

# **The Work Capability Assessment: a call for evidence – a response by the Social Security Advisory Committee**

## **1. Introduction**

1.1 The Social Security Advisory Committee (SSAC) welcomes the independent review of the Work Capability Assessment (WCA) and is pleased to have the opportunity to feed into it. SSAC is currently consulting on the Employment and Support Allowance (Limited Capability For Work And Limited Capability For Work-Related Activity) Amendment Regulations 2011 and we have drawn upon the responses we have received. We welcome the Department's continued commitment to an ongoing programme of independent review and improvement to the WCA. However, there is a widespread perception amongst stakeholders that the amendments taken forward as a result of the internal review will make it harder for some claimants to demonstrate that they are incapable of work or that they have limited capacity for work or work-related activity.

1.2 Currently, the WCA lacks credibility amongst claimants, their advisers and disability organisations in the voluntary sector; for the test to be credible, those entering the process need to be confident about its objectivity, accuracy and fairness. The concerns and complaints we have heard about the test suggest that it is perceived as mechanistic and inflexible, with DWP Decision Makers (DMs) doing no more than endorsing a subjective overall assessment of capability based on the opinions of the health care professionals carrying out the test. While only a minority of claimants express dissatisfaction with the process, the themes and contents of their complaints are strongly consistent. Certain types of cases – those involving mental health and cognitive conditions, and mixed diagnoses in particular - seem to be poorly served, both by the design and operation of the WCA.

1.3 We recognise that the assessment of capability for work is a contentious and emotive issue. We have always advocated a positive approach to the assessment of capability that looks at what individuals are able to do and their adaptation to their health condition or disability, rather than focusing solely on what a health condition or disability prevents an individual from doing. However, we also recognise the complexity of many individual cases and the significance of the factors that may determine capability in the real world but which cannot be measured by any test.

1.4 In this response we highlight concerns with a number of the process stages, as well as about particular groups, e.g. the WCA is regarded as particularly problematic for those with mental health/learning disability and fluctuating health conditions.<sup>1</sup>

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<sup>1</sup> Macmillan Cancer Support and Citizens Advice (2009) Failed by the system: why the Employment and Support Allowance isn't working for people living with cancer; Pearlman, V. and Royston, S. (2009) Limited Capability: CAB evidence on the first year of employment and support allowance administration; Royston, S. (2010) Not working: CAB evidence on the ESA Work Capability Assessment; CAB Evidence Briefing (2010) CAB evidence on the administration of Employment and Support Allowance in Northern Ireland

## **2. Reviewing the WCA**

2.1 A number of stakeholders have expressed concerns about some of the proposed changes resulting from the internal review of the WCA and also with regard to the timing of implementation of the changes. In SSAC's formal consultation report we recommend that the more positive changes are taken forward now (regarding fluctuating conditions and chemotherapy) but that the more controversial changes are held back until after the independent review recommendations are published.

2.2 We have some concerns that the short time frame for publication of the independent report might reduce the scope of the review, but note that the report expects to make recommendations both for the short-term and for future independent reviews.

## **3. The assessment process**

3.1 Case studies and evidence from respondents to our consultation highlight concern about the quality of the assessments and the ability of the WCA to accurately assess the impact of health conditions and disabilities on daily life and the ability to work. Assessments are sometimes carried out in open, noisy environments, by staff with little experience of mental health issues and, sometimes, at very short notice. Some claimants report that the Atos assessor had little knowledge of their individual circumstances.<sup>2</sup> They also feel that there is not enough time during the assessment for them to properly explain how their condition affects them and that the closed questions do not give them the opportunity to develop and elaborate their answers.<sup>3</sup> Claimants often went in to the assessment with the expectation that they would be subject to a full medical examination, but came out feeling that that the assessment was a tick-box exercise with a predetermined outcome. Evidence from CAB also suggests that the assessments are often perceived as hurried and focussed on the computer screen rather than the claimant.

3.2 We have noted what appear to be widespread misunderstandings and misapprehensions among claimants about the WCA process and we would question whether the information made available to claimants, and the manner and timing of the Department's communications, is appropriate and adequate for what, for many, is a complex and daunting process.

## **4. Assessment of mental health**

4.1 It is a matter of major concern amongst the welfare rights community and voluntary organisations, and a main theme of the responses to our consultation, that the standard of assessment is not always good enough,

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<sup>2</sup> Healthcare professionals employed by Atos Healthcare, a division of Atos Origin, provide medical services to the Department for Work and Pensions. Their main role is to give medical advice to help DWP decision makers reach an appropriate decision on entitlement to benefit.

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[http://www.citizensadvice.org.uk/index/campaigns/policy\\_campaign\\_publications/evidence\\_reports/er\\_benefitsandtaxcredits/not\\_working](http://www.citizensadvice.org.uk/index/campaigns/policy_campaign_publications/evidence_reports/er_benefitsandtaxcredits/not_working)

especially for people with mental health and cognitive difficulties. Evidence from a number of sources, including Citizens Advice, has highlighted problems with the assessment of claimants with mental health conditions making a new claim for ESA; we expect this to be exacerbated for existing claimants migrating from IB.

4.2 We are concerned that the generalist status of the health professionals employed by Atos does not support the proper assessment of mental health in the WCA. We understand that Atos policy is to recruit generalists and provide appropriate training, but we are also aware that they have been trialling the use of physiotherapists to assess certain specified types of cases and this has been successful. We would recommend that specialists (CPNs) should be employed by Atos to increase the skills mix within the organisation (a recommendation that we have previously made to the Department and to ministers). We would further recommend that Atos should generally aim to match practitioners' specialisms to the cases before them. We believe that an appropriate skills and specialisms mix would also assist in identifying those areas of a claimant's functionality that might be highlighted for further investigation, via additional supporting evidence, by the DM.

4.3 Respondents to the current consultation highlighted that the descriptors do not include any provision for a propensity to, and instances of, self harm, suicidal actions, self neglect or psychosis to be scored in the assessment. Similarly, no provision is made in the descriptors for panic and anxiety attacks, sleep disorders and eating disorders, all of which can severely diminish an individual's capability for work.

## **5. Medical evidence**

5.1 The Department acknowledge that Atos have been criticised for not requesting additional medical evidence. In our view the failure to actively seek out and consider additional medical evidence contributes to the large number of appeals and also to the high proportion of appeals which find in favour of the claimant. If ESA DMs were to be guided by the Department to proactively request, pursue and take account of additional evidence we believe that decision making standards would improve (leading to fewer appeals) and that the credibility of the decision making process would be enhanced. The DLA decision making process for evidence gathering is one that might be considered in this context.

## **6. Audit and Quality control**

6.1 We are concerned that many of the complaints about the WCA process refer to the accuracy of the record of the assessment, yet the capacity to review the quality of interactions is severely constrained by the lack of recording of the WCA by Atos. We understand from officials that this issue has been considered by Atos; we would recommend that a narrative account of the assessment is made a mandatory part of the process and that a proportion of all assessments should be fully recorded.

6.2 Respondents also report that claimants do not routinely see the WCA report and are often shocked by the quality and content of the report at appeal. We recommend that the opportunity to review the report should be routinely offered before the appeal stage; claimants should be allowed to highlight any inaccuracies, to prevent further problems in the claiming process, and the reconsideration process should be applied in cases where the review indicates it to be necessary.

6.3 We understand that the Department audits a random selection of WCA reports to ensure there is a correct outcome. However, we believe that the audit cannot provide an adequate assessment of the quality and accuracy of the WCA without a narrative account or a full recording of the event being made available for review. A review of the written report can only identify obvious internal inconsistencies. This was also a major limitation of the evidence considered by the internal review of the WCA.

## **7. Outcomes and impacts on claimants**

7.1 Failing the WCA has an impact both on individual claimants and on Jobcentre Plus/providers, although little evidence is currently available to assess the impact. A recent report published by DWP indicates that outcomes are of concern to Jobcentre Plus staff. In particular, advisers expressed a number of concerns including the perceived stringency of the WCA itself and the standard of implementation. They also pointed to “unexpectedly severe health problems” of many claimants in the activity group.<sup>4</sup> Claimants are likely to experience negative health and financial effects when they ‘fail’ the WCA, and respondents to our consultation have flagged as a particular risk a decline in mental health.

## **8. Decision making and appeals**

8.1 Our respondents have highlighted the need for DMs to be more proactive in seeking information about the claimant from the right source before an ESA50 is raised, and to make active decisions, rather than simply ‘rubber-stamping’ Atos reports. We recommend that DMs make personal contact with ESA claimants where clarification is necessary, further developing the model of claimant contact that has been trialled in Wrexham.

8.2 We are concerned about the number of ESA appeals generated by the WCA process.<sup>5</sup> We understand from the Department that if further evidence in support of a case is submitted after a decision has been made then the claimant should be referred back to the DM for reconsideration, rather than directly to appeal. We would welcome a review of this element of the process as it would appear that the reconsideration process has not routinely been actively pursued. We understand that DLA DMs carry out a full reconsideration of every case on which an appeal is lodged, resulting in a

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<sup>4</sup> Barnes, H. et al (2010) Employment and Support Allowance: Early implementation experiences of customers and staff. DWP RR631

<sup>5</sup> [http://research.dwp.gov.uk/asd/workingage/esa\\_wca/esa\\_wca\\_27072010.pdf](http://research.dwp.gov.uk/asd/workingage/esa_wca/esa_wca_27072010.pdf)

significant number of decisions being changed on the evidence before reaching tribunals. We would recommend this approach for ESA.

8.3 The latest statistical release on ESA appeals shows that there is currently around a 40% overturn rate in favour of the claimant. This rate suggests to us that there are underlying problems with the assessment and decision making processes (for example that guidance is not being applied correctly or consistently). We understand that one reason why appeals are overturned is that additional evidence is presented at appeal. This seems to us to be both avoidable and wasteful of resources, and an unnecessary strain on the claimant. We recommend that such evidence should either be made available to DMs earlier in the process, or proactively sought out by the DM in cases where it is apparent that it would aid the decision making process. We have noted that similar concerns were highlighted in the Work and Pensions Select Committee report on decision-making and appeals in the benefit system.<sup>6</sup>

8.4 Respondents are also concerned about the length of time it is taking for appeals to be heard and about the financial and associated emotional and health impacts of this for claimants. The delay in hearing appeals can mean that some claimants may spend a considerable amount of time on a reduced rate of benefit. The lack of support for claimants during the appeals process is also of concern. Where County Council Welfare Rights Teams are able to provide a comprehensive appeals representation service this has had a significant impact on claimants' appeal outcomes (Durham CC reports 58% of appeals heard have found in favour of the claimant in cases advised on and 69% in favour of the claimant where there is active representation). These figures are much higher than the national figures presented above.

## **9. Automatic exceptions**

9.1 We have previously recommended that certain claimants should be automatically exempt from the WCA, specifically that those currently exempt from the PCA should be automatically treated as meeting the conditions for the ESA Support Group.<sup>7</sup> This recommendation was not accepted by the previous Government, primarily, as we understand it, on the grounds that this would effectively mean exempting claimants from the WCA on the grounds of their medical diagnosis. We agree that the assessment process should be used to correctly identify the most appropriate benefit and support for each individual claimants, but only if the WCA is performing effectively. We are not convinced that this is currently the case.

## **10. Appropriateness of descriptors**

10.1 The appropriateness of certain descriptors is discussed in our report on the proposed WCA changes, and has been the subject of extensive comment by our respondents. Although not repeated here, we do have specific concerns about a number of the current and proposed descriptors.

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<sup>6</sup> <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmworpen/313/313.pdf>

<sup>7</sup> ESA report March 2010:

<http://www.official-documents.gov.uk/document/other/9780108509087/9780108509087.pdf>

## **11. Capability and employability**

11.1 We appreciate that the WCA is intended to measure functionality and has therefore been designed to determine an individual's work capability by reference to range of different activities. As such it does not take account of whether that individual is actually employable in a real world context, which impacts on potential outcomes. For example, whilst an individual could be assessed as being capable of work with adaptations, the lack of adaptations in the work place reduces employability. Other factors, such as age, education and skills, can also have a fundamental impact on an individual's capacity for work and hence on the level of support they require.

11.2 Stakeholders have also highlighted the social barriers affecting the ability of some disabled people to move into and sustain work, particularly in the current economic climate. This is not recognised in the ESA process. There is a large body of evidence demonstrating that people with health conditions and disabilities face discrimination and that their rates of employment improved very little in the relatively favourable labour market conditions pre-recession. Despite legislation to combat discrimination, programmes such as Pathways to Work that aimed to move Incapacity Benefit recipients closer to the labour market, and the availability of aids and adaptations to the work-place, theoretical work capability has not enabled significant numbers to move into employment.

11.3 It is perhaps inevitable that a test that does not reference the realities of the labour market presents an immediate problem of comprehension and credibility, particularly for those claimants who are subject to the test and are found fit for work but still face daunting barriers to finding employment. As we note below, the costs and impacts of a process that does not always lead to a substantial improvement in the circumstances and prospects of sick and disabled people who are seeking the security of a minimum income highlights the need for a system that is seen to be fair, transparent and humane.

## **12. The scoring system**

12.1 We have fundamental concerns about the operation of the WCA as a points-based scoring system. Such a system places the emphasis on the number of points achieved rather than on the assessment of actual capability for work and any functional adaptation. We appreciate Departmental concerns about the objectivity of an alternative approach, but feel that objectivity would be better achieved by asking consistent questions and obtaining detailed answers. In practice, a scored system does not equate with objectivity, because it is based on the opinions of the assessors.

12.2 A points-based system also fails to take account of the true effect of multiple impairments, which can be logarithmic in their impact, rather than simply additive. This is particularly the case for impairment across domains, for example musculoskeletal/heart problems and mental health/pain. A more credible system would recognise the cumulative and inter-related effects of such conditions, and award points accordingly.

### **13. Evidence base**

13.1 We strongly recommend that the Department continues to build a robust evidence base on ESA and the WCA, particularly with regard to outcomes for claimants who have been found capable of work by the WCA, in order to make an effective assessment of the current system and support the further development of the WCA. It may be the case, for example, that claimants with health conditions and disabilities are found to be capable of work, move to JSA and become long-term unemployed as they are not able to find suitable employment.

### **14. Costs**

14.1 We are concerned about the costs of the end-to-end process of assessing an ESA claimant, which could be an expensive exercise if it does not result in substantial numbers of individuals returning to, and remaining in, employment. This is likely to be a particular risk in the case of claimants migrating from IB to ESA. We have been unable to find any account of the real costs of the assessment process, or the costs of subsequent interventions (as claimants move into the JSA or ESA WRAG regimes) as claimants continue to comply with the relevant conditions of benefit entitlement but without making a successful transition to sustained employment.

### **15. Timing**

15.1 Respondents to our consultation suggested that in some areas assessments are not being completed within the 13 week assessment phase. This has implications for the provision of support services, particularly where these have been contracted out of Jobcentre Plus. Consistency of service provision and operating within the target times are vital to the system.

### **16. Communication**

16.1 Inadequate communication at the launch of ESA, particularly with regard to the occupational capability focus of the WCA, resulted in confusion and misunderstanding for claimants, staff and medical practitioners. This highlights the need for a comprehensive customer information strategy, allowing complete and accurate information to be very clearly communicated to claimants, intermediaries and Jobcentre Plus/HMRC staff.

16.2 Evidence presented to us by respondents suggests that the communication of outcomes needs to be better handled: for example, the piloting of a telephone call to explain a decision before sending out a letter has reduced appeal rates. Anecdotal evidence from Tribunals also suggests that claimants often find it easier to accept a decision if it is properly explained to them in person, even if their appeal is not upheld. We believe that investment in humanising and opening up the process to real engagement with the claimant could pay dividends. We recommend that the telephone call pilot is extended to cover all ESA claimants.

16.3 Respondents have also suggested that the description of the assessment as a medical examination is misleading as it is not diagnosis-based. The assessment could be re-branded to describe the assessment in terms of an examination of work capabilities and the support required to overcome barriers to work.

16.4 We appreciate that the ESA decision letters need to point directly to appeal because of the benefit implications (ESA continues in payment only for claimants who have lodged a formal appeal). However, we recommend that the letters should also inform claimants that any additional evidence should be presented to Jobcentre Plus, whether or not they decide to appeal, as ESA decisions can be submitted for reconsideration.

16.5 We are also concerned that information about the decision making process during appeals is not routinely fed back to DMs or Atos. We recommend that feedback should be given to fulfil a training and development need.

## **Summary**

We welcome the opportunity to contribute to the independent review. We believe that there is clear evidence of the need for process improvements which would drive an increase in the quality of the claimant experience and the accuracy of the outcome. We would highlight the following areas for further consideration:

- Enhancing effective engagement with claimants – focussing on communication and the assessment process
- Rebuilding the DWP Decision Making role for ESA to ensure that it is more proactive and customer focussed
- Reviewing supplementary (medical) information earlier in the WCA process, to address the number of appeals and the high overturn rate
- Improving routine monitoring by including a regular audit of process (based on a narrative or recorded account of the WCA), not just outcomes for the WCA, and continuing to build a robust evidence base.