



Department
for Work &
Pensions

Government Response to the House of Commons Work and Pensions Select Committee's Report on Employment and Support Allowance and Work Capability Assessment, First Report of Session 2014–15

Presented to Parliament
by the Secretary of State for Work and Pensions
by Command of Her Majesty
November 2014

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Foreword

I would like to thank the Work and Pensions Select Committee for its report on Employment and Support Allowance (ESA) and the Work Capability Assessment (WCA).

Since the report was published we have already made changes, appointing a new contract provider, Maximus, for health-related assessments and Dr Litchfield will today be publishing the fifth independent review of the WCA.

Whilst improving the WCA is important, we need to do more to support those with disabilities and health conditions to stay in or return to work. Work is almost always good for health and most disabled people and people with health conditions can and want to work, provided they have the right support.

Work is not only good for individuals; it is good for our economy and society. This Government's long term economic plan is delivering – with employment rising over the last four years by nearly 1.75 million, the number claiming the main out-of-work benefits reducing by over 850,000 and workless households falling by over 600,000.

However, it is not sustainable for large numbers of people to remain on incapacity benefits when better support could help them return to work. As the economy continues to improve we must support disabled people and people with health conditions who are currently out of work to find employment wherever possible. Equally importantly, we need to prevent people needlessly falling out of work.

This Government has already laid the ground work for this. We are changing employers' attitudes through our world leading Disability Confident campaign, the introduction of the Care Act, improving access to mental health services and by the introduction of the Fit for Work service.

But we can do more. My ambition is for the UK to become a world leader in supporting disabled people and people with health conditions so that they can realise their full potential.

To do this, we need a more joined-up approach across Government so that individuals get the support they need, when they need it.

This response sets out the Government's plans to learn more about the support needs of claimants through a series of pilots and responds to the Work and Pensions Select Committee's recommendations. I look forward to continuing to work together in supporting disabled people and people with health conditions to stay in or return to work.



Mark Harper MP

Minister of State for Disabled People

Introduction

1

What this Government has achieved so far

In 2010 we inherited a position where the majority of people claiming benefits as a result of their health condition were receiving old-style incapacity benefits while more recent claimants were going through the Work Capability Assessment (WCA) and being placed onto Employment and Support Allowance (ESA).

Since that time we have taken a number of steps to improve the operation of this system. An important focus has been the expansion of employment support since we know that work has beneficial effects for most disabled people and people with health conditions. In 2010 there was limited support available to ESA claimants. The Work Programme, which we introduced in 2011, changed that by providing a nationwide employment offer. Claimants placed in the ESA work-related activity group (WRAG) – initially those with three or six month review dates and more recently also those with 12 month review dates – are referred to the Work Programme. Other ESA or incapacity benefit claimants can volunteer to join it. As noted later in this report, the performance of the Work Programme in respect of ESA claimants has been improving.

Alongside this increase in employment support in 2011 we began the process of reassessing around 1.5 million claimants on old-style incapacity benefits. As part of this process, 728,000 people are now looking for or preparing for work. This is an excellent outcome but there is more to do as while the 100,000 fall in the overall incapacity benefits caseload since 2010 is welcome, we believe there is scope to help more people off benefit and into work.

Around 43 per cent of young ESA claimants are currently within the Support Group. Whilst the Support Group provides an important safety net, we want to ensure that for the vast majority of young people who have aspirations to work, we can help them meet their goals.

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Through the IB reassessment process and the introduction of the Work Programme we have greatly increased the amount of employment support available and the number of people who can benefit from that support.

We have also focused on improving the claimant experience, having implemented over 60 of the 83 recommendations made from the first four annual independent reviews of the WCA, with the remainder in progress.

When the WCA was introduced, in 2008, it deliberately had more focus on mental health than the assessment it replaced, the Personal Capability Assessment, but there was still further to go. Recognising the challenges of accurately assessing claimants with mental health conditions, this Government has taken decisive action to make the assessment more sensitive and better able to capture the functional impact of these conditions. This has included implementing the recommendations of a Department-led review, which simplified the language of the descriptors and expanded the Support Group for mental health conditions, and implementing recommendations from the WCA independent reviews, such as improving the ESA50 (the questionnaire about their health condition issued to claimants in advance of the WCA) to capture better the impact of mental health.

Later in this report, we reference the new provider, Maximus, who will deliver ESA assessments from March 2015. The financial and commercial terms of the contract and the robust controls it contains will ensure they can recruit sufficient assessors to deliver the number of assessments that we require.

We have continued to build our employment support offer. For example, the expansion of Access to Work means thousands more disabled people are getting support, and our flagship disability employment drive, Disability Confident, is now working with 1,100 employers. We also published the “Disability and Health Employment Strategy: The Discussion So Far”¹ in December last year, setting out our plans for a personalisation pathfinder to test a more individual and flexible advisory approach, and developing a prototype for a Gateway Employment tool which will assess individuals to identify the most effective support for them. In addition, we have extended and updated the Employer Portal with information and guidance on employing disabled people; launched a Young Person’s portal with information on the help and support available; and created a toolkit for MPs to help them deliver local events to bring together employers and disabled jobseekers.

As well as improving the support available to people when they claim ESA we have looked at ways of providing earlier interventions because we know that in many cases ill health starts long before a claim is made. We are therefore introducing Fit for Work to provide personalised support for employees in the early stages of sickness absence or ill health. This should speed up a return to work and support people to stay in work. Fit for Work will also offer general health and work advice to employers and GPs to help individuals stay in or return to work.

Claimants with a mental health condition have become an increasing priority. Since ESA was introduced the proportion of people claiming with mental health as a primary condition has been steadily rising. A significant proportion of Jobseeker’s Allowance claimants also have a mental health condition.

To help develop our understanding of the best approaches to support people with mental health conditions, we have launched Psychological Wellbeing and Work pilots which will explore how we can improve both employment and health outcomes for this group. We have also been supporting our staff to help people with mental health conditions. In January, for example, we launched the Employment and Wellbeing toolkit, which offers practical support to Jobcentre Work Coaches to help them work with claimants with mental health conditions.

¹ <https://www.gov.uk/government/publications/the-disability-and-health-employment-strategy-the-discussion-so-far>

In October this year, the Department of Health launched the new five-year plan for mental health, "Mental Health Services; achieving better access by 2020",² setting out the Government's ambition to achieve better access to mental health services and shorter waiting times, and the immediate actions that the Government will take to help meet those ambitions. This Government is investing an extra £40m funding this year to support some of the most vulnerable people to maintain and improve their health condition.

Other actions taken by the Government are also creating an environment which will help disabled people and those with health conditions find work. In May this year the Care Act received Royal Assent and this will help improve people's independence and wellbeing by ensuring they are aware of local services, facilities and resources. The Act requires local authorities to promote the wellbeing of individuals, and to establish the outcomes that they want to achieve in their day to day life, including the ability to engage in work, education or training. The Act also extends personal budgets and direct payments, giving people the flexibility to plan their own care and support and to exercise control over its provision.

Improving support for those who can work

Today we are announcing a package of ESA measures to improve further the support we offer disabled people and people with health conditions.

In early 2015 we are introducing a number of pilots to help us better understand what support ESA claimants need to help them move back into work.

The more intensive support pilot will increase the frequency and intensity of Work Coach support for the first six months following completion of the Work Programme.

In specific ESA 'hotspots' (areas that need the most help) we will be piloting a more active regime for ESA claimants. Those awaiting a WCA will be offered voluntary employment-related Work Coach interventions and we will also be testing occupational health advice for Work Coaches and back pain management support for claimants with this common musculoskeletal condition.

From early 2015, we are implementing a trial of the Claimant Commitment for ESA claimants at various stages of the claimant journey. Universal Credit claimants are required to accept a Claimant Commitment as a condition of entitlement, so the trial will inform our preparation for the cultural transformation that the introduction of Universal Credit requires for claimants and staff. The trial will take place in a single Jobcentre Plus District, with the groups being ESA claimants:

- awaiting a WCA (participation will be voluntary for this group);
- following a WCA (when allocated to the Work Related Activity Group); or
- who have completed their participation on the Work Programme.

The Claimant Commitment helps to focus claimants on their work related requirements including, where appropriate, proactive work search that treats looking for work as a full time activity. For the first time claimants' obligations are recorded in one place, clarifying both what they are expected to do in return for benefits and support, and exactly what happens if they fail to comply.

² <https://www.gov.uk/government/publications/mental-health-services-achieving-better-access-by-2020>

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We intend to introduce a measure to allow for a new extended period of sickness on Jobseeker's Allowance (JSA) in April 2015. This will mean that claimants who expect to be sick for less than 13 weeks can opt to remain on JSA rather than switch to ESA. This will allow them to continue to benefit from the support of the Jobcentre to help them return to work – as soon as they have recovered from their health condition.

We intend to introduce a measure to prevent claimants being paid the ESA assessment rate where a claimant has been found fit for work, but makes a repeat claim for benefit and has not developed a new condition or had a significant worsening of their condition. We would still need to consider the repeat claim but while we are considering it, and pending any appeal against our refusal of that claim, no ESA would be paid although JSA could be claimed. This is due to be introduced next spring and should help ensure that claimants found fit for work claim JSA and remain closer to the labour market, rather than looping around the ESA system.

We will evaluate the results of these pilots and consider any changes needed as part of the next spending review.

The challenges ahead

We need to ensure that the support system is correctly aligned so that those who want to work are given the right opportunities to reach their potential, whilst continuing to provide appropriate support for those who are unable to work.

We know work is almost always good for health, and that most disabled people and people with health conditions want to work. Setting active job-search activities as the condition for receipt of unemployment benefits and ensuring that jobseekers attend regular face to face interviews has been successful in preventing long-term unemployment for many JSA claimants. However, it is right that interviews and support should be flexible enough to accommodate an individual's needs in relation to their disability or health condition.

Successive Governments have seen the improved work outcomes that can come from increasing work-related activity, alongside appropriate support. We can also see the advantages in tailoring expectations and support on a more personalised basis and are making this a central part of Universal Credit. For example, in the pre-WCA assessment phase we will tailor our interventions to the circumstances of each claimant and will continue to test and learn new approaches to improve employment outcomes for this group. We need similarly to explore further what will work best for ESA claimants. And the new Fit for Work service, by providing personalised support to employees in the early stages of sickness absence or ill-health, will help speed up a return to work and support people to stay in work.

In the context of the economic recovery and the Welfare Cap, we need to ensure that money is spent in the most effective way for this group of people so that we ensure that those with the greatest need are protected, and we help those who can work to do so.

We also need the assessment process to identify health and employment support needs, whilst not being overly burdensome or intrusive for the claimant and ensuring that benefit is paid to those who need it most. Our objective is that claimants should not need to go through unnecessary assessments when there is information held within our systems that might support their claim. Clearly there is a need to strike the right balance between making the right decision based on all the appropriate available evidence, and being proportionate in gathering and considering that evidence, so that decisions are made without unreasonable delays or undue administrative costs.

Personal Independence Payment (PIP) and ESA are separate benefits, designed to meet different purposes. There are considerable challenges concerning the use of evidence from PIP assessments in WCAs and vice-versa. However, there is more we can do to share information between the two assessments when it is appropriate to do so. We have begun to test sharing WCA assessment reports with PIP assessment providers to inform their assessments and help us make decisions faster.

A further objective is to ensure that future action takes full account of Universal Credit, the key objective of which is to support people into work. In Universal Credit, for those disabled people and people with health conditions awaiting a WCA there will, as mentioned, be a tailored system of support and interventions. For those claimants found by the WCA to have a limited capability for work or found to have limited capability for both work and work-related activity the current UC design broadly mirrors the existing benefit system in having different levels of financial support and work expectations.

Under UC, the financial advantages of work will always be clear for all claimants. This includes people who are able to work only a limited number of hours each week or who have variable conditions which mean that some days they can work and some days they cannot.

ESA claims process and outcomes

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WPSC recommendations in detail

The preceding sections have set out the Government's broad position on the employment support available and the people who can benefit from that support. The following pages respond to the recommendations made by the Committee.

The Government notes the comments made to the Committee by claimants about the anxiety caused by the WCA. The Department for Work and Pensions (the Department) has taken steps to improve communications with claimants, partly in response to the independent reviews by Professor Harrington and Dr Litchfield. The Department has also consistently made clear to external providers that it is essential for assessors to understand the anxiety claimants may feel, and to manage face-to-face assessments accordingly. This point has been made explicitly in discussions with the new provider, Maximus, and standards of professional conduct are set out in the service requirement.

The Committee comments that the allocation to the Work Related Activity Group (WRAG) is not sufficiently sophisticated to address individuals' health barriers to employment. Once the outcome of the WCA is known, Jobcentre work coaches determine the type and level of work related support that is right for each claimant in the WRAG; and Disability Employment Advisers provide specialist assistance for people with more complex needs. The Jobcentre work coach carries out a diagnostic interview to assess an individual's needs and offers tailored advice and support to address those needs. An action plan is drawn up to capture the details of the analysis, actively involving the individual. The options available to the adviser include the Work Programme and Work Choice. Following the diagnostic interview ESA claimants in the WRAG are required to attend periodic interviews with the adviser, who can be a Work Programme, Work Choice or Jobcentre adviser. Jobcentre advisers will also consider whether a claimant who is eligible for the Work Programme is better supported through Work Choice.

As covered later in the paper, employment outcomes through the Work Programme have been improving. We will, however, continue to look at the best ways of offering labour market support.

Improving the claims process

3

Recommendation 3

The current ESA process is too long and complex. We agree with Dr Litchfield that it would be improved if DWP itself, and not the assessment provider, issued the ESA50 and decided whether a face-to-face assessment and/or additional evidence was necessary. This would both speed up the process and put the DWP decision-maker at the heart of the process. We recommend that this change be implemented when the new provider starts delivering the WCA.

Recommendation 4

As part of this new process we recommend that DWP decision-makers (DMs) proactively seek additional evidence, from both health and social care professionals, rather than placing the onus to do this on claimants (although claimants should retain the right to submit evidence with their ESA50 if they wish to do so). DMs are best placed to know whether additional evidence is necessary, whereas claimants may not know what evidence would be most useful or from whom to seek it, and may not be able to afford the significant charges which some GPs and other professionals require. Although this change may lengthen the decision-making period and may incur some additional public expense, this is likely to be balanced by a reduction in the number of appeals, which are expensive, time-consuming and stressful for claimants. DWP should also make clear guidance available to both professionals and claimants on what evidence is most useful in the process. This guidance should explain that supporting evidence needs to set out how a condition affects a claimant's functional capacity. DWP might also wish to explore options for providing training on this for GPs and other professionals.

Recommendation 5

We also recommend that DMs give much more careful consideration to whether a claimant can be placed in the Support Group without having to undergo a face-to-face assessment. Paper-based decisions are quicker, cheaper and less stressful for claimants, and may well be possible for a greater number of claims than is currently the case. However, we do not believe that paper-based assessments are appropriate for placing people in the WRAG, as can currently happen with IB reassessments (but not ESA new claims), because moving a claimant to a lower level of benefit should be based on the widest available evidence, particularly given the additional job-search conditionality which arises from being in the WRAG. We recommend that DWP change this policy urgently so that IB claimants are not placed in the WRAG without a face-to-face assessment.

The Committee endorses, and expands on, a number of recommendations made by Dr Litchfield in the fourth Independent Review of the WCA with the aim of simplifying the WCA claim process. The Government agrees that the points raised in recommendations 3 and 4 merit investigation.

In recommendation 3 the Committee suggests that the Department's decision makers (DMs), and not the assessment provider, issue the ESA50 and decide whether a face to face assessment or additional evidence is necessary. The ESA50 gives claimants the opportunity to describe how their health condition affects their everyday life. The Department believes it is important to continue to use the medical expertise of assessors: they have extensive clinical experience and training which are crucial to utilise in this process. At present the IT systems used by Atos (and to be used by Maximus) issue the ESA50 and it is not clear that the benefits to the claimant would outweigh the costs, and likely disruption, of such an IT and operational change.

The Department has been looking at how best to balance the responsibilities of DMs and assessors as part of the feasibility work into Dr Litchfield's recommendation to carry out a full impact assessment on an alternative process where the Department's decision makers would triage cases. The results from initial tests are not conclusive and we are considering alternatives such as including an assessor in the team of DMs to support them in decision-making. While we will not have in place a system proposed by recommendation 3 when Maximus starts, we will continue to look into the options for earlier decision-making.

The Government accepts the point made in recommendation 4 that some claimants may not know which evidence would be most useful or from whom to seek it: but subject to further consideration of closer working between DMs and assessors, believes that assessors are best placed to decide what further evidence might be needed. The Committee will be aware of the on-going judicial review on the Department's approach to seeking further medical evidence where claimants have a mental health condition. The Department will consider the Upper Tribunal's judgement once it is received. The Committee's recommendations on clear guidance and the need for any training for GPs and other professionals will be reflected in any changes introduced.

Recommendation 5 focuses on DMs giving more careful consideration to whether a claimant can be placed in the Support Group without a face-to-face assessment. The Department agrees that there should not be unnecessary face-to-face assessments and assessors are trained in considering this as part of providing their advice to the Department. The existing guidance makes it clear that assessors should provide advice without a face-to-face assessment where appropriate, and over the two years to February 2013 an average of two thirds of claimants allocated to the Support Group did not have a face-to-face assessment.³ This demonstrates that the current process already gives careful consideration to placing claimants in the Support Group without a face-to-face assessment.

We do not agree with the Committee's recommendation that claimants having IB reassessments should never be placed into the ESA WRAG group on the basis of a paper-based assessment. In some IB reassessment cases the assessor may conclude that there is sufficient evidence based on past claims to IB to enable them to make a judgment without the need to meet the claimant. Where there is not sufficient evidence available the assessor will carry out a face-to-face assessment. As the Committee rightly notes, paper-based assessments can deliver swifter and less stressful outcomes and we believe it is appropriate to make use of them in IB reassessment cases, where the individual facts justify it.

Recommendation 6

We acknowledge that reassessments are a necessary feature of the ESA system, to ensure that claimants remain in the correct benefit group with the right level of conditionality placed on them. However, reassessments are occurring too frequently, particularly for claimants with progressive conditions and ones which are unlikely to change. They also often take place too soon after successful appeals. Unnecessary reassessments are distressing for the claimant and a waste of public money. We recommend that DWP implements the recommendations of the independent reviewers on reassessment intervals without further delay and that it looks again at whether its current reassessment criteria are in the best interests of claimants and are a good use of public funds. A speedy decision on this would assist the new contractor to plan its work.

The Government agrees with the Committee that reassessments should not happen too frequently or too soon after successful appeals. Dr Litchfield recommended that a new reassessment period of up to five years should be introduced in the Support Group for people with severe incapacity from degenerative brain disorders. The Government accepted this recommendation in principle, and the Department is now exploring whether this assessment should be linked to specific conditions and the most appropriate review period.

Routine reassessments are currently suspended to focus on new claims and the points made by the Committee will be considered when this suspension comes to an end. The Government accepted both of Dr Litchfield's recommendations on applying any Tribunal recommendations on review periods as the default and on a minimum period of six months between a successful appeal decision and the issue of a review notice. The Department has already issued updated guidance to decision makers on both of these points.

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265611/4th-ind-review-wca-tables.xls

Recommendation 7

We welcome DWP's acceptance of Dr Litchfield's recommendation that all ESA-related forms and letters should be reviewed. We recommend that DWP improve the way it communicates with claimants, both in writing and in telephone calls. It should ensure that forms, including the ESA50, and letters are user-friendly and in plain English; the language used should be clear, with explanations of the more technical terms; and confusing legal explanations should be in footnotes or annexes rather than the main text. The terms "limited capability for work" (for those placed in the WRAG) and "limited capability for work-related activity" (for those placed in the Support Group) are very confusing for claimants. We recommend that DWP finds more meaningful terminology to use in explaining decisions on ESA claims to claimants.

Recommendation 8

Communication with contribution-based ESA claimants placed in the WRAG is particularly important because they need to understand that their ESA will terminate after a year. The consequences for claimants of the 12 month time-limit and the options available to request mandatory reconsideration of the WRAG decision and to apply for income-based ESA at the end of the time-limit should be clearly set out. We recommend that DWP ensure that these claimants receive specific and clear information on the implications of this claim outcome, including when the time-limit starts and when it will end, both in the decision letter and in the Decision Assurance telephone call.

The Department regularly reviews its communications with ESA claimants, drawing on feedback from stakeholder groups and claimant insight, and the departmental communications team includes accredited plain English practitioners. However, as the former Minister of State for Disabled People acknowledged when giving evidence to the Committee, the language used in communications with claimants can always be improved further.

All of the ESA communications are being reviewed in the light of Dr Litchfield's recommendations (and the Committee's comments). As this is an extensive review of all communications, the Department has developed a plan to prioritise ESA letters. The revised ESA50 is due to be issued early in January 2015, but other letters will be reviewed and issued to a longer timescale.

The Department notes the specific comment about the need to ensure that contribution-based ESA claimants who are placed in the WRAG understand the impact of the time limit. The review will address this comment. It will include the notifications issued once the outcome of the WCA is known and the subsequent letters issued notifying claimants that their benefit is due to come to an end. In addition, we will review the content of Decision Assurance Call in these circumstances.

Recommendation 9

More than 80,000 new ESA claimants and IB claimants undergoing reassessment, many of them with progressive conditions, have been placed in the WRAG since ESA was introduced, with a prognosis statement that a change in their functional abilities is unlikely in the longer term. The purpose of the WRAG is to provide work-related support for people who are expected to be fit for work in the short to medium term. Work-related conditionality accompanies this designation. We believe that it is wholly inappropriate to place people in the WRAG if they have a condition which is unlikely to improve and which makes their prospect of returning to work remote. We therefore recommend that DWP changes its practice so that claimants with this prognosis are allocated to the Support Group and not to the WRAG.

The Committee points out that considerable numbers of claimants with progressive conditions have been placed in the WRAG with a re-referral statement that a change in their functional abilities is unlikely in the longer term. This tends to happen when a claimant's condition is not likely to improve (or to get worse) but, with the right support, that person might be able to return to some form of work. It is also possible that an individual might adapt to their condition or that there might be advances in treatments available.

The Support Group is only intended for those claimants who cannot reasonably be expected to undertake any form of work-related activity. Given the beneficial impacts of even a small number of hours of either work, or structured work-related activity, it is important that claimants are not assigned to the Support Group where a closer attachment to the labour market would be of benefit to them. The risk of an assumption that because a condition is progressive and it might not be possible to work in the future, the claimant is not able to do so now, is that this person experiences a number of years of inactivity with detrimental effect.

Since November 2013 the Department has been running three pilots for ESA claimants who are due to be re-referred for a WCA in the longer term (18-24 months) to help understand the impact of the support provided by assessors, Jobcentre staff or Work Programme providers. The results of these pilots will build the evidence base of what works for ESA claimants to inform future policy in this area.

Design and application of the WCA descriptors

4

Recommendation 10

We welcome the Evidence Based Review as a step towards evaluating the effectiveness of the WCA descriptors. However we do not believe that the Review was sufficient in itself to lay to rest concerns about the descriptors. There were factors both in the way the Alternative Assessment was piloted, and in how its outcomes were compared with those of the WCA, which limit its value as a comparative test. To help address the limitations of the descriptors in the short term, we recommend that DWP remind both Atos assessors and its decision-makers that they must take proper account, in coming to a decision, of the claimant's ability to undertake an activity reliably, repeatedly and safely. Clear guidance should be issued to HCPs to avoid reporting inferences from a claimant's responses as factual statements of capability (as recommended by Dr Litchfield), and instead to use follow-up questions to ensure that they fully understand the impact of a health condition or disability on a claimant's functionality. In the longer-term, DWP should reconsider the effectiveness of the descriptors as part of the redesign of the system that we recommend in Chapter 8.

There are three elements to this recommendation. First, the Committee asks the Department to remind assessors and decision makers that they must take proper account of a claimant's ability to carry out an activity "reliably, repeatedly and safely". This is a standard part of the training for both groups. With the transition from Atos to Maximus, and the recruitment of new assessors, the Department is planning a refreshed training programme for decision makers and assessors. The training will address Dr Litchfield's recommendation about the need to improve this relationship. The need to take fluctuating conditions into account, and not just focus on a "good day", will also be a key part of this training. Maximus intend to improve the claimant experience through a number of initiatives, such as increasing the number of assessors who specialise in mental health.

Secondly, the Committee endorses Dr Litchfield's comment about assessors not reporting inferences from claimants' responses as factual statements of capability. The Department has reviewed the written training materials and made sure this point is fully brought out – the same will be done for the training programme outlined above.

Finally, the Committee proposes that the effectiveness of the descriptors is considered as part of a longer-term redesign recommended in their report. We cover that recommendation in Chapter 8 of our response.

Future delivery of the face-to-face assessment and the new contract

5

Recommendation 11

Atos has become a “lightning rod” for much public dissatisfaction with the benefit decisions people receive. This is unlikely to change if the WCA is simply “rebranded” by moving to a new provider, who will inevitably face a huge challenge in delivering the new contract. We recommend that the Government takes steps to communicate clearly to claimants, the wider general public and the media, that it is DWP which decides on benefit eligibility, not the contracted provider of the WCA, and that the face-to-face assessment is just one part of the decision-making process.

The Department agrees it is important that clear messages are communicated to claimants and the media alike. As the Committee says, the WCA conducted by an assessor forms only part of the decision making process, and the assessor’s job is to make a recommendation which the Department’s decision maker then considers along with any other evidence.

The Department recognises there is more to do in communicating the different responsibilities more clearly. Work is being carried out to update documents and training to ensure that internal and external messaging is clear about the differences between the roles of the two organisations, including maximising the opportunity from the branding of the new service.

Recommendation 12

Although some progress has been made, concerns remain about the accessibility of Atos assessment centres, the overbooking of appointments, and the manner in which some claimants are dealt with by assessors. We recommend that DWP specifies exacting service standards relating to these aspects of the claimant's experience of the WCA in the new contract. The Minister made clear that the Government is willing to pay more for a service that meets the standards that claimants and taxpayers are entitled to expect. We welcome this acknowledgement that, as assessments are to remain part of the welfare system, they should be adequately funded.

As with any new commercial competition, the Department sought to learn lessons from current and past contracts. In addition, improvements identified by EY, appointed as remedial adviser as part of the exit agreement with Atos, have been incorporated. The overriding aim is to ensure smooth transition between Atos and Maximus, stabilise delivery, build capacity and improve the delivery of the WCA.

As the Committee notes, the Department should be realistic about the challenge of transition, and not expect delivery to be transformed overnight. In the first instance, the estate in the new contract has been supplied by the Department, including estate that was under lease to Atos. The contract stipulates that any estate provided by Maximus must comply with the Equality Act 2010; have a suitable ground floor area; and have access to suitable parking for Blue Badge holders. Maximus also intend to conduct a full estates review in the first six months.

The new contract will carry forward service levels which address the number of claimants being sent home unseen due to accessibility issues. The specification for the new contract is also explicit about how the claimant must be treated during the assessment and has a strong emphasis throughout on the importance of the claimant experience, and acting on claimant feedback.

Recommendation 13

If claimant confidence in the process is to be restored, the new contractor will need to demonstrate that its staff have the expertise necessary to carry out effective assessments of claimants presenting with the more difficult conditions, including those which are progressive, fluctuating or relate to mental and cognitive health. We support Dr Litchfield's recommendation that assessors should have suitable and sufficient experience in mental health. We recommend that this should be set out on the face of the contract and that DWP extend this to other conditions which are acknowledged to be difficult to assess.

As set out in the Written Ministerial Statement of 27 March this year, it is expected that the Transfer of Undertakings Protection of Employment regulations will apply and most of the Atos employees, including assessors, will transfer to Maximus. The Committee will also be aware that Atos was tasked with completing a quality improvement plan. This was satisfactorily completed and the Department has full confidence in the assessors currently working for Atos. Maximus will be seeking to recruit additional assessors and the Department will ensure that these are trained to the same high standard as those working for Atos.

The Committee supports the recommendation made by Dr Litchfield that the Department should strengthen the requirements for assessors to have suitable and sufficient previous experience of dealing with people with mental health conditions. The Department agrees with the principles underpinning Dr Litchfield's recommendation, and believes that 'suitable and sufficient experience' includes matters such as post qualification experience, training, and on-going professional development. The Department is satisfied that assessors do, at present, have suitable and sufficient experience to perform their role. However, the Department is reviewing the matters raised by Dr Litchfield and is considering whether any additional requirements should be put in place. To provide greater assurance, the mental health training for new entrant assessors will be reviewed to ensure that this aspect is given sufficient weight, and the Department will continue to work with the Royal College of Psychiatrists to quality assure all assessor training and guidance materials.

Recommendation 15

The new WCA contract needs to balance the quality of assessment reports with specified levels of throughput of referrals which avoid backlogs and delays to claimants. Achieving this balance will depend heavily on DWP providing accurate forecasts of referral levels, as well as the efficiency of the provider. To ensure transparency, we recommend that DWP publishes the forecast levels of referrals which will be specified in the new contract. These will need to include different levels to take account of: the initial period when the backlog is being cleared; the period when the IB reassessment is being completed alongside new claims continuing; and then the period when steady state is achieved and only ESA new claims and reassessments of existing claims are being processed.

The Government understands the rationale for the Committee's recommendation that the new contract takes a different approach to the existing contract in view of the fact that Maximus will be required to manage a backlog of referrals.

The new contract specifies the number of assessments required in each of the three years of the contract: 1,100,000 assessments (of which 1,000,000 will be WCAs) in 2015/16, and 1,300,000 assessments (of which 1,200,000 will be WCAs) in both 2016/17 and 2017/18. It will be for the Department to control the flow of work to Maximus until the work outstanding reduces to an optimum level.

Recommendation 16

We recommend that DWP takes all necessary steps to assure itself that the new provider has the capacity to deliver both quality and quantity of assessments. Performance indicators should be challenging and transparent and financial penalties should be applied if specified standards are not met. However, given the extreme negativity around the existing contract, the WCA is unlikely to appeal to the few private contractors with the necessary capacity to take it on. DWP's willingness to offer incentives in the new contract, as well as imposing penalties, is therefore welcome.

Based on lessons learnt from previous procurement exercises, the process for selection of the new assessment provider involved extensive negotiations with prospective bidders to help test their bids and enhance their understanding of the requirements. This negotiation period allowed the Department to examine the bidders' quality and price proposals and to reassure Government that bidders were able to deliver what is being asked of them before agreeing the final contract. This included how they would staff the service to deliver the number of assessments required and ensure flexibility in the service to cope with fluctuating demands. The evaluation criteria for the bids included a range of indicators on price, capacity to deliver and quality.

There is a balance to be struck between supporting Maximus to succeed and ensuring that the taxpayer receives value for money. Performance will be monitored carefully. The financial model that underpins the new contract will provide incentives to improve performance as well as financial remedies for poor performance. The required service levels, including those which attract service credits (financial remedies), are transparent and allow us to intervene early and decisively.

Recommendation 17

DWP also needs to demonstrate that it has sufficient expertise and capacity to manage a contract of this size and complexity, to ensure value for public money and that claimants receive an acceptable level of service. This does not appear to have been the case with the Atos contract. If this capacity does not currently exist, we recommend that it be developed as a matter of urgency, bringing in expertise from other parts of Government if necessary. We welcome the Government's plans, in the longer term, to bring in multiple providers. This makes it even more important that DWP should develop its contract management expertise. Once the new contractor has been selected, we recommend that DWP make public the cost of the contract to the public purse (and how far that differs from the previous contract), the way payments will be calculated, and the basic service standards, including the average number of assessments to be carried out per assessor per day. Greater transparency on such matters would avoid some of the controversy which has dogged this benefit. The Government may also wish to take this opportunity to consider whether, in the light of the negativity around the delivery of the face-to-face assessment by a private provider, it would be more appropriate for the assessment process to be taken back in house.

As noted in the Civil Service Reform Plan, the Government accepts that there is a need to build capability and capacity in commissioning and contracting.⁴ The Department has assigned an account manager to each of its health and disability contracts and will be embedding additional account managers with the providers to help improve performance and obtain maximum value for money. Where providers are unable to meet the required performance standards the Department works with them to address issues whilst seeking any financial remedies as appropriate under the terms of the contract. All contracts are placed against either DWP or Cabinet Office standard contractual terms, which include appropriate break and review terms.

The Government appreciates the interest in transparency of payments for outsourced services but needs to balance the need for transparency against the need to retain confidentiality for the commercial strategy of both Atos and Maximus. The value of the contract, specification, redacted terms and conditions, and schedules were published on Contracts Finder on 24 November.

The Department notes the Committee's comment that this may be an opportunity to consider bringing assessments back in house. At this stage the Department believes that the current approach with independent medically-trained advice provided to the Department's decision makers is right.

⁴ www.civilservice.gov.uk/.../06/Civil-Service-Reform-Plan-acc-final.pdf

Mandatory reconsideration and appeals

6

Recommendation 19

Mandatory reconsideration will be a success if it results in a reduction in unnecessary appeals to HMCTS. We are however concerned that its introduction may deter claimants who were likely to have been successful in their challenge from appealing, because the new dual process is more onerous. We recommend that the Department monitor claimant behaviour, to evaluate whether the policy is having this undesired effect, rather than fulfilling its intended purpose of ensuring a correct decision is reached more quickly and without needing to go to appeal.

The Committee has in the past expressed concern about the scale of appeals against ESA decisions.⁵ The Department has fundamentally reformed its appeals process to address this, with the introduction of Mandatory Reconsideration (MR) and other changes to make the system work better.

The Ministry of Justice Tribunals statistics⁶ published on 11 September 2014 showed a continued reduction in the volume of appeals against ESA decisions. The Department remains confident the reforms, including MR, have contributed to this and are helping to resolve more disputes without the need for appeal.

The Department has committed to publishing statistics on MR and expects that this will include information such as the number of MRs requested and outcomes. The Department is also gathering claimant views on their experiences of MR and the appeals processes through the Department's quarterly claimant service and experience survey. This will help develop understanding of how the reforms appear to be working in practice. In addition the Department is working with stakeholder organisations to establish potential improvements.

⁵ Work and Pensions Committee – First Report Employment and Support Allowance and Work Capability Assessments, July 2014

⁶ Ministry of Justice Tribunals statistics quarterly April to June 2014:
<https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2014>

The policy objective is to get decisions right based on all the available evidence as early as possible and, where there is a dispute, to enable swift access to justice. Should monitoring indicate areas where this is not the case the Department will look at what changes can reasonably be made to address this. It is important that decision makers focus on ensuring that the decision has been fully reviewed and that the claimant has been given the chance to provide any additional relevant evidence.

Recommendation 20

We recommend that the Department works with the Office for National Statistics to ensure that official statistics on the operation of mandatory reconsideration are published as a matter of urgency. These should include: volumes of reconsiderations received and processed since the policy was introduced; the outcomes of these reconsiderations; the overall impact on ESA outcomes; and the length of time it is taking for reconsiderations to be completed.

Developing robust and reliable statistics on MR is a significant piece of work. The Department has committed to publishing statistics as soon as departmental statisticians judge that the data meet the standards set out in the UK Statistics Authority's Code of Practice. The aim is to release some statistics on MR by the end of 2014.

Recommendation 21

We acknowledge that DWP often needs to seek additional evidence as part of the reconsideration process, which can be time-consuming, and we agree that it is better for mandatory reconsideration to take a little longer if this results in the correct decision being made. However this should not be an open-ended process and we do not accept that either of these factors preclude DWP from introducing a reasonable time target for completion of reconsideration. The introduction of a time target would also help to drive better performance.

The Department welcomes the Committee's acknowledgment that some cases – particularly those where further evidence is required – can require more time. Applying a time target to this process would undermine the aim to gather, consider and use evidence to make good quality decisions. The objective is that MRs will be completed without any undue delays.

It is also important to recognise that MR was extended to ESA decisions relatively recently, and a number of changes have been made to help speed up the process – but this needs to be done in an effective way and without compromising the quality of decision-making.

The Department will consider developing proposals for an internal performance indicator for decision makers who conduct MRs once sufficiently reliable data is available on which this can be based. This would enable the Department to monitor performance and ensure that MR is carried out in an appropriate time-frame.

Recommendation 22

We believe that it is inappropriate that those who have been determined by DWP to be fit for work and who have asked the Department to reconsider the decision are ineligible for assessment rate ESA. Although these people may be eligible to claim JSA, many are reluctant to do so because of the accompanying conditionality requirements. There has also been a problem with some Jobcentre advisers not being aware of the flexibility to modify the attached conditionality appropriately for these claimants. Assessment rate ESA and JSA are the same amount of money, so there is no financial saving for the Department from the policy, and it may in fact cost the Department money due to the administrative burden of moving claimants from assessment rate ESA to JSA during reconsideration, and then back to assessment rate ESA if they decide to appeal. We therefore recommend that claimants deemed fit for work following the WCA process who have requested that the Department reconsider that decision be paid ESA at the assessment rate until they receive the reconsidered decision.

The Department acknowledges that some claimants may be reluctant to claim JSA after being found fit for work. The Department has made a number of improvements to its processes to make the transition to JSA work more smoothly. When claimants are found fit for work, unless the decision is overturned, that decision is in law a final decision and there is no legal basis on which to continue to make any ESA payments. This applies to all benefits, not ESA alone. However, once an appeal is lodged, ESA can then be reinstated and backdated to cover the MR period.

When an ESA claimant is found fit for work, a Decision Assurance Call is made, during which individuals are advised how to claim JSA. The Department's view is that where an individual is found fit for work it is only right that they are encouraged, with advice, to seek employment. This approach – enabling them to claim JSA and access the support made available through Jobcentre Plus – is designed to help develop and strengthen their links to the labour market.

The Department has issued comprehensive guidance to its staff to help ensure that claimants are given the help and advice they need to claim JSA, and also to improve awareness of how the JSA regime can be varied to take account of the claimant's physical or mental health condition. Specialist employment advice is also available from Disability Employment Advisers based in Jobcentres.

The claimant will be asked to attend a new jobseeker's interview to see if they meet the conditions of entitlement i.e. they are available for, and actively seeking, employment and to agree a Claimant Commitment. Prior to this interview the Personal Adviser is able to request a summary of the reasons for the ESA decision from the DM to help them prepare.

Recommendation 23

We welcome the introduction of more extensive feedback from appeals through the provision of summary reasons by tribunal judges. However it is critical that this feedback is used effectively by the Department to improve the initial decision-making process. We recommend that, in response to this report, the Government set out how it plans to handle the volume of information it is now receiving through summary reasons, and how it will analyse and use it to improve the initial decision-making process. We further recommend that feedback from summary reasons is also shared with the new provider of the face-to-face assessment, so that it can be used to evaluate how assessments could be improved.

As recognised by the Committee, the Department has already made progress with how to make effective use of the feedback it receives from Her Majesty's Courts and Tribunal Service. The Government fully supports the Committee's recommendations and the summary of reasons has helped in broadening the Department's understanding of why decisions are upheld or overturned.

Since April 2014 Tribunal judges have provided summary reasons for their decisions on ESA and PIP. From July 2014 the Dispute Resolution Teams (DRTs) started to capture information from the summary of reasons in cases where the Department's decision on an ESA claim had been overturned. The DRT's quality coaches discuss Tribunal feedback with the individual decision makers who were responsible for the appeal response and the mandatory reconsideration. Feedback can also be given to the original DM in a Benefit Centre and their line manager.

In response to the Committee recommendations on the Government's plans to analyse the volume of information received, the Department has introduced a national database which captures detailed information on the summary reasons the Tribunal provides. This information is then analysed to identify trends and give feedback to DMs, the Department, assessors and the Judiciary. The plan is that regular analytical reports will be produced to identify key learning points and improve the decision making process. The Department sees this feedback loop as a key component in helping to get decisions right first time.

In addition, the Department has started to share feedback from the summary of reasons with the assessment provider, where either the assessment itself or the assessment report is a contributing factor in the Tribunal decision. The intention is that this will assist the continuous learning and improvement of both the assessments and reports.

Recommendation 24

We welcome the efforts to streamline and speed up the appeals process by increasing the capacity of the Tribunals Service, and introducing direct lodgement and a target time for DWP to submit its case to the tribunal. We were, however, surprised to learn that documentation is exchanged between DWP and the Tribunals Service in hard copy through the post, given the Government's emphasis on the benefits of using the internet for public services. There is clearly further scope for increasing efficiency and improving the service for claimants making an appeal by introducing an online appeal application form and enabling electronic transfer of documents between DWP and the HMCTS. We appreciate that there will be an initial cost, but the return in terms of speed and efficiency would be worthwhile. We recommend that the Government set out the action it intends to take in this respect in response to this Report.

The Government fully accepts the point made by the Committee that the scope for increasing efficiency and improving the service for claimants should be explored by introducing an online appeal application form and electronic transfer of documents between the Department and Her Majesty's Courts and Tribunal Service (HMCTS).

HMCTS are in the process of assessing the benefits of an online appeal form which will enable claimants to access the Tribunal digitally. This builds on lessons learnt from similar initiatives in other areas of tribunals and courts.

HMCTS have already introduced the digital transfer of outcome decision notices from the Tribunal and are looking to extend this to straightforward exchanges of information, for example 'directions' and notification of hearing dates, in the current financial year.

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HMCTS has a well-developed digital strategy and has established a programme, with HM Treasury funding, to support further work to improve data sharing across the justice system. This work will be reviewed to see if there are parts that can be applied to Social Security Tribunals. At present the systems that are in place do not enable the efficient transfer and receipt of documents electronically, however HMCTS plan to develop a 'digital case file' for Tribunal cases in partnership with other Government Departments.

Interaction between ESA and employed outcomes

7

Recommendation 25

There is a gap in the current system which means that a claimant's employment support needs are not being properly assessed as part of the ESA claims process. In particular, claimants should not be found "fit for work" where they would only be able to enter employment if significant adaptations and support were provided. We recommend that DWP urgently reassess where in the process an assessment of health-related employment barriers could most appropriately take place—either by reintroducing the Work-focused Health-related Assessment (WFHRA) as a second stage of the WCA, or at a later stage as an extended version of the Work-focused Interview once the claimant is referred to Jobcentre Plus (or to the Work Programme). In the meantime, we endorse the recommendation made by both independent reviewers, that information obtained through the WCA process should be shared with Work Programme providers and JCP employment advisers.

The Government agrees with the Committee that it is important to identify the most appropriate health and employment interventions to support people back to work, whether they are found fit for work or placed in the WRAG.

The Work Programme is already successfully supporting ESA claimants, but we want it to do better: 1 in 10 of more recent ESA claimants (up to the end of June 2014) have had at least three months' work within the first 12 months of joining the programme. This is an improvement on 1 in 25 in the first year of the programme, and Work Programme providers are exceeding minimum performance expectations for more recent intakes of ESA claimants. The Department is now considering how best to develop the next phase of the Work Programme, looking to build on the success of the existing programme and enhancing the design to deliver an improved service and outcomes for claimants, including those with health conditions and disabilities. Work Programme providers currently work to a set of minimum service level requirements, which include actions such as each claimant having an action plan. Work Programme providers are free to innovate and decide the type of support and the frequency of contact with individual claimants.

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All ESA WRAG claimants have a diagnostic interview with the Jobcentre adviser to assess their needs. An action plan is used to capture the results including details of the claimant's health condition. ESA WRAG claimants who are assessed as not likely to return to work within 12 months continue to attend work focused interviews with the Jobcentre adviser. Jobcentres are encouraged to find innovative ways to provide support for claimants with health conditions and where a need is identified there is some flexibility to tailor the provision in place locally. Advisers deliver interventions flexibly and offer a range of support, including voluntary work experience, job search support, signposting to health support, specialist disability adviser support and access to self-employment options.

The Committee echoes the recommendations made by Professor Harrington and Dr Litchfield about sharing information with Work Programme providers and employment advisers in Jobcentre Plus. The Department recognises the potential gains this may bring in terms of an improved back to work action plan for ESA customers which reflects and accommodates an individual's health condition. The Department has developed a process to capture and share information from the Work Capability Assessment, along with any additional information provided, with Work Programme providers. The process is currently being quality assured to ensure the information and process supports these providers and will help them improve the service they offer to ESA customers.

Redesigning the ESA and WCA process

8

Recommendation 28

We recommend that the Government undertakes a fundamental redesign of the structure of ESA outcomes. This should focus on identifying changes to the assessment process, to ensure that the health barriers to employment that an individual faces are properly identified. For claimants in the WRAG, proper account needs to be taken of where they are on the spectrum of readiness for work. Work-related conditionality should be matched to the identified employment barriers. The support made available to help the individual move closer to work should be tailored more closely to their individual circumstances. It may be possible to use the different prognosis periods for when a claimant is expected to be fit for work as the basis for varying the conditionality and accompanying support. The redesign process will require a considerable amount of research, and will take time, but sufficient resources should be devoted to it to ensure that a new design is in place before the new multi-provider contract is tendered in 2018. The redesign will also need to take account of the implications for ESA of the introduction of Universal Credit.

The Government's current focus on ESA and the WCA is to ensure a smooth transition to the new WCA provider, continuing to improve the experience of claimants going through the WCA process and continuing to improve the employment support we offer, including through the pilots we have announced today. The Government will continue to keep how the system operates under review. The Department agrees that Universal Credit has an important bearing on handling claims from people with disabilities and health conditions and our thinking will take full account of its introduction.

Recommendation 29

The descriptors used in the WCA, and the way they are applied in the current points-based assessment, are not producing accurate outcomes of functional capacity in the workplace in many cases. The Evidence Based Review was a useful process, but more needs to be done to evaluate the effectiveness of the descriptors and to make them more responsive, particularly for claimants with progressive and fluctuating conditions, and those with mental, cognitive and behavioural difficulties. We recommend that the redesign of the ESA process includes a fundamental reassessment of the effectiveness of the design and application of the descriptors used in the Work Capability Assessment.

In relation to recommendation 29, the WCA has now been the subject of five independent reviews which have resulted in a large number of recommendations, of which the Department has accepted almost all in full or with only minor amendments. The Department has already implemented over 60 of the 83 recommendations from the first four independent reviews, with the remainder in progress. This reflects the significant commitment the Department has made to improving the WCA. The Evidence Based Review is a further example of the scrutiny which has been applied to the WCA. In light of the above the Department does not agree that the WCA is a flawed mechanism for assessing a person's functional capacity.

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