided to implement all the year one recommendations for the Incapacity Benefit reassessment cases first (following trials in Aberdeen and Burnley) and then to extend this to new ESA claimants later. Of the 14 year one recommendations for Department for Work and Pensions (DWP) Operations<sup>5</sup> and Atos, 11 have been delivered and the remaining ones are on track to be implemented by the end of 2011.
8. The Review saw, at first hand, the undoubted effectiveness of the new procedures when it visited Aberdeen in May 2011. The Decision Makers appeared empowered and enthusiastic about their enhanced responsibilities and initial feedback from claimants was also positive.
9. A visit to Plymouth Benefit Delivery Centre, also in May, revealed that although the formal re-training packages were not yet in place there, the manager was already creating greater autonomy for the Decision Makers and had relaxed the rigid throughput figures. The Decision Makers, for their part, were empowering themselves on the basis of their knowledge of the year one recommendations and in advance of formal training. This was most encouraging to observe.

### **The customer experience**

10. DWP Operations have initiated, or completed, work to reform the claimant's experience from providing additional information for the claimant at the start of the WCA process; to improving the contents of the ESA50 form; and finally having additional contact with the claimant following the Atos face-to-face assessment when a decision about entitlement to ESA is being made.
11. Following the early implementation in Wrexham and Oldham Benefit Delivery Centres, additional contact with the claimant has now been introduced nationally. There is now clearer information about the WCA process and the outcomes. The ESA50 form has been revised, including space for a paragraph from each claimant to explain how their ill-health or disability affects them. The follow-up letters have also been made clearer and less threatening. These steps – and those involving the enhancement of the role of the Decision Maker – are shown in Figure 1.

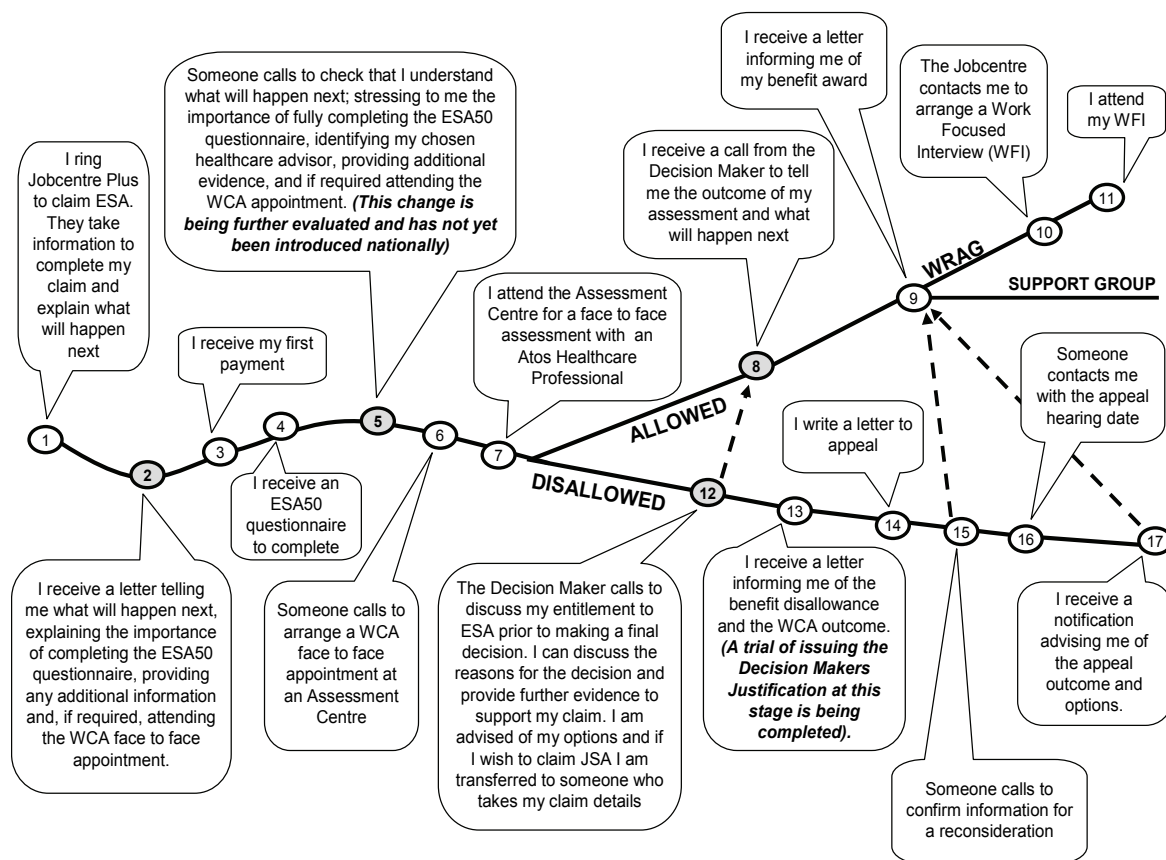
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<sup>5</sup> From October 2011 the formal agency status of Jobcentre Plus ceased to exist. For clarity and consistency throughout this document the work of Jobcentre Plus before October 2011 and anything after then are both referred to as DWP Operations.



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Figure 1: claimant journey following implementation of year one recommendations



12. A number of DWP Decision Makers responded to the Call for Evidence reporting positively on the introduction of these telephone contacts. In their experience, many claimants had responded positively to them. This was encouraging to hear and the Review looks forward to monitoring developments in year three.

### The Atos face-to-face assessment

13. The personalised summary statement to conclude the face-to-face assessment in plain English was introduced nationally by Atos in June 2011. Since then Decision Makers have been using the statement as part of the decision making process.

14. DWP Operations expect to reach a conclusion soon as to when and to which claimants this personalised summary statement should be issued. The Review has had extensive discussions with senior DWP staff over this and understands the need to issue the statement to the right claimants, in the right context, at the right time.

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15. It has also been suggested that a better approach would be to issue the Decision Maker's Justification instead if a claimant is disallowed. There are clear advantages to this proposal, especially as the Decision Maker is the one determining eligibility for the benefit and because the Decision Maker's written report would cover all aspects of the claim, not just the Atos section.
16. This seems to be a considerable improvement on the year one recommendation. It also demonstrates the importance of field testing and reviewing the recommendations in real life situations. DWP Operations deserve congratulating for improving on the recommendations, rather than simply following a policy laid down following an Independent Review. The Review looks forward to seeing the impact of this change as and when it is made.
17. Mental Function Champions have been trained and have been in place on a regional basis since May 2011. The initial recommendation for a Champion in each Assessment Centre was logistically impossible. The Review has been convinced that a regional approach is more efficient, conserving scarce resource and still delivering the desired result. The impact of Champions on the quality of assessments for people with mental, intellectual and cognitive conditions remains to be evaluated and monitored, and the Review will in turn monitor this.
18. However, initial evidence from Atos does suggest that Mental Function Champions are being well utilised, with an average of around 10 calls to the helpline each day. Anecdotal evidence also suggests that Atos healthcare professionals (HCPs) welcome the support and advice available from the Champions:  
  
*"I personally have found this service to be invaluable. I am lucky in that I have two very experienced HCPs who are Mental Function Champions at the assessment centre I work at and so am able to ask them for advice, which I do regularly, especially since I have been in the company only six months", Atos HCP*
19. Atos have piloted the audio recording of assessments and the evaluation of this exercise is proceeding. No decision on implementing or extending this will be made until the validity, cost and feasibility of the process has been assessed.
20. Atos have published a customer charter and it is in place at all Assessment Centres.

### **The decision making process**

21. Putting the Decision Maker back at the heart of the WCA was the central plank of the year one recommendations. They were tasked specifically with:
  - liaising more closely with the claimants; and
  - collecting as much corroborating evidence as possible from the claimant in support on their case, including from a claimant's chosen healthcare adviser.
22. As a result new learning material has been made available to Decision Makers. The object of this and the accompanying training packages was to improve their understanding of the WCA and how to gather and use additional evidence from the claimant before making a final decision.
23. All Decision Makers should have completed the new training by the end of 2011. To date, all Incapacity Benefit reassessment Decision Makers have received their training, as have over half of ESA claims Decision Makers.
24. A new Quality Assessment Framework has been introduced to monitor the standard of decision making. It is now in place for Decision Makers in both Incapacity Benefit reassessment claims and ESA claims.
25. Improving the communication between Atos HCPs and the Decision Makers has been trialled. The Review has seen at first hand that where this has been done it has been a valuable resource, particularly for Decision Makers who have had the opportunity to discuss difficult cases or complex medical evidence with Atos HCPs or to understand better the recommendations made by Atos following the face-to-face assessment. However, there has been no national roll-out of this, instead a telephone adviceline is being introduced.
26. Increased use of the reconsideration process is now a standard part of the later stages of the claimant journey. This is proving to be useful as additional medical information from the claimant often only comes to light at this stage. In an ideal world, the Decision Maker should have this evidence early in the process, but the fact that it is being considered routinely before an appeal needs to be invoked is an advance on previous practice.

### **The appeals process**

27. Modifying the appeals process is not strictly the preserve of DWP. The Review has actively engaged in dialogue with the First- and Second-tier Tribunals and has spoken at national meetings of both groups of Judges.

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28. Detailed and constructive discussions have continued throughout the year with both the First-tier Tribunal President and the Chief Medical Member. As part of these discussions, the First-tier Tribunal President has made it clear to the Review that the appeals process is outside of its remit. However, the Reviewer, and the Independent Scrutiny Group which oversees his work, still believes that improvements to the whole WCA process, including appeals, would improve both its fairness and effectiveness and so hopes this dialogue will be maintained.
29. The development of a summary feedback to the Decision Maker concerning the reason(s) for appeals being upheld is continuing. The suggestion is to have a short list of reasons which could be transmitted electronically to each Decision Maker for each upheld case. The Administrative Justice and Tribunals Council, the Administrative Justice policy section of the Ministry of Justice and the Social Security Advisory Committee have approved the idea.
30. A draft scheme for these one-liners (see Table 1) has been submitted to the First-tier Tribunal President with a view to a trial of the system. Whilst the First-tier Tribunal President is broadly supportive of this idea, he has made it clear that this is outside of the Review's remit.

**Table 1: draft summary feedback from Tribunals to Decision Makers**

<b>CORRECTLY MADE DECISIONS OVERTURNED BY TRIBUNALS</b>
The Tribunal was given additional evidence which was not available to the Decision Maker.
The Tribunal considered the same evidence as the Decision Maker but formed a different view.
The medical panel member interpreted medical evidence differently to Atos.
The presence of the appellant at the hearing had a significant impact on the outcome, shedding new light on existing evidence.
<b>INCORRECT DECISIONS OVERTURNED BY TRIBUNAL REASON FOR INCORRECTNESS</b>
The Tribunal concluded that the Decision Maker had failed to gather sufficient facts/evidence to reach an equitable outcome.
The Tribunal considered evidence that was available to the Decision Maker but which he or she disregarded/was unwilling to accept.

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The decision was based on a misinterpretation/misunderstanding of the available evidence.
The Decision Maker took into account wholly unreliable evidence.
The Decision Maker overlooked a relevant Commissioner's decision/Court decision which was or should have been available to him.
The Decision Maker failed to request adequate medical guidance.
The Atos medical report contained inaccuracies/was of poor quality, for example underestimated the severity of appellant's disability.
The Decision Maker failed to identify/resolve an obvious conflict in the evidence.
The Decision Maker did not action additional relevant evidence provided after his decision was made and initiate a revision.
Other error discovered.

31. If agreed and implemented, this list would also have the advantage of providing aggregated data for DWP Operations at either a regional or national level so they are able to understand better why appeals are being upheld. This means that Decision Maker performance could be improved at a macro as well as micro level.
32. A review of training given to medical and legally qualified members of the Tribunal has been undertaken and details of this are contained in Chapter 6.
33. Recommendation 17 stated:
- “The Review recommends that training offered by the Chamber President to Tribunal Judges and Medical Members should include modules on the evidence of the beneficial effects of work to an individual's well-being”*
34. At a meeting with the First-tier Tribunal Judges it was pointed out that it is not their responsibility to consider such socio-medical issues. Their role is to interpret the law as it relates to the WCA. The Review stands corrected and this aspect of the training recommendation has not been pursued.

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35. No progress has yet been made with the recommendation concerning the monitoring of appeal outcomes within and between Tribunals. The Review has heard further anecdotal evidence that suggests that the proportion of upheld appeals may vary widely between Tribunals, and between individual judges, and considers it important to understand whether and why there is any difference in outcomes between Tribunals.
36. A request for provision of statistical information, if it indeed exists, has been made to the First-tier Tribunal President. He has now responded by pointing out that such aspects of the Review's work on the WCA are outside its remit. The Review would welcome work in this area in the future, but recognises that it is an area of judicial responsibility.

### **Unannounced visits**

37. Visiting Benefit Delivery Centres as part of a planned programme organised by DWP Operations could lead to the accusation that the Review would only see the best practice in Centres primed for a visit. This potential perception problem was discussed with the Scrutiny Group. The view emerged that unannounced visits to some major Centres, following the example of senior managers at large employers such as Sainsbury's, would be informative.
38. The initiative was put to senior DWP officials and endorsed by them. Subsequently a list of potential Centres of sufficient size was drawn up. There were no restrictions on which sites were visited and when. The plan was that each visit would last no longer than an hour and would be an opportunity to question managers and Decision Makers about their experience of the new recommendations in practice. They would be asked whether the WCA process was improved for them and their claimants and, if not, why not.
39. Such visits subsequently took place at two sites: Merthyr Tydfil and Gloucester. At Merthyr, it was fortuitous that the day of the visit coincided with the second day of the three day training course for Decision Makers on the implementation of the year one recommendations. There was an opportunity to talk to the manager who was well versed in 'lean' techniques and who was totally wedded to the new 'change' culture. The Decision Makers were enthusiastic about their enhanced role and had nothing but positive things to say about their new, yet more onerous, responsibilities. It was a most encouraging visit, given the large work load with which a Benefit Delivery Centre like Merthyr has to cope.

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

40. At Gloucester the manager provided the Reviewer with an opportunity to discuss, in seminar fashion, the impact of the year one recommendations with 15 staff who were either Decision Makers or Appeals Writers. It was a most valuable experience and much appreciated by both the staff and the Reviewer. In general their attitudes and experiences mirrored those in Merthyr. They did, however, feel that the Decision Makers should be given more discretion in the number and style of telephone calls to claimants.
41. At both Gloucester and Merthyr the Decisions Makers were deeply frustrated by the lack of feedback from the Tribunals on the reasons for upheld appeals (see paragraphs 29 to 31).

### **The impact and effect of the year one recommendations so far**

42. Making changes to the workings of two large organisations such as DWP Operations and Atos cannot be achieved overnight. At the outset, DWP confirmed that all the recommendations were now policy. The implementation would take time. Some items could be put in place quickly, others would take months to execute. Some would need to be trialled and revised before national roll-out. Atos would, as part of their DWP contract, be required to carry out the changes necessary to implement the relevant recommendations.
43. The Call for Evidence issued in July 2011 specifically asked respondents for robust evidence about whether some or all the year one recommendations were in place at that time.
44. Whilst recognising that it is probably too early to be able to provide robust evidence about implementation at this stage, the vast majority of respondents reported that the process had broadly stayed the same or that they had not noticed any changes, primarily due to time:
- “Although DWP and Jobcentre Plus [DWP Operations] are making clear efforts to improve the system, it is clear that the reforms are taking time to translate into improvements for claimants”,* Disability Benefits Consortium
45. Some were positive about the changes to date, even if recognising that more work was needed before the full effects of the changes are felt:
- “I think the changes to the way we reconsider a case has vastly improved. I am pleased to say that the new process genuinely provides a good level of service, sometimes outstanding. Please keep the telephone call in the process”,* DWP Operations Decision Maker
- “The process in some cases is improving. It does appear that in some cases the decision makers have been allowed to enter into dialogue and give consideration to evidence other than that provided by Atos”,* East Dumbarton CAB

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

46. However, some respondents did report negatively on the implementation of the recommendations, noting particularly the increase in time taken for claims to be processed and the remaining lack of clarity in the process:
- “Lack of clarity, information to individuals called for re-assessment is slow, and of poor quality, which has the effect of heightening anxiety and stress in those individuals I work with”, Neath Port Talbot Council*
47. In August 2011, a series of seminars was convened with the major representative groups, patient support groups and the Work Programme providers. The outcome of these discussions reflected responses to the Call for Evidence and suggested that although few organisations had seen any change some positive messages were starting to get back to them. Most saw little change yet, but the more circumspect thought this would come soon. Some, disappointingly, saw no change for the better and did not expect to see any. This last opinion is not shared by the Review.
48. The Disability Benefits Consortium’s response to the Call for Evidence included the results of a survey of 439 welfare rights advisors during the period 19 July 2011 to 16 August 2011.<sup>6</sup>
49. Reviewing evidence for improvements in the claimants’ experience of the ESA process from the beginning of 2011, less than 4% saw improvements, whilst 75% reported no change. Less than 2% of respondents reported any increased empowerment by Decision Makers.
50. Some did recognise an improvement in written communications since January 2011 (10-16% depending on specific issues) and a third of respondents noticed an increase in the reconsideration process.
51. In some ways, these fairly negative results are not surprising. The Disability Benefits Consortium themselves recognise the possibility for bias given the sample population. Furthermore, most of the changes to the claimants’ journey were not implemented until the middle of the year at the earliest and so would not have had a significant impact when the survey was conducted.
52. Repeating such a survey in 2012 might be a better guide to changes in the process and the Review would very much welcome seeing the results.

## **Conclusions**

53. Evidence collected at first hand by the Review and from numerous meetings with DWP staff proved conclusively that the recommendations *are* being enacted. The will to achieve change is strong among senior staff and the energy to apply them at local level by the Decision Makers is impressive.

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<sup>6</sup> <http://www.disabilityalliance.org/dbcharrington2.pdf>



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

54. Inevitably, the whole process has been time consuming but the Review believes that positive changes are in the pipeline. A little patience would be valuable here from the critics, but a recommendation for year three will be to report, in detail, on progress using a series of agreed indices. For example, any reduction in the rate of successful appeals may be one indicator of change for the better although it is not the only one.
55. Whilst the implementation of the recommendations at different times for Incapacity Benefit reassessment and ESA claimants is understood from a practical point of view, there appears to have been some confusion about what this meant in reality. Once all of the recommendations have been implemented for every claimant going through the WCA noticeable improvement in the process can be expected to be seen.

### **Recommendations**

56. This Review has reported real appetite for change in both the Department and Atos, and has noted the positive changes that have been made as a result of the year one recommendations. Unfortunately this view is at odds with many of the respondents to the Call for Evidence.
57. To better establish the rate and amount of progress made it would be helpful to consider in detail the data which DWP Operations collects routinely.

**Implementation of the Review's recommendations should be monitored over time and on a regular basis, including focus on:**

- **Percentage of claimants failing to return the initial ESA50 questionnaire;**
- **Percentage of claimants failing to attend the face-to-face WCA appointment;**
- **Percentage of decisions meeting criteria in the Decision Making Quality Assessment Framework;**
- **Percentage of reconsiderations received;**
- **Percentage of decisions changed following reconsideration;**
- **Percentage of appeals received; and**
- **Percentage of appeals upheld.**

58. To ensure recommendations are being implemented in practice it is vital that their impact is monitored over time. DWP Operations are best placed to do this using the indices outlined above, although evidence collected from other sources, such as the Disability Benefits Consortium survey of welfare rights advisers, will help build the evidence base.

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

In year three the Independent Reviewer should pursue the year one recommendations about monitoring performance within and between Tribunals and trialling the one-line summary of reasons for upheld appeals.

59. As noted in paragraphs 27 to 36 above, little progress has been made with these recommendations from the first Review. They are, however, important recommendations to understanding more about how and why appeals are upheld which the Review believes would considerably add to the WCA process.
60. As noted earlier, the First-tier Tribunal President considers these recommendations to be outside the remit of the Review. A dialogue will be maintained to try and progress this, especially the summary one-liners.

### **Unannounced visits to both Benefits Delivery Centres and Atos Assessment Centres should be carried out during the year three Review.**

61. Given the importance of monitoring the impact of the implementation of the Review's recommendations it seems sensible, building on the success of the unannounced visits to Benefit Delivery Centres this year, to allow the Review access to more Benefit Delivery Centres and to Atos Assessment Centres.
62. This would not constitute a formal audit of the Centres and the people carrying out the WCAs, but would provide real insight into how things are changing and what people involved in the process make of those changes.
63. However, in order to get a truly representative picture of national implementation it will be important for these visits to consider issues such as geography, the demographics of claimants and whether the Centres involved are dealing with ESA claims and/or Incapacity Benefit reassessment claims.

## Chapter 3: Descriptors

### Year one recommendation

1. The first Review suggested that the descriptors used in the Work Capability Assessment (WCA) needed detailed scrutiny and possible revision.<sup>7</sup>
2. As a result the Review agreed to work with a number of representative groups and independent experts to provide recommendations on:
  - the mental, intellectual and cognitive descriptors;
  - the approach to assessing fluctuating conditions<sup>8</sup>;
  - the provisions for people undergoing treatment for cancer; and
  - whether the assessment could and should incorporate more ‘real world’ or work-focused elements.
3. It was agreed with Ministers that – rather than wait until the end of the year – any recommendations from the Review would be submitted to the Department for Work and Pensions (DWP) over the course of the year.

### Plan of action

4. Broadly speaking each of the four workstreams followed the same process:
  - Establish a group of relevant representative groups to make initial recommendations for refinements and improvements.
  - Establish the terms of reference and the scope of the group, including a timetable for the work.
  - Establish an independent Scrutiny Group of experts to critique the recommendations made by the representative groups and to work with them to iterate and agree improvements to the initial recommendations.
  - Once the Scrutiny Group and representative groups had agreed a final set of recommendations these were submitted to the Review. These were then reviewed and critiqued by the Reviewer before either accepting them and submitting them to DWP; modifying them before submitting them to DWP; or rejecting them/asking for further work on them before considering them again.

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<sup>7</sup> Chapter 8, paragraphs 2-9, “An Independent Review of the Work Capability Assessment”, Harrington, 2010.

<sup>8</sup> For ease referred to as ‘the fluctuating conditions descriptors’ although this is more an approach than having specific descriptors.

## **Mental health descriptors**

5. Mental and behavioural disorders still make up the largest group of Employment and Support Allowance (ESA) claimants, with 35 per cent of people going through the WCA being recorded as having a mental and/or behavioural condition as their primary condition.<sup>9</sup> This does not take into account the many more people who have a mental and/or behavioural condition as a secondary condition.
6. The year one Review also noted how many people believe that mental, intellectual and cognitive conditions are poorly accounted for under the WCA, especially where people may be unwilling or unable to explain the extent of their problems.

## **Development of recommendations**

7. In September 2010 Mind, Mencap and the National Autistic Society were asked to provide recommendations on refining the mental, intellectual and cognitive descriptors used in the WCA.
8. They presented initial recommendations to an independent Scrutiny Group in December 2010. This Scrutiny Group comprised of:
  - Tom Sensky (Chair), Emeritus Professor of Psychological Medicine, Imperial College;
  - David Henderson-Slater, Consultant in Neurological Disability and Rehabilitation Medicine, Senior Research Fellow, University of Oxford;
  - Josanne Holloway, Consultant Forensic Psychiatrist, Greater Manchester West Mental Health NHS Foundation Trust;
  - Paul Litchfield, Chief Medical Officer, BT Group;
  - Molly Meacher, Chair, East London NHS Foundation Trust;
  - Donna Pereira, Occupational Therapist and Head of Staff Health and Welfare, West London Mental Health NHS Trust; and
  - Rachel Perkins, Freelance Consultant, Recovery – Employment – Participation.
9. Generally speaking there was broad agreement between the representative groups and the Scrutiny Group about the proposals. This was particularly the case on some of the conceptual issues such as the need to focus on what a person can do (with help and/or adjustments) rather than what they cannot; the relevant weighting of the descriptors; and the focus on frequency, severity and duration improving the accuracy of the assessment. In April 2011 the Scrutiny Group and representative groups made their joint recommendations to the Review.

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<sup>9</sup> Table 7,  
[http://research.dwp.gov.uk/asd/workingage/esa\\_wca/esa\\_wca\\_25102011\\_tables.xls](http://research.dwp.gov.uk/asd/workingage/esa_wca/esa_wca_25102011_tables.xls)

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### 10. Their **recommendations**:

- Went back to the fundamentals of each descriptor to examine what it should be measuring, and concluded that the **descriptors need to be multi-dimensional** in order to **reflect the complexity of the impairments being assessed**;
- Attempted to **account better for fluctuations in impairment, or intermittent impairments** by trying to produce **a more nuanced assessment of people's impairments**. Their proposals were deliberately structured in such a way that they could be used as the **direct basis for questioning** the claimant and could be understood by the claimant;
- Looked at the **amount of help or support a person needs to overcome their impairments** in order to work, rather than focusing on what they cannot do; and
- Proposed **going back up to ten descriptors**, rather than using the seven descriptors which were being used from March 2011 after implementation of the DWP's internal review.

11. Having carefully considered the recommendations, the Reviewer was able to endorse them and submitted them to DWP in April 2011. In doing so there was a recognition that more work needed to be done to test and validate the evidence underpinning the recommendations. It was also clear that putting the proposed descriptors into an operational context would be one of the key things needing further consideration.

12. Whereas the original recommendation from year one had suggested that recommendations should be received by the Review in late November and advice would be presented to Ministers soon after that, the complexity of this task meant that the timelines were necessarily extended.

13. This is helpful in highlighting that, whilst there is much unease about the current descriptors from representative groups, gathering evidence and reworking them to be fairer, more effective, easily to implement and replicable is not straightforward.

### **Departmental response**

14. The Department's response to the recommendations expressed a number of concerns about them. These focused on:

- the lack of evidence base supporting the proposals, either that the current descriptors are not working as they should or that the proposed descriptors would improve the assessment;
- the proposed matrix approach to scoring the descriptors potentially providing less transparency and consistency to the assessment and meaning that physical conditions would be assessed and scored in a different way to mental, intellectual and cognitive conditions; and

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

- the potential for added complexity in the assessment by trying to capture all the complexities of all mental, intellectual and cognitive conditions in the descriptors rather than using guidance to support the descriptors.
15. Although the Reviewer did not necessarily accept all of these arguments, constructive discussions between the Review, the Department and the representative groups and Scrutiny Group identified several opportunities to make positive progress in the short-term whilst also building an evidence base to support any further, and potentially more fundamental, changes to the descriptors in the longer-term.
16. In the short-term there was agreement to:
- consider the ESA50 form and whether it is possible to incorporate elements of the recommendations around frequency, severity and duration into this so that initial evidence from claimants allowed more informed decisions; and
  - consider changes to specific words or language used in the current descriptors by clarifying their intent or application to help improve the assessment.
17. In the longer-term there was agreement of the need to build an evidence base to inform any future changes to the mental, intellectual and cognitive descriptors. This could take the form of a 'gold standard' review to establish evidence of the way in which the current descriptors are working and to test robustly the proposed descriptors to see if they would improve the assessment.

### **Current status**

18. DWP did not receive any suggestions from the representative groups about the specific wording or language used in the current descriptors.
19. An initial and constructive meeting about the ESA50 was held between DWP and the representative groups in October 2011. It was agreed that the representative groups would produce a suggested improved version of the ESA50. No timescales were agreed for this, although the expectation is that this will happen relatively quickly.
20. Initial thinking on how to build a suitable evidence base is progressing, and the Review looks forward to commenting on proposals once DWP and the representative groups have had more detailed discussions. It is hoped that work to build an evidence base will commence in early 2012.

## **Fluctuating conditions descriptors**

21. The year one Review recognised the potential problems associated with assessing fluctuating conditions, particularly the repeatability of tasks, pain and fatigue and the view that the WCA provides a ‘snapshot’ assessment rather than taking a longer-term view of the condition and its impact on the individual.<sup>10</sup> As a result, the year one Review proposed that the descriptors used to assess fluctuating conditions were considered in more detail this year.

### **Development of recommendations**

22. In January 2011 a group led by the MS Society and also containing Arthritis Care, Crohn’s and Colitis UK, Forward ME, the National AIDS Trust and Parkinson’s UK were asked to provide recommendations on refining the approach used to assess fluctuating conditions in the WCA.

23. They presented initial recommendations to an independent Scrutiny Group in April 2011. This Scrutiny Group comprised of:

- Robert Moots (Chair), Professor of Rheumatology, University of Liverpool;
- Steve Boorman, Medical Director, UK Occupational Health Services, Abermed;
- Maurice Murphy, Consultant Physician, Clinical Academic Unit Director, Infection and Immunity, Barts and the London NHS Trust; and
- Tom Sensky, Emeritus Professor of Psychological Medicine, Imperial College.

24. In November 2011 the Scrutiny Group and representative groups made joint recommendations to the Review. These **recommendations**:

- Concluded that the **descriptors need to be multi-dimensional**, in particular **taking into account frequency, severity and duration** of symptom or symptoms;
- Suggested that the descriptors should be clearly worded so that it is clear **each activity must be able to be completed ‘reliably, repeatedly and safely’** and, as appropriate, ‘within a reasonable amount of time’;
- Attempted to include **more work-related activities within the descriptors** to give them more of a work focus; and
- Proposed **more consistent use of the non-functional descriptor** by Decision Makers.

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<sup>10</sup> Chapter 5, paragraphs 31-32, *ibid.*

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25. After considering these recommendations the Review was able to endorse them and submitted them to DWP later in November 2011.
26. In doing so there was a recognition that, as there had not been enough time since the implementation of the March 2011 descriptors to develop a strong evidence base about their effectiveness there was a need to work with the Department to do so. Similarly, as they followed a similar model to the recommendations made for the mental, intellectual and cognitive descriptors, they would also potentially add to the complexity of the assessment.
27. The recommendations from the representative groups and Scrutiny Group also suggested further work may be needed as part of future Independent Reviews on the specific wording of the sensory descriptors and that there may be a need to consider an additional descriptor which addresses the impact of generalised pain and/or fatigue. These issues will be considered in more detail early next year.
28. Whilst DWP have not yet had time to consider the recommendations, the Review believes that there would be real value in this work joining up with the work which is being explored for the mental, intellectual and cognitive descriptors to build a suitable evidence base. The Review looks forward to the Department's response in due course.

### **Cancer treatment**

29. Macmillan Cancer Support wrote to the Review in January 2011 outlining their concerns about the treatment of cancer patients receiving oral chemotherapy and some forms of radiotherapy.
30. These concerns focused particularly on the way in which people receiving non-oral chemotherapy (and awaiting non-oral chemotherapy after the DWP internal review in March 2011) are exempt from the face-to-face assessment and are placed into the Support Group but people receiving oral chemotherapy and some forms of radiotherapy are not exempt from the face-to-face assessment.
31. They argued that:  
*“oral chemotherapy and radiotherapy can be just as debilitating as non-oral chemotherapy and can similarly affect a cancer patient's capability to work.”*

### **Development of recommendations**

32. Given the evidence presented by Macmillan and the recent advances in medical practice supporting this evidence Macmillan were asked to make recommendations for improving the provisions used for cancer patients receiving treatment for their condition.



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33. To develop their recommendations and ensure they were clinically robust Macmillan carried out a consultation exercise with senior cancer specialists. They also consulted a wide range of national cancer charities on their proposals.
34. The consultation exercise was carried out online and 14 experts participated from a range of different cancer specialisms, including healthcare representatives from other cancer charities.
35. The consultation exercise comprised three phases:
- Phase 1: involved setting questions about different forms of treatment, including chemotherapy, radiotherapy and emerging treatments and their side effects.
  - Phase 2: was an online ‘bulletin board’ that enabled respondents to interact with each other and see the responses posted by everyone to a series of questions.
  - Phase 3: agreed the final wording for recommended new provisions.
36. Macmillan’s findings were split between the various different types of cancer treatment available to patients. They concluded that:
- Cancer patients receiving oral chemotherapy may experience equally as debilitating effects as patients receiving non-oral chemotherapy;
  - Cancer patients receiving radiotherapy for certain cancers are highly likely to experience significant debilitation as a result of their treatment; and
  - Undergoing radiotherapy in combination with chemotherapy is one of the most severely debilitating treatment regimes.
37. In June 2011 Macmillan made four **recommendations** for improving the cancer treatment provisions. These were:
- “A. As a result of the expert consultation we recommend that a cancer patient should be automatically exempt from going through the WCA and placed in the Support Group if they are:**
- Awaiting, receiving or recovering from **treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy**; or
  - Awaiting, receiving or recovering from **treatment by way of oral chemotherapy**, except when the therapy is continuous for a period of more than six months; or
  - Awaiting, receiving or recovering from **combined chemo-irradiation**; or

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- Awaiting, receiving or recovering from **radiotherapy in the treatment of cancer in one or more of the following sites:**
  - Head and neck
  - Brain
  - Lung
  - Gastro-intestinal
  - Pelvic

**B.** When cancer patients receive an ESA50 form for the first time they should be made aware of the need to provide supporting medical evidence from a relevant healthcare professional.

**C.** Decision-makers should be better equipped and more empowered to use discretion appropriately when reviewing whether a cancer patient should be required to undertake the WCA following treatment.

**D.** When a cancer patient's ESA Support Group status is being reviewed decision-makers should routinely carry out a "light-touch"<sup>11</sup> assessment seeking information regarding their treatment/post treatment condition before deciding whether or not to send out a further ESA50 form."

38. The Reviewer considered Macmillan's recommendations and spoke to several cancer specialists. Given the evidence based nature of the recommendations – and the associated conclusion that the provisions need to change to incorporate a wider group of people who were likely to suffer similarly debilitating effects as a result of their treatment – the Review was able to endorse them without use of an independent Scrutiny Group. They were submitted to DWP for consideration in July 2011.

### **Departmental response**

39. The Department agreed that Macmillan's report provided compelling evidence that the effects of oral chemotherapy can be as debilitating as other types of chemotherapy, and that certain types of radiotherapy (and in particular combined chemo-irradiation) can be just as debilitating if not more so than chemotherapy.
40. Given this, there was agreement that the basis for the current provisions is no longer sound, especially given the evidence provided by Macmillan.

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<sup>11</sup> Clarified with Macmillan to mean an assessment is carried out on the basis of evidence collected or provided by the claimant, rather than routinely sending out an ESA50 or calling the person for a face-to-face assessment.

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

41. There were some concerns, however, that allowing people undergoing the cancer treatments outlined in Macmillan’s recommendations to go straight into the Support Group could have the unintended consequence of:

- failing to recognise the variation in debilitation caused by the various types of treatment identified;
- removing the ability or chance for someone to work during their treatment (with suitable support from an employer) if they felt able to do so; and
- encouraging the wrong behaviours from employers and stigmatising cancer as something that can automatically lead to unemployment or worklessness, rather than encouraging employers to provide support to help individuals to stay in work where possible.

42. Macmillan themselves recognise the value of work during cancer treatment, making it essential that the flexibility to work remains for an individual even when they are undergoing treatment for cancer:

*“Many people who are working when they are diagnosed with cancer would prefer to remain in work, or return to their job, during or after treatment.”<sup>12</sup>*

43. The Reviewer agreed with these reservations and so the Department undertook to consider the requirements for implementation of the provisions proposed by Macmillan whilst also ensuring that people undergoing cancer treatment are not automatically considered unfit for work.

### **Current status**

44. The Department is currently working through the detail of any changes to the provisions.

### **Real world test**

45. The year one Review heard a number of suggestions that the WCA could be improved by taking greater consideration of an individual’s capability for work by providing some sort of ‘real world’ assessment of work capability.<sup>13</sup>

### **Development of recommendations**

46. In December 2010 the Review asked Citizens Advice Bureau to provide recommendations on what a real world test should or could look like.

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<sup>12</sup> “Making It Work”, Macmillan Cancer Support.

<sup>13</sup> Chapter 8, paragraphs 10-14, “An Independent Review of the Work Capability Assessment”, Harrington, 2010.

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

47. They presented recommendations to the Review in July 2011. Rather than use an independent Scrutiny Group to iterate the proposals the intention was to host a seminar in the autumn for key stakeholder groups (TUC, CBI, Work Programme providers and representative groups) as well as Departmental officials.

48. Citizens Advice Bureau's **recommendations** focused on:

- A **realistic assessment** of ability to work;
- Retention in Universal Credit (UC) of additional help for those able to do some work;
- The trialling of a **more diagnostic assessment**;
- **Early collection and use of existing medical evidence** for all ESA claimants;
- Greater recognition of the effect of a **deteriorating condition**;
- **More sensitive timing** of assessments; and
- Recognition of the **effect of combined impairments** on ability to work.

49. Unfortunately the full report was unable to offer clear, evidence based advice on what a real world test might look like. For example, the outline of a more diagnostic assessment lacked the necessary detail and evidence base; while the proposal for a more realistic assessment of ability for work lacked any information on what objective, measurable and fair criteria could be used to assess 'employability'.

50. This meant that the Review was unable to commend the report to DWP. Instead a dialogue was maintained with Citizens Advice Bureau to try and find some practical suggestions that could be made to the Department.

51. The planned seminar was cancelled, although the Review did meet the TUC and CBI to discuss the idea of a real world test in more detail, as well as arranging a seminar specifically for the Work Programme providers as part of the Call for Evidence.<sup>14</sup>

52. This series of meetings was helpful in identifying the need to separate 'employability' from 'work capability' and the key role of DWP Operations<sup>15</sup> and Work Programme providers in helping and supporting people into work after the WCA.

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<sup>14</sup> These meetings also met recommendations in the Work and Pensions Select Committee report falling directly to the Review: page 39, paragraphs 121 and 122, <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmworpen/1015/101502.htm>

<sup>15</sup> From October 2011 the formal agency status of Jobcentre Plus ceased to exist. For clarity and consistency throughout this document the work of Jobcentre Plus before October 2011 and anything after then are both referred to as DWP Operations.

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53. As identified in Chapter 7, communications need to improve in all parts of the WCA. Although it strays slightly beyond the remit of this Review, there is clearly a need for improved communications between Decision Makers and Work Programme providers if someone is found Fit for Work and volunteers for the Work Programme or is placed in the Work Related Activity Group.
54. Work Programme providers described a situation whereby they know little about the person in front of them and how they have to go back several steps and essentially repeat a lot of the information gathered during the WCA.
55. This is counter intuitive and is something that could and should be remedied. There is a clear need for improved information flows so that the Work Programme providers better understand why a decision has been reached and what limitations a person might have. They can then build on this with their local knowledge of the employment market and appropriate skills/employment related training.

*“We do not believe it is possible within the limited timeframe of the Work Capability Assessment to accurately assess all of the criteria necessary for a ‘real work’ test. We are also concerned that increasing the scope of the test may have a negative impact on the accuracy of outcomes”, Ingeus UK*

*“The one thing Papworth Trust would change to make the WCA operate more fairly and effectively is to improve its linkage with the Work Programme”, Papworth Trust*

*“Simulating a ‘real world test’ poses many challenges and there are a number of practical considerations... ERSA believes there are a number of more straightforward recommendations the review should consider which will improve the interaction between the WCA and the Work Programme”, Employment Related Services Association (ERSA)*

### **Current status**

56. The Review welcomes the ongoing and constructive dialogue with Citizens Advice Bureau and will continue to work with them to explore some of their recommendations in more detail.

### **Conclusions**

57. Whilst it may have taken longer than anticipated, real progress has been made in improving the descriptors. The cancer treatment provisions will hopefully change shortly to better reflect the impact of these treatments on individuals. Good progress is being made on adapting the ESA50 following recommendations on the mental, intellectual and cognitive descriptors and work is underway to establish how to build an evidence base to inform any future changes to the descriptors. The Review looks forward to receiving DWP’s response on the fluctuating conditions descriptors recommendations.

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58. The concept of a ‘real world’ test has proved more difficult to make both conceptually and operationally tangible. However, there may be elements of Citizen Advice Bureau’s recommendations which the Review can explore in more detail and improving the ‘baton pass’ between the WCA and the Work Programme providers should aid clarity.

59. Much has been made about the descriptors and changes to them, but it is important to see them as only one part (although an integral part) of the assessment.

60. The criteria which are used to assess eligibility for ESA need to be right, but these changes also need to be seen in the context of other changes to the assessment which are already taking place such as the increase in Decision Maker autonomy, greater use of evidence from a chosen HCP and improved communication concerning the purpose of the assessment and the positive value of work for many people.

61. Making changes to the guidance and handbook used by Atos HCPs and the information available to DWP Decision Makers – which both groups use to help them better understand and interpret the descriptors – will also ensure a more accurate assessment, based on the latest medical evidence. The representative groups would be well placed to help with this process.

*“A number of organisations, including the National AIDS Trust, Arthritis Care, the National Rheumatoid Arthritis Society, Asthma UK, the Stroke Association and RSI Action, have identified inaccuracies and out-of-date information in the medical guidance provided to Atos assessors on certain conditions... We would welcome a more regular and transparent review and consultation process on this guidance to ensure that this remains accurate and up-to-date”, Disability Benefits Consortium*

62. Testing of proposed changes to the descriptors will be helpful both in assessing whether they are better than the current ones and whether they will make the assessment fairer, more effective and more transparent. The Review welcomes the opportunity to work with DWP, the representative groups and the independent Scrutiny Group to do this for the mental, intellectual and cognitive descriptors. The Review hopes that the work on the fluctuating conditions descriptors will be included as part of this.

## **Recommendations**

Given my findings this year, I recommend that:

**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.**

63. The ‘gold standard’ review should provide robust evidence on the way in which the current descriptors are working and test the proposed descriptors to see if they will improve the assessment. This will be an important step in establishing whether the proposed descriptors are more accurate than the current ones. This review needs to be thoroughly conducted and independently overseen to ensure fairness in the process: the Review looks forward to doing this and examining the results, but understands and advises that until then any further decisions about the mental, intellectual and cognitive descriptors should be put on hold.
64. Similarly, if, as hoped, the fluctuating conditions descriptors work is included in this ‘gold standard’ review then decisions about those should only be taken once that work is completed.
65. If changes to the descriptors are made, much of their success will depend on how Atos HCPs carry out the assessment. Therefore, HCPs will need to be trained to enable them to effectively utilise the revised ESA50 form and any new descriptors.

**DWP should consider working with relevant representative groups and their clinical advisers to:**

- **Update the handbook and guidance used by Atos healthcare professionals; and**
- **Produce practical guidance for Decision Makers.**

66. Representative groups have raised a number of concerns about the handbook and guidance used by Atos HCPs and the guidance available to DWP Decision Makers. Whether the ESA50 and descriptors change or not, it is imperative that the information available to both of these groups is both up to date and accurate.
67. As and when these materials are being updated it would appear sensible to involve the representative groups and their clinical advisers so that there is a common understanding of the information used and its validity.

**This ‘bottom up’ model – involving a wide range of experts as well as DWP – should also be adopted in any future changes to the WCA descriptors, where appropriate.**

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

**Work on the specific wording of the sensory descriptors and an additional descriptor which addresses the impact of generalised pain and/or fatigue should be considered early on in the year three Review.**

68. The model used for making recommendations for refinements and improvements to the descriptors has proved valuable in providing practical recommendations for improving the WCA.
69. The use of experts from outside of DWP has proved particularly valuable, and there is a strong case for making use of the expertise of the relevant representative groups and clinical experts should this process be repeated. This approach has the advantage of involving those who best know some of the practical problems with the assessment, whilst also making use of both independent experts and people within the Department who have most knowledge about how the WCA is implemented to ensure a robust and iterative process.
70. The report on the fluctuating conditions descriptors highlighted that there may be further value in repeating the process for sensory conditions and to see if generalised pain and/or fatigue are worthy of a separate descriptor to ensure that the process of continuous improvement to the WCA is maintained.
71. The ultimate aim should be to ensure that the assessment is as fair and accurate as is possible, and replicating this process for these conditions will help ensure this happens.

**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.**

72. If changes are made to the descriptors it is important to understand the impact that these changes are having, and to ensure that the changes are having the impact envisaged.

**DWP consider ways of sharing outcomes of the WCA with Work Programme providers to ensure a smoother claimant journey.**

73. This practical step will improve the claimant experience for people placed in the Work Related Activity Group and for people found Fit for Work who volunteer onto the Work Programme, ensuring that 'employability' as well as work capability are properly considered.
74. Similar provisions may also be helpful for Work Choice providers who are likely to face similar 'communication gaps' with DWP Decision Makers.



## **Chapter 4: Research**

### **i) Year one recommendation – quality decision making**

1. In year two the Review should examine what happens to people who are found Fit for Work, people who are placed in the Work Related Activity Group, and people who are placed in the Support Group.

### **Background**

2. It is important to understand exactly how decisions about eligibility for Employment and Support Allowance (ESA) have been made before considering in more detail what happens to these people after the decision. Department for Work and Pensions (DWP) Decision Makers play a key role in this process, particularly in identifying and allocating claims which may be on the borderlines between either being found Fit for Work and the Work Related Activity Group or the Work Related Activity Group and the Support Group.
3. Research was therefore commissioned to understand better why a case might be seen by DWP Decision Makers as borderline and to develop guidance to support future decision making.

### **Decision Maker focus groups**

#### **Approach**

4. Ten focus groups were conducted across a range of Benefit Delivery Centres. At each Centre there was one focus group for more experienced Decision Makers and one for Decision Makers newer to the role.
5. Focus groups aimed to explore broad views and approaches with Decision Makers, as well as capturing detailed feedback on specific scenarios where a claim could be considered borderline.

#### **Findings and conclusions**

6. The research report relating to this work will be published in January 2012. Therefore further analysis will be carried out once its conclusions are finalised.
7. The research suggests that local practices vary considerably between Benefit Delivery Centres and between individual Decision Makers. This emphasises the need for professional standards to ensure the consistency and quality of decision making.

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

8. The research has also highlighted some potential process issues in terms of how Decision Makers treat claims. For example, none of the Benefit Delivery Centres where focus groups were conducted had a separate and specific approach to arguably borderline cases, and while in some Benefit Delivery Centres Decision Makers feel empowered to award points, in others the Decision Makers believe they have to go back to Atos in all cases where they want to change Atos's recommendation.
9. Interviews with Atos healthcare professionals have also been carried out but were not included in the interim findings. The Review looks forward to exploring these in more detail once they are published.

### **Conclusions**

10. Research into how and why Decision Makers make decisions – and the processes they use to do this – has revealed some interesting findings.
11. Consistency and quality of decision making appear to be key issues, especially considering the increased importance of their role following the year one Review's recommendations.
12. The Review looks forward to receiving the full research report in January and to discussing the findings in more detail with DWP to address potential issues highlighted by the research.

### **Recommendations**

On the basis of the evidence presented in the interim findings I recommend that:

#### **DWP undertake regular audit of Decision Maker performance.**

13. The process used in this research could easily be modified to constitute a formal audit of DWP Decision Maker performance. Atos healthcare professionals (HCPs) are regularly audited to ensure consistency of performance (see Chapter 5), but it is important that a similar system is put in place for Decision Makers to ensure that quality standards of decision making remain high.
14. The introduction of a Quality Assessment Framework for DWP Decision Makers is a welcome step. However given the increased emphasis on the Decision Maker's role it is important to ensure that they are making sound decisions that are free of bias and unnecessarily influenced by empathy, but that are evidence based and in accordance with the law.
15. Introducing a regular and robust audit of DWP Decision Maker performance would ensure this happens. Northern Ireland appear to have a good process for Decision Maker audit, and there may be useful lessons to learn here.

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

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

16. The Review continues to believe that undertaking more general research into outcomes by Group would be a helpful exercise. This should form part of the year three work programme.

### **ii) Year one recommendation – withdrawn claims**

17. In year two the Review should examine what happens to people who do not complete their Work Capability Assessment (WCA).

### **Background**

18. In year one the Review identified that over 36 per cent of Employment and Support Allowance (ESA) claims were closed or withdrawn before the claimant had an Atos face-to-face assessment.
19. Anecdotal evidence suggested that most of these people returned to the labour market, but it was felt important to have more precise data in case a significant group of these claimants were withdrawing their claim and being lost to the system for other reasons, particularly if these reasons were to do with the WCA process.

### **Results**

20. Recent research<sup>16</sup> confirms that 71 per cent of people whose claim was closed or withdrawn were either in employment or self-employment or were unemployed and looking for work six to nine months after their initial ESA claim. Most of the remainder were either sick (temporarily or permanently) or caring for family members.
21. DWP analysis has supplied more detail about people who withdrew their claim or whose claim was closed, and the reasons for this<sup>17</sup>. Thirty-one per cent reported that they had withdrawn their claim, 30 per cent that their claim had been closed, and nearly a quarter (23 per cent) said they had been claiming ESA but were now back in work.

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<sup>16</sup> "Employment and Support Allowance: Findings from a face-to-face survey of customers. DWP Research Report No 707", Barnes, Sissons and Stevens, 2010.

<sup>17</sup> Based on DWP in-house secondary analysis of "Routes on to ESA" survey. For published analysis of the survey, see "Employment and Support Allowance: Findings from a face-to-face survey of customers. DWP Research Report No 707", Barnes, Sissons and Stevens, 2010.

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

22. Of the 31 per cent who had actively withdrawn their claim and given a reason for doing so<sup>18</sup>:
- 47 per cent had withdrawn their claim because they became fit for work, were found Fit for Work or were claiming Jobseeker's Allowance (JSA);
  - 27 per cent had withdrawn because they went back to work or got a job; and
  - 8 per cent had withdrawn because they found the process too stressful or bureaucratic.
23. Claims from men represent 60 per cent of all closed/withdrawn claims, and this gender split is broadly similar across the other ESA outcome groups. However, those whose claim was withdrawn or closed are more likely to be younger compared to the other outcome groups.
24. Claimants whose claim was withdrawn or closed are less likely than those in other outcome groups to have multiple health conditions (54 per cent, compared to 67-69 per cent); and those with a health condition in the closed/withdrawn group were more likely to have a fluctuating condition (60 per cent), compared to those with a health condition in the other outcome groups (33-51 per cent).
25. In common with claimants found Fit for Work and in the Work Related Activity Group, those in the closed/withdrawn group were more likely to have a musculoskeletal condition than a mental health or systemic condition.

## **Conclusions**

26. Most people who withdrew their claim did so because they no longer needed ESA.
27. There does not seem to be a significant group of claimants who were unjustifiably or inappropriately lost to the system.
28. Whilst a relatively small number of people who made an initial claim for ESA but later withdrew it did so because the process was too complicated or stressful, it is hoped and expected that the added contact with claimants resulting from the year one recommendations (particularly telephone calls to explain the process to them) should result in a more empathetic and transparent system which will help reduce this figure.

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<sup>18</sup> Some people may have given multiple answers to the question.

## Chapter 5: Atos Healthcare

### **i) Year one recommendation – Logic Integrated Medical Assessment (LiMA)**

1. In year two the Review should examine the Atos computer system (LiMA) and how it can drive the right behaviours.

### **Background**

2. Atos healthcare professionals (HCPs) use the LiMA computer system to help structure discussions at the face-to-face assessment, to build a picture of the claimants functional capabilities and to generate a final report containing findings, advice and recommendations to Department for Work and Pensions (DWP) Decision Makers.
3. The first Review received a number of negative comments about LiMA and the impact it can have on both the conducting of the face-to-face assessment and the quality of the reports generated about individual claimants. Generally speaking, there was a view that LiMA can potentially:
  - drive HCP behaviours;
  - drive HCP decisions, with HCPs only ticking boxes and LiMA driving the conclusions; and
  - mean an impersonal and mechanistic assessment as the HCP is forced to look at the computer screen rather than the claimant.
4. An independent assessment as to whether or not LiMA drives HCP behaviours, and if so whether it drives the right/positive behaviours, was therefore undertaken.

### **Findings**

5. The Review had the chance to see the LiMA system on several occasions (in a training environment and in real and mock face-to-face assessments) as well as having the opportunity to speak to key HCPs in Atos about it and how it has been developed.
6. As part of the continual process of improving LiMA and in implementing DWP's internal review of the WCA and the changes from the first Independent Review considerable changes have been made to the system in the last year.
7. These changes, particularly the insertion of increased options for HCPs to select around variability of condition, appear to have improved the software.

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

8. Having looked at this in some detail it appears that the ‘logic’ of the system is sound, and that it points the HCP in a certain direction whilst flagging linked elements (e.g. if someone has a mental health condition, all relevant areas will be highlighted) but does this in a constructive rather than restrictive way. There are no phrases which the HCP must use, and all actions are completed by the HCP rather than the software.
9. Similarly there are no mandatory questions in LiMA. It provides a guide and structure for the HCP undertaking the face-to-face assessment, but does not direct the assessments. HCPs remain in control of the system at all times, and anything appearing on the final report (the ESA85) is a result of information they have input.
10. However it does appear that the use of free text within LiMA is key to individualising the assessment. Although Atos are placing an increased emphasis on the use of free text, and the use of the new personalised summary statement<sup>19</sup> should help further, it is important for Atos to monitor the use of free text to ensure that reports actually reflect the individuals they have seen.
11. A strong emphasis is placed on being able to justify conclusions during Atos HCP training and again use of free text will help HCPs do this by individualising the assessment for each claimant.
12. There may be a need for Atos to monitor the ‘softer’ skills of their HCPs, as well as auditing their disability analysis competence.
13. Atos already reinforce the importance of ‘soft skills’ during new entrant training, regularly monitor the manner adopted by HCPs during the Customer Satisfaction Survey and have introduced a bespoke ‘soft skills’ training DVD to emphasise the importance of interactions with the claimant. But if HCPs do not have the necessary IT (especially typing) or communication skills then using LiMA could distract their interaction with the claimant. This could potentially lead to an impersonal and mechanistic assessment.
14. The first Review was clear that there was a need for a consistent and replicable assessment, and having a computer assisted assessment would seem to be the most sensible way of achieving this. The reassessment of Incapacity Benefit claimants strengthens the need for consistency of assessments as the number of face-to-face assessments each week has already increased significantly.
15. However, the need to do more assessments and the desire to have an assessment which is replicable across the country should not mean that the quality of assessments drops or the way in which assessments are conducted suffers.

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<sup>19</sup> Chapter 5, paragraphs 43-44, “An Independent Review of the Work Capability Assessment”, Harrington, 2010

## Stakeholder seminars and Call for Evidence

16. Since the Independent Review process started a number of concerns have been raised by stakeholders about LiMA, what it does/does not do, how it drives HCP behaviours and its impact on the assessment. However, in recognition that many people have never had an opportunity to see the system in operation three seminars were organised for key stakeholders to do this. A specific question about LiMA was also included in the Call for Evidence.

### Before the seminars

17. Prior to attending the seminars stakeholders were asked to fill in a questionnaire detailing their current knowledge of the LiMA system and its role within the face-to-face assessment.

18. Views in these questionnaires varied considerably, for example<sup>20</sup>:

- Answers to: ‘On a scale of one (know nothing) to ten (very knowledgeable), how much do you know about LiMA, what it does and how it works?’ ranged from two to eight, with an average of 4.5.

*“Most of my knowledge about LiMA is inferred from what people have told us about their WCAs. It has been suggested to me, by people with more experience of this issue, that the system guides the assessor in terms of identifying areas they should seek information. From people's experience of assessments it would appear that HCPs feel as though they need to stick to a fairly rigid format and structure and it would seem likely that the information required by LiMA is the basis of this”,*  
Mind

- Answers to: ‘On a scale of one to ten, how much do you think that the logic of LiMA pre-determines questions and extrapolates answers based on responses to earlier questions?’ where one was ‘Not at all’ and ten was ‘Completely’ ranged from four to ten, with an average of 7.2.

*“This certainly used to happen with Incapacity Benefit, where the same statement taken from the record of daily life would crop up all over the place even where it was quite incongruous”,* SSAC

- Answers to: ‘Given that it is important to document the information given by the customer contemporaneously during the assessment, where do you think the balance of interaction lies between gathering information using a computer system in a consistent manner and healthcare professional interaction/rapport with the customer?’ where one was ‘Using a computer system’ and ten was ‘HCP interaction’ answers ranged from two to ten, with an average of 6.9.

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<sup>20</sup> The Review recognises and acknowledges the small sample sizes used.

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

*“The computer should be for recording the assessment – nothing more”, National Autistic Society*

### **The seminars**

19. At the seminars themselves there appeared to be a fundamental misunderstanding amongst some stakeholders of the role LiMA plays in the face-to-face assessment.
20. This manifested itself in comments and criticisms about how the assessments are carried out by the HCP rather than about the way in which LiMA was used.
21. However several anomalies in the content of and language used in LiMA were identified by the stakeholders, including:
  - The lack of an option to record that the claimant has a Certificate of Visual Impairment, which has been updated as a result of the seminars.
  - Whether the phrasing of the ‘I advise a return to work could be considered within...’ option needs revising in light of the fact some claimants may never have worked before.
  - Whether the phrasing of the ‘Client states...’ option needs revising in light of the fact some claimants may have someone with them at the assessment who is answering on their behalf.
22. There were also a number of other comments, including:
  - that LiMA should have a section focusing on work as well as the typical day section; and
  - that LiMA could create sentences such as "can walk to bus stop, despite pain relating to neuropathy and fatigue which lasts for some hours afterwards" where the word 'despite' has a meaning quite distinct from what the patient could have said in the situation as the pain and fatigue could be caused by the walking.
23. The point about LiMA focusing on work is intrinsically linked to the descriptors, and indeed the policy supporting the WCA. Whilst there is a risk of fundamentally changing the policy basis for the WCA – some people may never have worked and so the descriptors would not apply to them, for example – this is something that has been recommended as part of the work looking at the fluctuating conditions descriptors and should be considered as part of that by DWP as the recommendations are considered in detail (see Chapter 3).



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

24. Observations about LiMA created words and sentences have some merit. But with the move towards an emphasis on HCPs using free text accurately to record the face-to-face assessment it would be wrong to suggest changes being made to LiMA which (although correcting some factual anomalies) could have the perverse incentive of making it easier for HCPs to use the stock phrases within LiMA.
25. On balance the Review believes that the emphasis should be on HCPs – and the training and auditing of them – to interpret what the claimant says and input this into LiMA correctly, rather than allowing all possible combinations of claimant answers to be covered in the system. This, of course, does not mean that the accuracy of assessments and subsequent reports should suffer, but that HCP quality should ensure the report reflects the conversation had at the assessment.

### **After the seminars**

26. Questionnaires after the seminars showed a similar range of views as the pre-seminar questionnaires, with some views on LiMA having changed considerably (either positively or negatively) and some having stayed the same.

*“I was left with the impression that the way the LiMA system currently operates does allow for serious errors of judgement to be made in relation to assessing whether someone is going to be fit for work”, Forward ME*

27. As identified during the seminars, many of the comments focused on how the assessments were conducted and other more general policy issues, rather than the use of the LiMA software during the assessment.

*“Although the provision of free text boxes throughout the assessment is good I think the concern remains that time and volume pressures mean many HCPs will rely on those options provided by LiMA”, Leonard Cheshire Disability*

28. But there was a general consensus that HCP quality was key to how LiMA is used as well as to the quality of the assessment itself.

*“I think that LiMA is potentially an excellent system; my concern is that it only reaches its potential in the hands of [the right] people”, SSAC*

29. Comparing views to some of the questions asked before and after the seminars:<sup>21</sup>

- Average answers to: ‘On a scale of one (know nothing) to ten (very knowledgeable), how much do you know about LiMA, what it does and how it works?’ increased from 4.5 to 7.6.

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<sup>21</sup> The Review recognises and acknowledges the small sample sizes used, and that not all stakeholders answered both questionnaires.

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

*“I think the seminar gave a useful level of information about LiMA, it did succeed in demystifying it”, National Autistic Society*

- Average answers to: ‘On a scale of one to ten, how much do you think that the logic of LiMA pre-determines questions and extrapolates answers based on responses to earlier questions?’ where one was ‘Not at all’ and ten was ‘Completely’ reduced from 7.2 to 5.8, although there was still considerable variation in answers.

*“The seminar did clarify that LiMA does not predetermine what questions should be asked”, National Autistic Society*

- Average answers to: ‘Given that it is important to document the information given by the customer contemporaneously during the assessment, where do you think the balance of interaction lies between gathering information using a computer system in a consistent manner and healthcare professional interaction/rapport with the customer?’ where one was ‘Using a computer system’ and ten was ‘HCP interaction’ changed from 6.9 to 5.5, although again there was considerable variation in answers.

*“After the seminar I am still of the view that the system should be influenced much more by the HCP interactions with the claimant than by the computer”, RSI Action*

### **Call for Evidence**

30. Views expressed in the Call for Evidence mirrored those expressed by stakeholders who attended the seminars.

*“From our own observations, it appears that LiMA drives the process rather than the HCP being in control of LiMA. The fact that the programme autopopulates the ESA85 causes any errors to misinform the report”, Bath CAB*

*“LiMA cannot read free text; it looks for key words e.g. usually, sometimes, rarely and for set phrases e.g. can walk 10 minutes and it disregards the rest. The operators have to deliberately change what the claimant has said to fit in with the set pieces to try and get LiMA to provide them with advice on appropriate descriptors and to help them construct the justification”, Ms P*

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

31. Given the specific question about LiMA in the Call for Evidence these views were expressed both more frequently and more vociferously than during the year one Review. Claimants not recognising themselves in the ESA85 report and factual inaccuracies in the report seem to be particularly problematic in this respect.

*“Following receipt of my 31 page Atos report, a number of issues concerning quality of report and findings were evident”, Mr K*

*“There seems to be some problems with the assessors being very slow to enter the data on the system which makes an often stressful interview very long”, Cymorth Cymru*

32. Again, many of the concerns appear to be based on the way in which the assessment itself is carried out by HCPs or the fundamental basis of the assessment where there is not a focus on the working day.

33. The Call for Evidence, therefore, was extremely helpful in emphasising the recurring themes and strength of feelings about what LiMA does or does not do whether these were explicitly linked to the actual software or not.

### **Conclusions**

34. The Review welcomes the positive changes made to LiMA as part of the continual process of improving it. Although some minor changes might further improve LiMA there does not appear to be any fundamental problems with the way in which the software operates.

35. Any issues or concerns expressed by stakeholders and Call for Evidence respondents about LiMA appear to relate more to the way in which HCPs carry out assessments or use the software, rather than the software itself.

36. Many of the comments received about LiMA and what it does/does not do appear not to be robust or evidence based. The Review has seen no evidence that LiMA:

- drives HCP behaviours by forcing the face-to-face assessment down a certain path;
- drives HCP decisions about what appears in the final report; and
- leads to an impersonal and mechanistic assessment where the HCP has to focus on the computer screen rather than the claimant.

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

37. The important caveat to all of this is that LiMA relies on the quality of information which is put into it, and so the quality of assessment carried out by the HCP. Failure to put adequate information into LiMA is likely to lead to a final report which does not adequately reflect the individual claimant, and vice-versa.
38. Atos are rightly encouraging HCPs to use more free text in their assessments, and this (along with the personalised summary statement) will help better reflect individual claimants. But there is no evidence that LiMA in itself drives either positive or negative behaviours as the face-to-face assessment is being carried out.

### **Recommendations**

Based on my review of LiMA I recommend that:

39. The stakeholder seminars identified several anomalies in the language used in LiMA which could have a negative impact on the quality of reports generated during the face-to-face assessment (see paragraph 21).

**These changes should be adopted, and that further changes to LiMA should be considered as and when they are raised.**

40. Atos are encouraging the use of free text within LiMA to ensure what the reports generated are of high quality and accurately reflect individual claimants.
41. Given this increased emphasis on the use of free text it will be important both to monitor the impact of this and to ensure the HCPs have the skills to use suitable and accurate amounts of free text whilst at the same time engaging appropriately with the claimant.

**Atos and DWP monitor and audit the use of free text within LiMA to ensure a consistently high standard of accurate reports.**

**If needed, Atos healthcare professionals are provided with the relevant IT training – especially typing – to enable them to use the LiMA system intelligently and ensure that the quality of the face-to-face assessment does not suffer.**

## **ii) Year one recommendation – Consistency of Atos healthcare professional performance**

42. In year two the Review should explore the use of other healthcare professionals in the Atos assessments and check the consistency of assessments by different professions.

### **Background**

43. Atos contracts doctors, nurses and physiotherapists to undertake the face-to-face assessment part of the WCA for the Department for Work and Pensions (DWP).

44. At the end of May 2011 Atos contracted 665 healthcare professionals (HCPs), with the following numbers in each category:

- 231 doctors (35%)
- 379 nurses (57%)
- 55 physiotherapists (8%)

45. The first Review looked at the recruitment of HCPs to Atos<sup>22</sup>, whilst the training provided to new recruits has been considered in more detail this year (see Chapter 6).

### **Consistency of healthcare professional performance**

46. To explore whether the current mix of HCPs is right – and whether there is consistency between the different HCPs – the review considered data available from Atos about outcome recommendations (scores of 15 points or more) split by HCP group.

47. The sample used was of just under 34,000 cases. The results are in Table 2.

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<sup>22</sup> Chapter 5, paragraph 10, “An Independent Review of the Work Capability Assessment”, Harrington, 2010.

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

**Table 2: 15 point or more recommendations by HCP type<sup>23</sup>**

	Doctors		Nurses		Physiotherapists		Total	
Total cases	11,670		20,720		1,420		33,810	
Over 15 points	2,450	21%	3,670	18%	250	18%	6,370	19%
Uncontrolled condition	30	0%	30	0%	0	0%	60	0%
Chemotherapy Support Group	20	0%	50	0%	0	0%	70	0%
Terminal Illness Support Group	10	0%	0	0%	0	0%	10	0%
Severe Functional Disability Support Group	720	6%	1,180	6%	50	4%	1,950	6%
Pregnancy Support Group	10	0%	20	0%	0	0%	30	0%
Physical or Mental Health Risk Support Group	300	3%	730	4%	30	2%	1,060	3%

48. The results show broadly consistent findings between HCP groups.

Understandably doctors make more recommendations of 15 points or over as they assess the majority of complex cases which are more likely to result in a recommendation of being allowed ESA. Given the sample size of the physiotherapist group it should also be noted that their outcomes are likely to be more dependent on the characteristics of the sample seen during the month.

49. The consistency of these findings would suggest that Atos's training and audit of HCPs is having the desired outcome and that, regardless of profession, face-to-face assessments are being undertaken in a reliable manner.

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<sup>23</sup> Numbers rounded to the nearest 10.

## Differences between physical health conditions and mental health conditions

50. Atos also collect information about whether HCPs recommend points for each claimant for physical issues or mental function issues. The results by HCP type are in Table 3:

**Table 3: Recommended point scores for physical and mental health by HCP type<sup>24</sup>**

	Doctors		Nurses		Physiotherapists		Total	
Total cases	11,670		20,720		1,420		33,810	
6 points – physical	900	8%	1,300	6%	140	10%	2,340	7%
9 points – physical	300	3%	470	2%	30	2%	800	2%
>15 points – physical	1,080	9%	1,490	7%	110	8%	2,680	8%
Awarded any points – physical	2,280	20%	3,260	16%	280	20%	5,820	17%
6 points – mental function	530	5%	940	5%	60	4%	1,530	5%
9 points – mental function	220	2%	410	2%	20	1%	650	2%
>15 points – mental function	1,250	11%	2,070	10%	130	9%	3,450	10%
Awarded any points – mental function	2,000	17%	3,420	17%	210	15%	5,630	17%
Awarded any points – all	4,280	37%	6,680	32%	490	35%	11,450	34%

51. Atos do not identify a primary condition in their assessments, but this information is helpful in showing the split between 6 point, 9 point and 15 or more point recommendations by HCP type.

<sup>24</sup> Numbers rounded to the nearest 10.

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52. As with the 15 point or more recommendations there appears to be broad consistency between HCP types. Nurses are slightly less likely to recommend points against physical health descriptors and physiotherapists are slightly less likely to recommend points against mental function descriptors. It is important to continue to monitor this to see if all HCP types assessing all conditions remains appropriate.
53. Doctors are more likely to recommend points against any of the descriptors, although (as with the 15 point or more recommendations) given they are more likely to be assigned complex cases – which by definition are more likely to score points – this is to be expected.
54. It is worth noting that, whilst these figures are helpful in giving an indication of Atos HCP recommendations, they will not correspond to the overall ESA disallowance rate. This is because:
- these are only Atos recommendations and may not translate to Decision Maker decisions;
  - this is a much smaller sample than the national data; and
  - claimants will score across both physical and mental function descriptors to reach 15 or more points.

### **Audit by healthcare professional group**

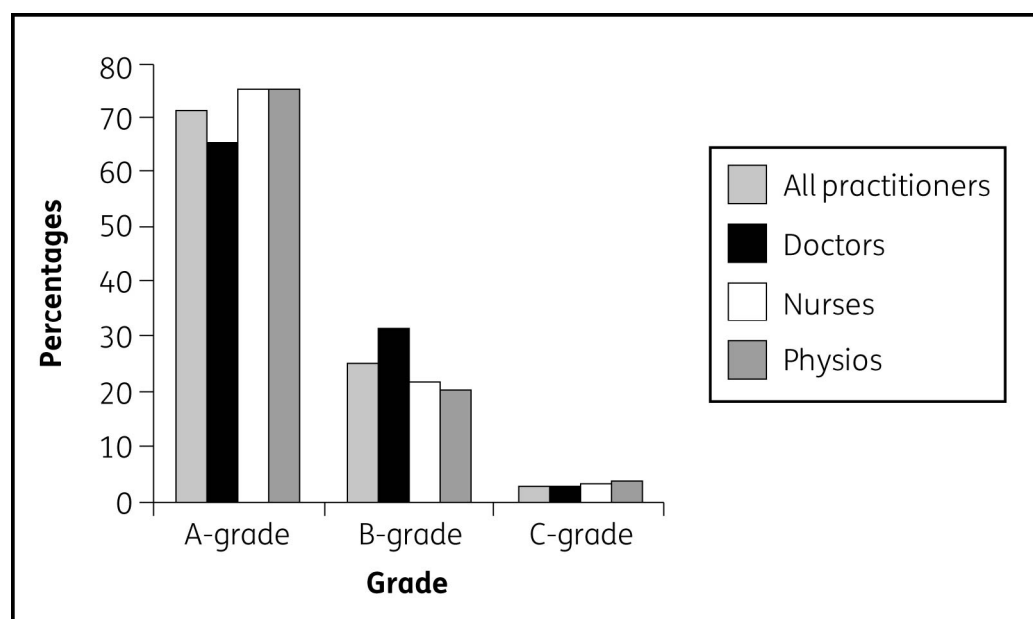
55. As identified in the first year Review, Atos continue to regularly monitor and audit check the quality of HCPs. As the first year Review made clear, A-grades are given if the assessment fully meets required standards; B-grades are where some improvements are possible; and C-grades are given where the report is deemed to be unacceptable and it does not meet required standards.<sup>25</sup>
56. In the three months to the end of May 2011 Atos audited just under 1,000 cases.
57. The results of these audits are shown in Figure 2.

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<sup>25</sup> Chapter 5, paragraphs 12-15, “An Independent Review of the Work Capability Assessment”, Harrington, 2010.



**Figure 2: Grading of assessments post-audit by HCP type**



58. The per cent of C-grade assessments has fallen when compared to a comparable number of assessments quoted in the first year review (3.1 per cent in 2011 compared to 5 per cent in 2010). Whilst recognising that the sample will depend on the types of cases chosen for audit as well as the quality of HCPs this does suggest that standards at Atos remain high – and DWP’s less than 5 per cent target for C-grades is still being met.
59. All Atos HCPs are audited by the same group of auditors and to the same audit criteria, regardless of the type of HCP. The Review spent time at the Atos Independent Audit Assurance Panel in Bristol reviewing the auditing of the auditors. This work was done by senior Atos HCPs from another region and involved DWP staff monitoring the process. The process seen was thorough and the results of any shortcomings were reported to the individual auditor. General lessons were transmitted to all Atos auditors.
60. It appears that the audit results by grade are broadly comparable across HCP type. There is little appreciable difference between HCP groups at a national level where C-grades are concerned, whilst the fact doctors have proportionately more B-grades (and so proportionally less A-grades) than nurses or physiotherapists is likely to reflect that they see the more complex doctor only cases and therefore auditors are more likely to pick up learning points which will be fed-back through B-grade audits.
61. The proportion of B-grade reports should not be seen as negative, or be used to suggest that HCPs are below the expected quality standards. Rather this reflects a conscious effort by Atos to constantly monitor and improve HCP performance, and B-grade reports are contractually fit for purpose. This is to be commended.

### Conclusions

62. The data provided by Atos suggests that there is not a significant consistency issue between the three types of HCPs who carry out face-to-face assessments either in terms of recommendations for claimants scoring 15 or more points or recommendations for where points are scored.
63. Taking this, the training provided to new recruits to Atos (see Chapter 6) and the audit procedures in place into account it would appear that continuing negative responses to the face-to-face assessment – particularly about the way in which the assessment was conducted – are related to isolated individuals rather than there being an endemic issue within Atos. This, of course, does not mean that these negative experiences should be ignored.
64. It is beyond the remit of this Review to make recommendations about who should be carrying out the assessments (as opposed to reviewing how they are carried out). Whilst there appears to be a good level of consistency between the types of HCP currently used by Atos, the Review has also considered whether any other types of HCP could carry out WCAs.
65. The Review has heard from several people that Occupational Therapists (OTs) might be well placed to carry out WCAs given their expertise in assessing functional capability for work. Similarly, several people have suggested that only people with relevant mental health expertise should carry out assessments for people with a mental health condition.
66. If OTs, or other types of HCP, were to carry out WCAs it would be important that they were subject to the same training and quality standards as other HCPs currently employed by Atos.

### Recommendations

Based on the data presented by Atos and my analysis of this I recommend that:

**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.**

67. Evidence supplied to both the first and second Reviews suggests that Atos are regularly meeting the 5 per cent C-grade target. Whilst it is necessary for the C-grade target to exist to ensure that HCPs can learn from experience, this target could be more challenging and should not be a 'safety net' which supports poor performance.

**To improve the transparency of the face-to-face assessment, data on Atos performance and quality should be regularly published.**

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

68. The Review is impressed with the consistency of HCP performance. However, it is important to ensure that standards are not allowed to slip and so regular reporting of Atos performance and quality should become standard.

### **iii) Call for Evidence responses**

69. This year's Call for Evidence asked a number of specific questions about the face-to-face assessment.
70. The Review recognises that there are still a considerable number of negative comments about the face-to-face assessment and the HCPs carrying out those assessments. The Call for Evidence was enlightening in eliciting these views from individuals.
71. The Call for Evidence asked specifically about where concerns with the face-to-face assessment focused. The vast majority of respondents had concerns with the HCPs approach, their understanding of conditions and the IT supporting the assessment; or with the HCP's approach and knowledge.
72. It is worrying that these negative experiences of the face-to-face assessment, and the WCA process as a whole, are still being reported to the Review. Of particular concerns are:
- Reports that supporting evidence from a chosen healthcare adviser is not being asked for or taken into consideration in the decision making process.  
*"The decision appears to have been made only on the medical and the detailed form I filled in has no weight. There is much evidence available from my doctor, specialists, and work experience that in the last few years that I have tried to work, am able to do part time work for a short period but then my symptoms flare up and I am incapable of work, amounting to about 6 months in a year. I was not asked to provide this back up evidence", Ms E*
  - The continuing questioning of Atos HCP's professional skills.  
*"Many HCP's do not appear to have any knowledge of health conditions, long term illness or impairment", Disabled People Against Cuts*
  - Inaccurate reports being generated at the face-to-face assessment.  
*"I consider the report submitted... to only be a selective report and not a contemporaneous accurate report of what actually transpired", Mr S*

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

73. These concerns should not be ignored. The provision of corroborating evidence from a chosen healthcare adviser is particularly important if Decision Makers are going to be make balanced and evidence based decisions. Therefore, the Review will monitor developments in each of these areas during year three.
74. The Review has, however, also heard anecdotal evidence from several sources that on occasions supporting evidence is being withheld from Decision Makers and not being submitted until the appeal. It would be extremely worrying if this is true, especially if this is being done simply to keep the upheld appeal rate high.
75. It is hoped that fewer negative experiences will be reported overall next year as the recommendations from this year and last are fully implemented and begin to have a real impact.
76. The question in the Call for Evidence about the need to present and explain the face-to-face assessment in a different way resulted in a real mix of views.
- Some thought the process is mis-understood and therefore needs explaining in a different way.  
*“Claimants are easily confused as they provide a medical certificate, but are told they have not had a diagnostic assessment. This difference needs to be much higher profile than at present”*, DWP Operations<sup>26</sup>  
Appeals Officer
  - Others thought some tweaks were needed to the language used, but otherwise the presentation was about right.  
*“Our experience suggests that there often is a mismatch between what applicants are expecting the assessment to be like (i.e. more of a ‘medical’) and what it is actually like”*, Centre for Mental Health, Mind, the Royal College of Psychiatrists and the Scottish Association for Mental Health
  - A further group disagree with the whole policy position underpinning the WCA and so thought the answer was not so much about presenting it differently, but about redesigning the policy intent.  
*“The reason claimants are critical of the assessment is that it... fails to reflect the true nature of work and the realities of the workplace. Thus, there is an urgent need for the DWP to understand the real source of our dissatisfaction and anxiety, instead of assuming that we claimants misunderstand the purpose of the WCA”*, Ms R

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<sup>26</sup> From October 2011 the formal agency status of Jobcentre Plus ceased to exist. For clarity and consistency throughout this document the work of Jobcentre Plus before October 2011 and anything after then are both referred to as DWP Operations.

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

77. It is difficult to reconcile such a diverse range of views. The year one Review concluded that the policy intent behind the WCA is the right one, and so redesigning the whole assessment would not be practical.
78. This Review has already reported its own positive experience of the implementation of the year one recommendations (see Chapter 2). The expectation is that others will start to see these positive changes over the coming year. Recommendations in this Review about better communications will also help improve things.
79. As part of their response to the Call for Evidence Citizens Advice Bureau submitted survey results analysing the accuracy of 37 reports generated during the face-to-face assessment.
80. The results of this survey are interesting and show that, according to their analysis:
- 43 per cent of reports contained 'severe' errors;
  - 27 per cent of reports contained 'medium' errors; and
  - 30 per cent of reports contained 'few' errors.
81. The report also identifies a number of specific criticisms about the reports, including:
- incorrect observations made by HCPs during face-to-face assessments;
  - the style of HCP questioning not giving claimants opportunity to give full answers or explain fluctuation;
  - incorrect recording of accounts given by claimant (e.g. on their typical day);
  - HCPs making medical judgments 'which they were not in a position to decide', sometimes overriding specialists' advice; and
  - lack of consistency in HCP reports, sometimes leading to incorrect points being awarded – and not picked up by Decision Makers.
82. The Call for Evidence asked for robust evidence about the face-to-face assessment. Although this survey provided both quantitative and qualitative analysis of a number of assessments it must be taken into account that the sample size is small compared to the overall number of assessments being carried out.
83. The survey was also conducted between summer 2010 and June 2011 and so many of the year one Review's recommendations (see Chapter 2) and changes to LiMA (see Chapter 5) are unlikely to have had a real impact in that period.

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

84. The Review would welcome a repeat of the survey in 2012 – with an increased sample size, if possible – so that trends in accuracy of reports can be monitored and further recommendations, if appropriate, can be made.

# Chapter 6: Training

## Background

1. In its sixth report of Session 2010-2012, the House of Commons Work and Pensions Select Committee reported that the Incapacity Benefit reassessment process:  
*“is not yet properly communicated to claimants, leading to fear and anxiety among vulnerable people.”<sup>27</sup>*
2. Better communication with and better handling of claimants is one of the reasons why appropriate training is needed for those who deal directly with the public. This would ensure they have both the technical and softer skills necessary to support fully the claimant through the process.
3. There are four main groups of personnel involved here:
  - Department for Work and Pensions (DWP) Contact Centre staff who make initial telephone calls to claimants to explain the process to them;
  - DWP Decision Makers, who make the final decision on benefit entitlement and will have more frequent and empathetic contact with claimants following the first Review’s recommendations;
  - Atos healthcare professionals (HCPs) who conduct the face-to-face assessment; and
  - Judges and Medical Members of the First-tier Tribunal who rule on appeals if they are made.
4. The Review believed it was important to gain a better understanding of the training provided to these groups as part of this year’s programme of work.

## DWP staff

5. The first Review’s recommendations proposed empowering DWP Decision Makers. A key training requirement would be to provide these staff members with the training and quality assurance packages needed to ensure that they can fulfil their new, enhanced role. These measures are outlined in Chapter 2, paragraphs 21 to 26 and conclude that positive progress has been made in empowering Decision Makers to interact more empathetically with claimants.

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<sup>27</sup> <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmworpen/1015/101502.htm>

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

6. Contact Centre staff have been made aware of the changes, including those who are making the follow up telephone call to new claimants whose claims are dealt with by Wrexham and Oldham Benefit Delivery Centres. There is also a new desk aide to support staff in delivering the key messages and if the claimant has a more complex question which they are not able to answer they will handover to the Benefit Delivery Centre dealing with the claim.

### **Atos healthcare professionals**

7. Much of the anger expressed by claimants about the Work Capability Assessment (WCA) is aimed at Atos staff and, in particular, those HCPs who undertake the face-to-face assessments.
8. The first year Review talked about recruitment processes for Atos HCPs.<sup>28</sup> Far more HCPs have been needed to cope with the large increase in assessments resulting from Incapacity Benefit reassessment. Details of numbers of HCP's in post at the end of May 2011 are in Chapter 5. It must be recognised that these activities, combined with the largely negative press they receive, could impact on retention of staff.
9. Increased turnover of staff could, in turn, lead to increased training requirements and a longer time taken for each HCP to reach the required competency levels. It is therefore important to improve retention and uphold quality.
10. As part of the year two work, the Review decided that it was important to examine the quality of Atos HCP training. Time was spent at an Atos Training Centre in Stoke-on-Trent and Atos training materials were scrutinised. The new recruits were eager to learn and were engaged in the training programme. The trainers also displayed good knowledge about the WCA, and were able to stimulate constructive and challenging discussions with the recruits.
11. The scope and depth of the training materials supplied was impressive. Nurses and physiotherapists receive a longer training/induction course than doctors which makes sense in practical terms. The University of Derby have also accredited the nurse training content and this can contribute towards their Continuing Professional Development (CPD).
12. Having undergone the necessary time in training, each trainee has to pass all the specified tests before they can enter a period of supervised and audited practice. Not until then are they allowed to conduct assessments unsupervised.

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<sup>28</sup> Chapter 5, paragraph 10, "An Independent Review of the Work Capability Assessment", Harrington, 2010.



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

13. Even after their training, the HCPs are regularly audited. More details of audit and HCP consistency are in Chapter 5.
14. All training content is revised annually and training packages have been updated to include changes to the legislation and descriptors in March 2011, the first Independent Review and Incapacity Benefit reassessment. DWP approve and sign-off all Atos training materials.
15. Continuing Professional Development (CPD) programmes are also agreed with DWP each year.

## **Appeals Judges and Medical Members**

16. Similar requests for details of training packages and quality assurance measures were put to the First-tier Tribunal President and the Chief Medical Member.
17. In March 2011 the Review had an opportunity to observe a training exercise for Judges on the subject of the March 2011 changes to the legislation and descriptors used in the WCA. It was a thorough and well organised session which energetically engaged the group and revealed a real understanding of the WCA and the changes being made to it.
18. Induction training for Judges and Medical Members is essentially the same. There is heavy emphasis on the law, the evaluation of evidence and on fact finding.
19. An initial two and an half day residential training course is followed by an evaluation of its effectiveness after six months. Appraisal systems are in place on a regional level. Appraisal competences are based on both the GMC's Good Medical Practice and the Judicial Studies Board Judicial Competencies.
20. Annual logs are kept of training and educational activity and, after the first year appraisal, such procedures are every three years. Refresher training courses are available on an annual basis.
21. In addition, there is a very informative Judicial Information Bulletin with a password protected website which is run by Judges and Medical Members for themselves. It is thoroughly up-to-date and provides an opportunity for Tribunal members to read, comment on and debate issues around the WCA and other topics.
22. First-tier Tribunal training is accredited by the Law Society and the Bar Council and attracts CPD for the legally qualified panel members. Medical Members receive a certificate of attendance.

### **Conclusions**

23. From an extensive review of training materials, answers to a number of additional questions to get further information and first hand evidence of training in practice, the Review believes that both Atos and the First-tier Tribunal provide good and comprehensive training opportunities for their staff.
24. Refresher training courses seem relevant and up to date and appraisal procedures appear to be sound and thorough.
25. For Atos HCPs the training is focussed on disability medicine and using the tools necessary to undertake the face-to-face assessment, including the LiMA computer system.
26. For the Medical Members of the First-tier Tribunal, their training is largely geared to improving their knowledge of the law as their responsibility is to assess accurately each appeal based on facts of law.
27. From 2012 medically qualified practitioners in this country will have to sign up to a Revalidation process set out by the General Medical Council (GMC) in order to determine whether they are fit to continue to hold a license to practice. This will occur every five years. All the medical Colleges and Faculties have annual accreditation/appraisal schemes in place for their members which should ensure that Revalidation every five years with the GMC is not a problem.
28. It is unclear to the Review which accreditation/appraisal schemes are the most suitable for the medically qualified personnel employed by Atos and the First-tier Tribunal.
29. It is also worth noting that practitioners who merely wish to remain registered with the GMC can still practice in certain contexts. In 2009 Ministry of Justice Ministers accepted that whilst Tribunal Medical Members need to be registered with the GMC and therefore conforming to the principles laid down in Good Medical Practice, they did not need to be licensed and could decide to remain registered only. The qualifications order for members of the First-tier Tribunal was amended accordingly.
30. The practical application of training is as important as the training itself. The quality of outcomes will help determine whether or not the training is being used to ensure the WCA works as well as it should.

## **Recommendations**

After reviewing the training materials used in the WCA I recommend that:

**DWP should continue to monitor the quality and appropriateness of DWP Operations and Atos training.**

31. The Review was satisfied that, in 2011, both Atos and the First-tier Tribunal had delivered relevant and up to date training for their staff involved in the WCA. It is important that the quality of the training provided to Atos HCPs is monitored as any subsequent changes to the WCA are made.
32. The Review has also seen first hand the new training for DWP Decision Makers which has been implemented as a result of the year one recommendations. It is important that DWP monitor the quality and impact of this training as well on an ongoing basis given the key role of Decision Makers in the WCA process.
33. Similar commitments from the First-tier Tribunal about their training would also be helpful, but this is arguably outside the remit of the Review.  
**Where appropriate, there should be sharing of knowledge and training between the various groups involved in the WCA.**
34. All of the training materials seen this year have been of high quality. However, the Review understands that there is very little (if any) sharing of knowledge about, and interpretation of, the WCA and how it is applied.
35. Greater join up between the various bodies' training would mean a better shared understanding of what each part of the process is trying to achieve. This could involve a mutual sharing of the training materials used by each body to facilitate greater understanding of how and why each does things the way it does; or a more regular and formal process of discussing training in an open forum.
36. The First-tier Tribunal President has informed the Review that any consideration of judicial training is outside the remit of the Review. Whilst this concern is duly noted, involving them in this sharing of knowledge would have considerable benefits to the overall WCA process and the Review would hope that consideration is given to them engaging with DWP Operations and Atos.

**DWP should closely monitor the recruitment, and retention, of Atos healthcare professionals in year three.**

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

37. The increased workload caused by Incapacity Benefit migration will, inevitably, put strains on Atos. Given that the LiMA system seems to work reasonably well if the HCPs are able to use it properly (see Chapter 5), the onus for the delivery of sound, accurate and effective assessments which the Decision Makers can use to make reasoned and evidence based decisions on rests heavily on Atos. To do this they need to maintain a body of first class HCP's.
38. A high turnover of staff will place undue demands on the training programme that Atos have put in place, which in turn could have a negative impact on the assessment process as a whole.

## Chapter 7: Other issues

### **People who are found Fit for Work but are unable to claim Jobseeker's Allowance (JSA): year one recommendation**

1. In year two, the Review should examine what happens to people who are found Fit for Work but are unable to claim Jobseeker's Allowance (JSA).

#### **Background**

2. Analysis of this problem suggests that there are two groups of people who potentially fall into this category:
  - People who, although having been found Fit for Work in their Work Capability Assessment (WCA), still feel that they are unable to work due to the impact of their health condition or disability or whose Personal Adviser in Department for Work and Pensions (DWP) Operations<sup>29</sup> feels are unable to work for the same reason; and
  - People who are still in employment but who are found Fit for Work and so would have to leave employment in order to fulfil conditionality under JSA.

#### **Analysis of the problem**

##### **DWP Operations communications**

3. Anecdotal evidence has shown that a proportion of claimants found Fit for Work in their WCA still feel that they are unable to work due to their health condition or disability. This may be exacerbated by Personal Advisers in DWP Operations who tell claimants they cannot understand how the Fit for Work decision was reached.
4. The Review has found that the problem may be that the claimant has not had a proper explanation of the decision to find them Fit for Work or the subsequent help and support available to them on JSA or the Work Programme. Lack of clarity of the reason for a Fit for Work decision despite ill-health or disability and failure to explain what happens next could lead to appealing the decision or making a new claim for ESA and a subsequent cycling through the benefits system.

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<sup>29</sup> From October 2011 the formal agency status of Jobcentre Plus ceased to exist. For clarity and consistency throughout this document the work of Jobcentre Plus before October 2011 and anything after then are both referred to as DWP Operations.

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

5. DWP Operations must ensure that a claimant is clear on what their options are once a decision has been made on their entitlement to ESA. The claimant must also receive consistently clear messages from DWP Operations – whether that is from the Contact Centre, a Personal Adviser or a Decision Maker. The way in which DWP Operations communicates with claimants and internally is essential to ensuring that claimants are not caught in a cycle of claiming, reclaiming and appealing ESA. Communications between Decision Makers and Personal Advisers in DWP Operations appear to be particularly important if a ‘silo’ mentality is to be avoided with Personal Advisers backing up positive messages about a possible return to work.
6. Implementation of the first Review’s recommendations has led to more support for the claimant during the course of their benefit claim (see Chapter 2). This will help the claimant better understand what is happening to them and why. But it would also be helpful for DWP Operations to take additional steps to ensure that each area of the claim process communicates with each other regularly, clearly and consistently.

### **Claimants in employment and found Fit for Work**

7. There are also a group of people who claim ESA that have a contract of employment, but are temporarily incapacitated and so unable to do their job.
8. Most will have a ‘fit note’ from their GP that says they are currently unfit for their job. If this is the case then reasonable adjustments by the employer should be the first option (e.g. revised duties or reducing working hours to fit around the temporary circumstances), working alongside a DWP Operations Disability Employment Adviser if appropriate.
9. However, it may be necessary for some of these people to make a short-term claim for ESA, for example if their Statutory Sick Pay has expired.
10. As the WCA assesses functionality for any work these people may be found Fit for Work but find that they are unfit to return to their normal work duties. They cannot claim ESA because they have been found functionally fit to work but are unable to claim JSA because their employment status will negate them from claiming JSA.
11. To fix this anomaly would require changes to JSA legislation which is out of the scope of this Review.

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

### **Universal Credit**

12. A longer-term solution to this problem will be provided with the introduction of Universal Credit, which will be a single income-related payment reflecting the personal circumstances of the claimant whether they are in or out of work. The Review understands that under Universal Credit:

- As long as an individual meets the basic entitlement conditions, they will be entitled to Universal Credit regardless of their employment status. The amount of Universal Credit payable will depend on the person's needs and circumstances, and will increase or taper off in response to fluctuations in their earnings. There will be no need to carry forward existing entitlement rules around permitted work as there will be a new system of earnings disregards and a single taper. Nor will there be the same distinction between in and out of work claimants (such as the definitions which currently restrict eligibility for JSA); and
- The application of conditionality will be more flexible than now, with requirements tailored to the capability and circumstances of individuals rather than dictated by which benefit they claim. So where a person is expected to meet work-related requirements, these will be set through discussion with a Personal Adviser, taking into account the claimant's health and ensuring that they are compatible with any existing contract of employment.

### **Recommendations**

Taking all the evidence into account, I recommend that:

**DWP Operations should improve internal communications to ensure that each part of the claims process and Personal Advisers have a broad understanding of the policy intent of the WCA, what a Fit for Work decision means for a claimant and the support available to them.**

**DWP Operations should continue to monitor the impact of the year one recommendations, particularly the additional 'touch points' with claimants, to better understand whether messages about the support available on Jobseeker's Allowance are fully understood by claimants.**

13. If everyone in the claims process does not understand, even in broad terms, what it is trying to do and why there is a risk that communications will be piecemeal then claimants will get contradictory messages from different people. This undermines the whole process and risks derailing the positive efforts to try and get people who are able to work into employment.

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

14. Similarly it is important to explain fully the help and support available on JSA to claimants found Fit for Work. Currently not reaching the ESA points threshold is seen by many as 'failing' the assessment when in fact being able to work will be much more positive for many people.
15. More transparent messages for claimants – especially on what they are being assessed on and what the descriptors actually mean in practice – could also reduce feelings of embitterment and being assessed against opaque criteria.

**DWP should ensure that Universal Credit considers the risks of applying conditionality to those claimants who are currently employed.**

16. Whilst Universal Credit is beyond the scope of this Review it is clearly in the Review's interest to ensure people making short-term benefit claim because of a genuine need are protected in the system.
17. It appears that Universal Credit will offer a pragmatic solution to a problem within the current system. The Review looks forward to seeing how this works in practice once Universal Credit is implemented.

### **Complex problems and chaotic lifestyles**

18. Several people, in either Call for Evidence responses or meetings, have noted that people with complex problems may face particular challenges in the WCA. This could include people with addictions (including drugs and alcohol) or people who are homeless. These problems may be exacerbated by co-morbidity and underlying, potentially undiagnosed, conditions.
19. Whilst the WCA rightly focuses on functional capability rather than diagnosis, the Review believed it was important to explore some of these issues in more detail to ensure that people were not being unfairly treated. Problem drug users were the focus of this, although it is likely that the findings will apply equally to other conditions.

#### **Problem drug users**

20. Several drugs charities, particularly the UK Drug Policy Commission (UKDPC), put forward the case that problem drug users (PDU) had particular difficulties in the WCA above and beyond claimants with other mental health conditions. Evidence suggests that these PDUs are more likely to be stigmatised in terms of employment and that they required a longer and more intensive rehabilitation on the way to full employment.
21. Atos and DWP Operations were approached to see what, if any, measures were in place to deal with PDUs as a special case within the WCA process.



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

22. The responses indicated that whilst Atos do not have specific procedures for claimants with addictions they are treated as for mental health conditions and the new Mental Function Champions<sup>30</sup> would assist in their assessments.
23. DWP Operations, for its part, recognised residential rehabilitation as a special case after the implementation of the DWP internal review in March 2011. This means that anyone in residential rehabilitation is now treated as having limited capability for work for the purposes of ESA.
24. DWP Operations can also call on the assistance and expertise of Drug Champions where available at a local level and also cover drug use in their general skills training. Personal Advisers should always consider flexibilities within a Jobseeker's Agreement to take account of a drug addiction and existing treatment commitments, however a jobseeker must still be available for and actively seeking work.
25. There is also continuing work to implement the Government's 2010 Drug Strategy which will extend the Personal Adviser options for conditionality for individuals in structured recovery activity:
- "We will offer claimants who are dependent on drugs or alcohol a choice between rigorous enforcement of the normal conditions and sanctions where they are not engaged in structured recovery activity, or appropriately tailored conditionality for those that are. Over the longer term, we will explore building appropriate incentives into the universal credit system to encourage and reward treatment take-up."<sup>31</sup>*
26. The UKDPC also pointed out that residential rehabilitation only accounts for around 2 per cent of all PDU's treatment and, as a group, these claimants need longer and more detailed assistance before they are ready for full time employment.
27. There appears to be a case, therefore, for Atos and DWP Operations to have access to additional advice in order to enhance their assistance to PDUs in the WCA and beyond.

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<sup>30</sup> Chapter 5, paragraphs 48-49, "An Independent Review of the Work Capability Assessment", Harrington, 2010.

<sup>31</sup> Page 23, <http://www.homeoffice.gov.uk/publications/alcohol-drugs/drugs/drug-strategy/drug-strategy-2010?view=Binary>

## Recommendations

Based on the evidence provided to the Review, I recommend that:

**DWP Operations should consider seeking, and using, advice and guidance from the UK Drug Policy Commission and other relevant experts in order to improve and enhance the knowledge and capability of Decision Makers and Personal Advisers in managing these cases (see also Chapter 3).**

**Similar advice should be sought by Atos for their Mental Function Champions and the UK Drug Policy Commission and other relevant experts could be involved in updating the relevant sections of the Atos Guidance Manual for their healthcare professionals (see also Chapter 3).**

28. Whilst a strong argument cannot be made for making PDUs a special case in the WCA (indeed the UKDPC recognise the value of employment to recovery) there is a need to ensure that both Atos and DWP Operations staff have the most up-to-date knowledge available to them about the challenges PDUs may face in finding and sustaining employment.

### Communication problems, including dyslexia

29. In June 2011 the Review was approached by Lord Addington. He put forward the case that people with dyslexia may not be well prepared for the WCA and that they may not be getting correct and useful advice throughout the process, particularly at initial contact.
30. With 10 per cent of the population having some form of problem with literacy and the ESA50 being a key part of the ESA claim the Review agreed that this was something worth exploring in more detail.
31. It is likely that these problems will apply equally to people with general communication problems – which may result from a mental health condition or a learning disability – and not just to people with literacy problems.
32. DWP Operations have informed the Review that any claimant, not just someone with dyslexia, can request help to complete their ESA50. This can take the form of:
- Someone from DWP Operations phoning the claimant back and going through the ESA50 question by question to transcribe their answers;
  - A face-to-face interview at a Jobcentre Plus office where the same transcribing service is available;
  - An audio version of the ESA50, which people listen to so they are aware of the questions before filling in the form themselves or asking for help from a friend or relative or the transcribing services provided by DWP Operations;

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- An online version of the ESA50, which is compatible with accessibility programmes available; and/or
  - Claimants asking a friend or relative to help them complete the form.
33. This appears to be a comprehensive range of possible ways of completing the form for people with dyslexia or other literacy problems. Taken in combination with the fact that the face-to-face assessment will still go ahead if there is no completed ESA50 and a mental or behavioural condition is recorded on DWP Operation's systems (i.e. a claim for ESA will usually only be stopped if the claimant requests that it is – see Chapter 4 for more details), this appears to suggest that processes are robust.
34. Although the number of people who apply for ESA with dyslexia as their primary condition is small (less than ten in 2010/11), the Review's biggest concern with dyslexia and other literacy problems is people who do not recognise that they have a problem and so may disadvantage themselves in a claim through an inaccurate or incomplete ESA50. This is also a potential problem for mental health conditions and learning disabilities.
35. This problem will apply to both the ESA50 and the face-to-face assessment. There is no easy way of getting around this, but the routine collection of evidence from a chosen healthcare adviser should help the application and Decision Making process. The Review has already noted the positive moves by DWP Operations to collect corroborating evidence from a chosen healthcare adviser in Chapter 2, but recognises that more work is needed before this process works perfectly.

## **Northern Ireland Independent Review**

### **Year one review**

36. Early in 2011, Professor Harrington was approached by the Department for Social Development in Northern Ireland, requesting a similar independent assessment of the WCA as it operated in Northern Ireland as was carried out in Great Britain in 2010.<sup>32</sup>
37. Following discussions, it was agreed that the most cost efficient way of dealing with the request for a review was for the Department to identify the Northern Ireland specific issues. It was also agreed that they should indicate whether the year one recommendations could be implemented in Northern Ireland and where they were not applicable or alternative arrangements were already in place.
38. The supply of this information led to additional requests from Professor Harrington for expansion and clarification and these responses were delivered speedily.

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<sup>32</sup> <http://www.dsdni.gov.uk/wca-review.pdf>

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39. A final assessment from Northern Ireland was received in August 2011. Professor Harrington was able to approve their report – particularly some interesting observations about the Decision Making process in Northern Ireland – and a final version was submitted to the Northern Ireland Assembly in September 2011.
40. Subsequent activities of the Great Britain Review have been extended to Northern Ireland and a Call for Evidence mirroring the Great Britain one was issued in Northern Ireland in September 2011. The responses have since been collated in Belfast and sent on to the Review for consideration in due course.

### **Update since the year one review**

41. The Department for Social Development have now provided Professor Harrington with an update to the position in Northern Ireland since the publication of the first report in September. It is encouraging to already see further progress in the implementation of the Great Britain Review's recommendations.
42. Enhancements have been made to the Employment and Support Allowance claimant journey, and further pilot exercises have been developed to commence in the coming months.
43. Professor Harrington has strongly advocated the use of free text in assessment reports and, in line with Department for Work and Pensions, the Department for Social Development has introduced the use of a personalised summary statement since Atos began carrying out face-to-face assessments in June 2011. The feedback from Decision Makers about this has been positive.
44. The Department has also been proactive in putting a detailed proposal to Atos for the provision of Mental Function Champions for Northern Ireland.
45. Any changes to the LiMA system resulting from the Great Britain Review will be taken forward in Northern Ireland as a matter of course through existing processes.
46. A research proposal is currently being developed to examine borderline cases in ESA decision making in Northern Ireland; whilst a piece of research is being commissioned to examine the destinations and outcomes of claimants going through the WCA process.
47. In addition, it is intended that Northern Ireland will be fully integrated into any further work on the descriptors.

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48. One further significant development has been the appointment of a Health Assessment Advisor in August 2011, to:

- provide medical governance to Atos;
- support the implementation of the Harrington recommendations; and
- be responsible for ensuring the quality of services provided by Atos, including their audit processes, the standard of training and training material provided to healthcare professionals, quality assurance of medical guidance and the approval of all appointed healthcare professionals.

49. As was the case in response to the first independent review of the WCA, Professor Harrington now recommends that the Department for Social Development examines the recommendations included in the Great Britain year two Review and considers their application within the Northern Ireland context.

50. Professor Harrington looks forward to receiving a response from the Department for Social Development in due course, and welcomes the full alignment of Northern Ireland and Great Britain work streams for the period of the third review.

## Conclusion

1. The first independent review of the Work Capability Assessment (WCA) concluded that the assessment is the right concept. This remains the case.
2. However, the first review also concluded that modifications at all stages of the assessment process were required to make it a fairer, more effective and more humane process. In this respect positive progress has been made over the last 12 months, and the Review expects this progress to be consolidated and built upon in the next year.
3. The reassessment of Incapacity Benefit claimants for eligibility for Employment and Support Allowance (ESA) as well as the number of people making a new claim for ESA will, understandably, place considerable demands on every part of the WCA process. But it also serves to emphasise the need for the right decision about a claimants' eligibility for ESA to be made first time.
4. This means that everyone involved in the process (from Contact Centre and Benefit Delivery Centre staff, to Atos, to individuals making a claim) have a responsibility to ensure that accurate and reliable information is available and is communicated at each stage.
5. There is an obvious need to support fully people who are unable to work through ill health or a disability. However, there is also a need to move away from concepts of 'passing' or 'failing' a WCA which are unhelpful and often cloud the evidence linking health and work.
6. A fair and effective WCA will help in this respect, as well as providing a more cost effective system than is currently in operation.

## Annex A: List of recommendations

<b>Implementation of the year one recommendations</b>	
1	<p>Implementation of the Review’s recommendations should be monitored over time and on a regular basis, including focus on:</p> <ul style="list-style-type: none"> <li>• Percentage of claimants failing to return the initial ESA50 questionnaire;</li> <li>• Percentage of claimants failing to attend the face-to-face assessment;</li> <li>• Percentage of decisions meeting criteria in the Decision Making Quality Assessment Framework;</li> <li>• Percentage of reconsiderations received;</li> <li>• Percentage of decisions changed following reconsideration;</li> <li>• Percentage of appeals received; and</li> <li>• Percentage of appeals upheld.</li> </ul>
2	<p>Unannounced visits to both Benefits Delivery Centres and Atos Assessment Centres should be carried out during the year three Review.</p>
<b>Descriptors</b>	
3	<p>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.</p>
4	<p>DWP should consider working with relevant representative groups and their clinical advisers to:</p> <ul style="list-style-type: none"> <li>• Update the handbook and guidance used by Atos healthcare professionals; and</li> <li>• Produce practical guidance for Decision Makers.</li> </ul>
5	<p>This ‘bottom up’ model – involving a wide range of experts as well as DWP – should also be adopted in any future changes to the WCA descriptors, where appropriate.</p>

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6	Work on the specific wording of the sensory descriptors and an additional descriptor which addresses the impact of generalised pain and/or fatigue should be considered early on in the year three Review.
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.
8	DWP consider ways of sharing outcomes of the WCA with Work Programme providers to ensure a smoother claimant journey.
<b>Research</b>	
‘Borderline’ cases	
9	DWP undertake regular audit of Decision Maker performance.
10	In year three, further research is undertaken to examine in more detail what happens to people found Fit for Work and people placed in the Work Related Activity (including Work Programme outcomes) and Support Groups, and the factors influencing these outcomes.
<b>Atos Healthcare</b>	
Logic Integrated Medical Assessment (LiMA) – the Atos IT system	
11	These changes [to LiMA, based on comments from the stakeholder seminars] should be adopted, and that further changes to LiMA are considered as and when they are raised.
12	Atos and DWP monitor and audit the use of free text within LiMA to ensure a consistently high standard of accurate reports.
13	If needed, Atos healthcare professionals are provided with the relevant IT training – especially typing – to enable them to use the LiMA system intelligently and ensure that the quality of the face-to-face assessment does not suffer.



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Healthcare professional consistency	
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.
15	To improve the transparency of the face-to-face assessment, data on Atos performance and quality should be regularly published.
Training	
16	DWP should continue to monitor the quality and appropriateness of DWP Operations and Atos training.
17	Where appropriate, there should be sharing of knowledge and training between the various groups involved in the WCA.
18	DWP should closely monitor the recruitment, and retention, of Atos healthcare professionals in year three.
Other issues	
Fit for Work but unable to claim Jobseeker's Allowance (JSA)	
19	DWP Operations should improve internal communications to ensure that each part of the claims process and Personal Advisers have a broad understanding of the policy intent of the WCA, what a Fit for Work decision means for a claimant and the support available to them.
20	DWP Operations should continue to monitor the impact of the year one recommendations, particularly the additional 'touch points' with claimants, to better understand whether messages about the support available on Jobseeker's Allowance are fully understood by claimants.
21	DWP should ensure that Universal Credit considers the risks of applying conditionality to those claimants who are currently employed.

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Problem drug users	
22	DWP Operations should consider seeking, and using, advice and guidance from the UK Drug Policy Commission and other relevant experts in order to improve and enhance the knowledge and capability of Decision Makers and Personal Advisers in managing these cases (see also Chapter 3).
23	Similar advice should be sought by Atos for their Mental Function Champions and the UK Drug Policy Commission and other relevant experts could be involved in updating the relevant sections of the Atos Guidance Manual for their healthcare professionals (see also Chapter 3).

## Annex B: Acknowledgements

1. In the first Independent Review of the Work Capability Assessment (WCA), I set out an extensive list of recommendations to improve the fairness and effectiveness of the assessment. The Government accepted all of them and the Department of Work and Pensions (DWP) rapidly set about the task of turning those proposals into practice.
2. Staff at all levels in DWP Operations<sup>33</sup> have ensured that real action followed policy. It has been a pleasure to work with such dedicated and committed people within the Department.
3. My Scrutiny Group of Dr Olivia Carlton, Paul Farmer and Neil Lennox were superbly led by Professor David Haslam. They have been a source of immense help and support throughout this years work. I am indebted to them.
4. A number of the major charities and patient support groups have been actively engaged with me in providing proposals for revising a number of the descriptors used in the assessment. This work has progressed efficiently and swiftly. I thank the charities for their forbearance when some areas of their proposals have progressed slower than I would have wished.
5. The team at DWP has, this year, been smaller than last year but the work has been just as taxing. Mark Wilson and Philip Cooper have done a great job in helping me to produce this second Review. Throughout the year, Mark has been an invaluable source of advice, help and wisdom – not least in guiding me through the workings of a large Government Department. I thank Phil and Mark most sincerely.
6. I also would like to thank the organisations and individuals (over 425 in total) who responded to the Call for Evidence, or attended my seminars on aspects of the WCA, or who were happy to allow me to take up their time with questions and yet more questions. Particularly:  
Lord Addington; Professor Dame Carol Black; Dr Steve Boorman;  
Dr Laura Crawford; Anna Deignan; Dr David Henderson-Slater;  
Dr Josanne Holloway; Dr Paul Litchfield; The Countess of Mar;  
Dr Ed McDermott; Baroness Molly Meacher; Professor Robert Moots;  
Dr Maurice Murphy; Donna Pereira; Rachel Perkins; Dr Jane Rayner;  
Baroness Ruth Runciman; Dr Helen Sapper; Liz Sayce;  
Professor Tom Sensky; Richard Thomas; Sir Richard Tilt.

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<sup>33</sup> From October 2011 the formal agency status of Jobcentre Plus ceased to exist. For clarity and consistency throughout this document the work of Jobcentre Plus before October 2011 and anything after then are both referred to as DWP Operations.



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