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Peer Review

Claimant: [REDACTED]
NI Number: [REDACTED]

Review conducted by:

Name [REDACTED]

Role [REDACTED]

Address DWP OPD Business Management Team, 5th Floor Daryl House, Stockton on
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Approved by: [REDACTED]

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Background and Purpose

1. [REDACTED].
2. [REDACTED].
3. [REDACTED].
4. [REDACTED].
5. This 'Review has been undertaken in accordance with DWP Peer Review Guidance and The Ombudsman's Principles of Good Administration, and its purpose is to consider the events [REDACTED] and to identify potential opportunities to improve the IBR process and our engagement with vulnerable claimants [REDACTED].
6. Whilst the 'Review does highlight potential process failures, the intention is not to seek out or apportion blame. It is intended to be a supporting, quality assessment tool that can be used as part of continuous improvement planning, and in addition to the recommendations on page 10, we have throughout the "Chronology of Events" section (from page 14) offered suggestions for consideration in respect of Process improvement.
7. We have also made contact with colleagues involved in continuous improvement to check that our recommendations do not overlap with theirs and to forge links between our teams in order to give closer consideration to the role of Peer Reviews in continuous improvement. The contacts are described at Annex 4.

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Summary of Findings

8. This section breaks down the IBR Process that [REDACTED] was required to follow, into the five main component stages. The synopsis of each stage begins with what we see as a reasonable objective for that part of the process, and highlights areas where the process may have failed in respect of the objective and / or the prevailing Guidance¹ relating to both the IBR Process and the identification and handling of vulnerable claimants. We have based the composition of objectives on a combination of what we understand from Guidance to be the purpose of the process, or policy intent, and what [REDACTED] reasonable expectations might have been.
9. [REDACTED].

Stage 1 Initial Contact by letter and Contact by CCD

- [REDACTED].

Stage 2 ESA50 Completion

- [REDACTED].

Stage 3 Work Capability Assessment (WCA) [REDACTED]

Stage 4 Decision Making and Appeal

- [REDACTED].

Complaint and Reconsideration

Stage 5 [REDACTED]

[REDACTED]

[REDACTED]

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Lessons Learned and Recommendations

10. [REDACTED].
11. [REDACTED].
12. The potential appears to exist for colleagues who are managing claimants through the national IBR Process to do so with minimal reference to the plentiful Guidance and advice on the importance of engaging correctly with vulnerable claimants. [REDACTED].
13. [REDACTED].
14. Currently, the identification of vulnerability is everyone's concern, and there are no steps in the IBR process where responsibility for such identification is allocated to a particular role. We know for example that detailed completion by the claimant of the ESA50 is crucial to process efficiency, and we also know that vulnerable claimants may, perhaps because of unfamiliarity with our procedures, be inclined to provide less information than they could about their condition in the ESA50. On return by the claimant, the content of the ESA50 is scrutinised by Atos who can refer back to the claimant's GP for more information if they believe it necessary to do so. There is however no specific requirement to consult with the GP in order to ensure that the ESA50 has been completed as comprehensively as possible.
15. Even though there are some opportunities for them to do so, we need to ask whether or not in the context of a fast moving environment of high volumes and anticipated levels of performance, the current process requires, encourages and supports BC colleagues to independently and systematically consider claimant vulnerability.
16. The problem of identification and ongoing awareness of a claimant's vulnerability is exacerbated for example by the absence of IT functionality to "flag" a claimant as such, and we also need to consider whether or not there is sufficient awareness of whose job it is to consider vulnerability and at what stage(s) of the process it should be considered.
17. The guidance advises staff "your experience of dealing with claimants will inform your opinion but (that they should) ensure this is based on behavioural evidence". This assumes that the member of BC staff who takes the call has experience of dealing with vulnerable claimants; and also in identifying characteristics / behavioural evidence over the telephone. [REDACTED].
18. BC colleagues are aware that claimants with [REDACTED] may find it difficult to engage effectively with our procedures, and the Department makes a wide range of Guidance and support tools available to help. Guidance acknowledges for example that claimants, [REDACTED], may have had very little contact with Jobcentre Plus and that it is essential that they understand the reasons for the actions being taken with their benefit. It goes on to say that claimants not already identified as 'vulnerable' may become so at any point during the Reassessment process, and that there is extensive Jobcentre Plus guidance on dealing with vulnerable claimants and also specific National Reassessment guidance. It makes the important point for example that claimants identified as vulnerable may be invited by the DM, during the

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Decision Assurance call to take any further information they may have to support their case into the local Jobcentre for a face to face discussion. [REDACTED] in the case of claimants who have specified that they do not wish to be contacted by telephone, the Decision Maker must write to them to advise them of the Decision and provide them with 17 days to supply additional information.

19. [REDACTED].

20. [REDACTED]. The risk associated with disregarding the possibility that some of these claimants need more support or a different form of engagement is that we fail to recognise more cases like [REDACTED], with consequent potential impact on the claimant. There is clearly a resource implication in treating more claimants with [REDACTED] as potentially vulnerable. However, that should be balanced against the resource implications of repeated appeals.

Recommendation

We recommend that

- A review is undertaken of DWP's ongoing Duty of Care in relation to the identification and support of claimants required to participate in the IBR Process, who as a result of a [REDACTED] may be vulnerable and have different or additional support needs
- When defined, the Duty of Care should be brought to the attention of all colleagues including those from Atos who are involved in the IBR Process, and that their responsibilities for the identification and support of claimants with a [REDACTED] are written into role descriptions and included as specific process steps

We believe that the risks related to non-identification and support of claimants with a [REDACTED] may be exacerbated by the following issues that might be considered as part of a Process review:-

- There are no specific steps in the IB / IS Reassessment Process that require the consideration of additional support needs for claimants with [REDACTED]
- There is no specific locus of responsibility for a claimant's entire IBR Process journey
- There is no IT facility to "flag" a claimant, for the duration of the IBR process, who may have different or additional support needs as a result of a [REDACTED]
- There is a possibility that BC staff are less likely to identify a claimant with a [REDACTED] as having different or additional support needs without an indication from Atos
- There are no specific process steps to monitor, support, and challenge claimants to complete the ESA50 fully and no "completion quality" measures in place

Consideration might also be given to the following anomaly. Having failed to contact the claimant by telephone on two occasions, the Decision Maker is

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required to send the Disallowance notification. This contrasts with the approach for claimants who have specified that they do not wish to be contacted by telephone, who receive the Decision by letter and then have 17 days to provide additional information, plus another 10 days if they fail to respond by the deadline.

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Annex 1 The IB / IS National Reassessment Process

Employment and Support Allowance is replacing Incapacity Benefit, Income Support paid on the grounds of illness or disability and Severe Disablement Allowance. Customers currently in receipt of those benefits will be assessed for Employment and Support Allowance through the IB Reassessment Process.

In the case of IB claimants [REDACTED], the existing Personal Capability Assessment (PCA) prompts will be re-sequenced by Pension Strategy Computer System (PSCS) into Work Capability Assessment (WCA) prompts. Two weeks before the WCA prompt matures PSCS issues an initial notification letter to the customer.

A Customer Account Management (CAM) task is automatically created for the Contact Centre Directorate (CCD) to make the initial outbound call, during which the customer will be advised that the reassessment process has started.

When the WCA prompt matures an automatic referral is registered on MSRS and the WCA process will start and the majority of cases will be referred to MSRS automatically via a new electronic interface.

An ESA50 and covering letter are sent by Atos to the claimant for completion and return

The claimant returns the ESA50 to Atos who decide whether or not a medical assessment will be required, and if so Atos arrange for the claimant to attend

The medical assessment is undertaken by a Health Care Professional who then prepares a report for the Benefit Centre Decision Maker who uses it in conjunction with other evidence to determine whether or not the claimant has limited capability for work and is therefore entitled to claim Employment & Support Allowance (ESA).

[REDACTED]

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Annex 2

[REDACTED]– Personal Information

[REDACTED]

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Annex 3 CHRONOLOGY OF EVENTS		
Date	Event and Comment	Process Improvement Discussion Points
[REDACTED]		

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Annex 4 Links to other areas of Continuous Improvement

1. As part of our consideration of recommendations and suggestions that may contribute to Process improvement, we have consulted with DWP colleagues involved in Continuous Improvement in OED and Medical Services.
2. The purpose of consultation was twofold. We wanted to check for contemporary consideration of the IB/IS Reassessment Process and to instigate dialogue with Continuous Improvement colleagues' about the potential for Peer Reviews to contribute to process improvement;
3. Our consultation has confirmed that there are currently no other initiatives with a remit to review and improve this part of the IB / IS National Reassessment Process.

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Annex 5 Reference

[REDACTED]

The IB (IS) Reassessment Customer Journey

[http://intranet.link2.gpn.gov.uk/1/jcp/guidance/bus_del/a-z/ib\(is\)%20reassessment%20for%20benefit%20centres/04%20IB\(IS\)%20National%20Reassessment/DWP_S214406-03.asp#P35_6136](http://intranet.link2.gpn.gov.uk/1/jcp/guidance/bus_del/a-z/ib(is)%20reassessment%20for%20benefit%20centres/04%20IB(IS)%20National%20Reassessment/DWP_S214406-03.asp#P35_6136)

[REDACTED]

Understanding Vulnerable Customers – IB National Reassessment Guidance

[http://intranet.link2.gpn.gov.uk/1/jcp/guidance/bus_del/a-z/ib\(is\)%20reassessment%20for%20benefit%20centres/04%20IB\(IS\)%20National%20Reassessment/DWP_S162175.asp#TopOfPage](http://intranet.link2.gpn.gov.uk/1/jcp/guidance/bus_del/a-z/ib(is)%20reassessment%20for%20benefit%20centres/04%20IB(IS)%20National%20Reassessment/DWP_S162175.asp#TopOfPage)

Vulnerable claimants

http://intranet.link2.gpn.gov.uk/1/jcp/guidance/bus_del/a-z/ESA%20Guidance%20For%20Benefit%20Centres/02%20Claimant%20Contact/DWP_S097418.asp

Harrington Review

Year One – summary of recommendations and what's been delivered

http://intranet.link2.gpn.gov.uk/1/jcp/directorates/cp/changedelivery/welfare/harrington/dwp_t693878.asp#P8_426

Decision Making Quality Assessment Framework - ESA & IB Re-assessment

http://intranet.link2.gpn.gov.uk/1/jcp/directorates/cp/changedelivery/native/dwp_t716560.doc

The IB (IS) Reassessment Customer Journey

Claimant Journey

24. To ensure the claimant understands what is happening and what is required of them at every stage in the reassessment process, a number of key 'touchpoints' have been built into the claimant journey. If the claimant is Non-English speaking the existing guidance should be followed to assist the claimant.

25. For claimants who live in Wales and who choose to deal with their business in Welsh, refer to the IB (IS) Reassessment Welsh Language guidance.

Touchpoint	Step in Claimant Journey – Up to Limited Capability for Work determination
1	Claimant may become aware about the forthcoming changes to benefit
2	Claimant receives an initial notification letter from Benefit Centre Directorate (BCD) informing them that changes are about to commence and advising them on the next steps
3	Claimant receives a telephone call from CCD to give them further information and advice and to find out if they need extra help with the process. CCD will also ask claimants who are in receipt of Child Dependency Allowance (CDA) if they agree to a claim being submitted to Child Tax Credits (CTC). If the claimant agrees a CTC claim will be made on their behalf. If the claimant refuses they will be issued a clerical Consequences Notification Letter.
4	Claimant receives <u>ESA50</u> Limited Capability for Work Questionnaire to complete and return to the Health Assessment Advisory Service
5	Claimant is contacted by the Health Assessment Advisory Service to arrange a Work Capability Assessment (WCA) if required. The appointment will be confirmed in writing
6	Claimant attends the WCA.
Touchpoint	Step in Claimant Journey – Limited Capability for work Met under WCA
7	Claimant may be contacted by BCD to gather missing information if required data has not successfully transferred to JSAPS from Income Support Computer System (ISCS) or Pension Strategy Computer System (PSCS)
8	Claimant receives a telephone call from a Claimant Service Officer (CSO) in BCD advising them of decision on ESA entitlement and next steps
9	Claimant receives ESA award notification letter detailing allocation into either the Support Group (SG) or the Work

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	Related Activity Group (WRAG) and amount of transitional addition (TA) (where appropriate). Touchpoints 10–11 applies to claimant in WRAG. For SG claimants the journey ends here, however touchpoints 10-11 will apply at the claimant's request.
10	Claimants placed in the WRAG are contacted by the Diary Admin Support Officer (DASO) in Jobcentre Directorate (JD) to arrange a Work-focused Interview (WFI)
11	Claimant attends/fails to attend the WFI
Touchpoint	Step in Claimant Journey – Limited Capability for Work
	Not met under WCA
12	Claimant receives a Decision assurance/Disallowance telephone call from a Decision Maker (DM) in BCD to inform them of the possible entitlement decision and to advise them of their options. The claimant will be given the opportunity to submit further evidence to support their claim. If the claimant has nothing further to add, then the disallowance decision is explained to them so that they can request a reconsideration of the decision. If the claimant satisfies another condition of entitlement for IS they may stay on that benefit. If the claimant wishes to claim Jobseekers Allowance (JSA), a warm hand over to CCD will be completed to take their claim details.
13	Claimant receives a letter informing them of the termination of their award of incapacity benefits and the decision on ESA entitlement
Touchpoint	Claimant submits a valid Appeal against Limited Capability for Work determination
14	Claimant returns leaflet GL24 or sends letter of appeal
15	The DASO in JD is notified of WCA appeals received and appeals outcomes via a JP Process report or a Work Available Report (WAR)
16	The DM will call the claimant and confirm that they have had a reconsideration of their case and asked if there is any further information the claimant would like to tell us to support the appeal
17	The claimant will receive ESA assessment phase rate until the appeal outcome is known

FROM 28 OCTOBER 2013

26. If a claimant wishes to dispute a decision that has been notified on or after 28 October 2013, they cannot make an appeal straight away. They must first have a mandatory reconsideration (MR).

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27. Once they have received notification of the outcome of the MR, the claimant can then lodge an appeal with Her Majesty's Courts and Tribunal Service (HMCTS). A claimant cannot lodge an appeal with the Department.

See Disputes and Appeals Process from 28 October 2013.

Touchpoint	Claimant requests a Mandatory Reconsideration of the Limited Capability for Work determination
14	Claimant requests MR.
15	If claimant has not already received a Decision assurance/Disallowance telephone call, an Outbound Reconsideration Call must be made to explain the decision and ask if there is any further information/evidence.
16	If the decision cannot be revised, two copies of the Mandatory Reconsideration Notice (MRN) are sent to the claimant, this includes information about appealing to HMCTS.
Touchpoint	Claimant submits a valid Appeal against Limited Capability for Work determination
17	Claimant submits appeal to HMCTS.
18	Appeal response request received from HMCTS notifying the Department that an appeal has been submitted.
19	The DASO in JD is notified of WCA appeals received and appeals outcomes via a JP Process report or a Work Available Report (WAR)
20	The claimant will receive ESA assessment phase rate until the appeal outcome is known

Claimant requests the start date of their IB (IS) Reassessment

28. Where the claimant contacts a Benefit Centre to ask for the date their IB (IS) Reassessment will commence, they should be told that it will be prior to April 2014.

29. To ensure all cases are handled effectively and efficiently for claimants between now and 2014 start dates for reassessment may have to be adjusted. This smoothing means that, whilst the Personal Capability Assessment (PCA) date can be used as a guide for when a claimant may start reassessment, in some cases it may be before or after this date.

30. The PCA date should be given if the claimant requests the specific date their reassessment will commence. It should be emphasised that this date may change.

31. If the claimant calls the Contact Centre to ask the date their reassessment will start, the Claimant Service Agent will tell the claimant that it will be prior to April 2014.

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32. However if the claimant then requests the specific date their reassessment will commence, a handover template will be completed and the claimant will need to be contacted.

33. If the claimant asks at the Jobcentre the date their reassessment will start Jobcentre staff will tell the claimant that it will be prior to April 2014.

34. However if the claimant then requests the specific date their reassessment will commence they will be advised to use the warm phone unless they are vulnerable or unable to use the phone. A member of staff from the Jobcentre will contact the Benefit Centre on behalf of the claimant and when giving the PCA date it should be emphasised that the date may change.

User Journey

35. Below is an overview of the user journey for IB(IS) Reassessment. Full details and guidance can be found in the Directorate specific chapters of this guidance.

User Journey – Up to Limited Capability for Work determination

Step	Action
1	PSCS issues initial notification letter
2	An automated CAM task is created for CCD to make the initial Outbound Call
3	Initial Outbound Call made to claimant
4	JSAPS Gateway triggers referral to the Health Assessment Advisory Service via MSRS
5	The health Assessment Advisory Service returns the Assessment report through MSRS and a CAM task is created
6	Consider all evidence provided by the claimant and the Health Assessment and Advisory Service in order to determine if claimant has LCW

User Journey – Claimant has Limited Capability for Work

Step	Action
1	Claimant may be contacted by BCD to gather missing information if required data has not successfully transferred to JSAPS from ISCS/PSCS
2	JSAPS will calculate the effective date and award benefit
3	Claimant receives a telephone call from a Claimant Service Officer (CSO) in BCD advising them of their decision on ESA entitlement and next steps
4	Claimant receives ESA award notification letter and allocation into the appropriate group. Touchpoints 5-6 applies to claimants in the WRAG. For SG claimants the journey ends here, however touchpoints 5-6 will apply if the claimant requests

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5	Notification is sent to DASO in JD via a JP Process report or a WAR to arrange a WFI for claimants placed in the WRAG
6	Claimant attends/fails to attend the WFI

User Journey – Claimant does not have Limited Capability for Work

Step	Action
1	View ISCS to check if the claimant has another condition of entitlement to IS for example; carer or lone parent
2	DM in BCD contacts claimant by telephone to explain the decision and options available
3	BCD staff offer claimant a reconsideration
4	<p>If claimant states intention to appeal against WCA decision, issue leaflet GL24.</p> <p>FROM 28 OCTOBER 2013</p> <p>If claimant states intention to appeal against WCA decision, advise them that they must first request a MR of the decision. They may appeal directly to HMCTS following receipt of the MRN.</p> <p>See Disputes and Appeals Process from 28 October 2013.</p>
5	BCD issues a letter informing them of the termination of their award of incapacity benefits

User Journey – Claimant does not have Limited Capability for Work – Appeals

Step	Action
1	Appeal received – check for IS or JSA claim
2	Check that claimant has current medical evidence covering from the date of disallowance.
3	If claimant has medical evidence and the appeal is valid, the user puts ESA into payment at the assessment rate. If not, medical evidence is requested
4	DM carries out a reconsideration of the decision
5	If Reconsideration unsuccessful case is sent to ESA owning office for Appeal and all further actions. Appeal papers are constructed
6	Appeal is sent to the Tribunals Service
7	Appeal decision received
8	Appeal outcome unsuccessful – terminate payment
9	Appeal outcome successful - claimant receives an allowance letter and allocation into the appropriate group, based on the Tribunal's findings

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10	Claimant will receive payment of full ESA rate including any Transitional Addition (TA) and arrears if appropriate
11	Notification is sent to DASO in JD via a Work Available Report (WAR) to advise appeal outcome

User Journey FROM 28 OCTOBER 2013 – Claimant does not have Limited Capability for Work – Mandatory Reconsiderations and Appeals

Step	Action
1	Claimant requests MR.
2	If claimant has not already received a Decision assurance/Disallowance telephone call, an Outbound Reconsideration Call must be made to explain the decision and ask if there is any further information/evidence.
3	If the decision cannot be revised, two copies of the Mandatory Reconsideration Notice (MRN) are sent to the claimant, this includes information about appealing to HMCTS.
4	If claimant still unhappy with decision - submits appeal to HMCTS.
5	Appeal response request received from HMCTS notifying the Department that an appeal has been submitted.
6	Appeal received – check for IS or JSA claim.
7	Check that claimant has current medical evidence covering from the date of disallowance.
8	If claimant has medical evidence and the appeal is valid, the user puts ESA into payment at the assessment rate. If not, medical evidence is requested.
9	Appeal papers are constructed and sent to HMCTS.
10	Appeal decision received
11	Appeal outcome unsuccessful – terminate payment
12	Appeal outcome successful - claimant receives an allowance letter and allocation into the appropriate group, based on the Tribunal's findings
13	Claimant will receive payment of full ESA rate including any Transitional Addition (TA) and arrears if appropriate
14	Notification is sent to DASO in JD via a Work Available Report (WAR) to advise appeal outcome

Understanding Vulnerable Customers – IB National Reassessment Guidance

Introduction

1. The purpose of this guidance is to aid understanding and recognition of certain Claimant Group, including Mental Health customers. It will assist with handling claimants who need help in using our services and will help identify situations where it would be more appropriate to see claimants face-to-face.
2. National Reassessment claimants will have had little or no interaction with Jobcentre Plus. This could cause the claimant to feel unsure and as a result they are more likely to be vulnerable.
3. The number of contacts from customers is likely to increase as a result of the National Reassessment process.
4. There are no changes to guidance about handling claimants who need help in using our services but this product gives you links to existing guidance if you need to refresh your knowledge.
5. See Vulnerability Hub for further guidance.

Claimants who need help in using our services

6. Claimants may have additional needs and require extra support. Claimants may wish to get the help of Third Party representatives in dealing with the Department and we are committed to supporting their right to do so.
7. There are no changes to current guidance, however staff should be aware that there may be an increase in contact from these customers.

Understanding Claimant Groups

8. There are certain other Claimant Groups that may require extra support and help at any stage of the Reassessment process. It is important that all staff are aware of these groups as the number of contacts are likely to increase as a result of the Reassessment process.
9. Detailed below is a list of some examples of Claimant Groups who are more likely to need help and extra support but there will be claimants in this group who are not on this list:
 - Carers
 - Asylum Seekers and Refugees
 - Customers with debt problems
 - Drug/Alcohol misuse
 - Disabled customers

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- Bereaved person
- Ethnic Minority Groups
- Travellers
- Homeless person
- Transsexual and Gender Recognition.

Mental Health

10. Customers with mental health conditions may require additional support.

11. The guidance has not changed but it is essential that it is reviewed as there may be an increase in contact from this Customer Group.

12. Staff should ensure that they are familiar with existing guidance on how to recognise and handle these customers.

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Vulnerable claimants

This information is available in the public domain at:

<https://www.whatdotheyknow.com/request/259586/response/635763/attach/html/4/Vulnerability%20guidance.pdf.html>

Harrington Review- Year 1

This information is available in the public domain at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/70071/wca-review-2010.pdf

Decision Making Quality Assessment Framework - ESA & IB Re-assessment

Framework Document

jobcentreplus

The Importance of Quality Assessment

Virtually any administrative system needs some way of measuring and assuring that it is working as it should. Rigorous, robust quality assessment contributes to:

- **Public confidence.** The public has the right to expect Civil Servants to carry out their duties correctly. They have the right to expect that any decision made that affects the financial support they receive from public funds is made in accordance with the law and that the process is subject to testing to ensure that this is the case.
- **Consistency of approach.** The public has a right to equal treatment. Where there is an element of discretion in decision making, there is some legitimate scope for different outcomes on the same facts. However, there is also potential for local practices to develop which are not consistent with the legislative intention. A national system of checking that applies the same universal standards helps guard against this.
- **Ensuring financial probity and safeguarding public funds.** Checks should ensure not only that there has been no impropriety involved in decisions that effect the amount of support given, but also that decisions affecting benefit payments should allow appropriate financial support to be awarded.
- **Improving standards.** Overall standards of decision making can be improved by identifying trends and providing feedback about what is going well or not so well. Errors in individual cases can be identified and corrected where necessary.

More specifically for JCP Decision Making, a QAF will contribute towards

- Our ability to gauge whether there is a consistent approach to gathering, weighing and presenting evidence
- meaningful discussions at 1-2-1s and to help identify L&D needs
- providing a national assessment route for determining current knowledge and skills levels and for influencing the development of future L&D products (technical and “soft skills”)
- Enhancing Departmental reputation. A level of assessment can be given that an appropriate standard is equitably applied to benefit decisions for all JCP claimants.
- Ensuring decisions are fit for purpose, in line with the Decision Makers Reasoning Principles, when sharing the reason for the decision with claimants.

Why adopt this approach?

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More generally, checks on benefit claims have centred on payment accuracy and administration rather than the substance and quality of decision making.

Increasing interest from parties such as the DWP Decision Making Standard Committee and the Work & Pensions Select Committee has highlighted decision making standards as an area for concern and the department itself is striving to ensure a more consistent and standard approach to decision making across all benefits.

Administrative checks are clearly important in order to ensure payment accuracy, the integrity of data and to ensure the correct decision notifications have been issued to claimants. However, these matters do not impact the quality of decisions.

This checking approach concentrates on the essence of the decision itself. Assessing the quality of the decision focuses on the processes by which the determination was reached and the soundness of its conclusions. It checks whether those processes and conclusions comply fully with the law. The aim is to identify whether the decision maker has dealt with the crucial issues appropriately in line with the fundamental principles of decision making.

Securing improvements

Although the intention is, as the checking regime beds in, to gather statistical information with regards to compliance with the standard, this information serves little purpose unless it is used as part of meaningful feedback. This in turn helps to identify training needs and nurture good practice, so as to effect continuing improvements in the overall standards of decision making.

To do this, it is essential that anyone involved in assuring quality has a thorough understanding of how the process of decision making works and what standards are required.

The Quality Assessment Framework

The aim is to identify any **fundamental** errors rather than minor mistakes that have no potential impact on the decision making process or the outcome.

A fundamental error is where the outcome is wrong, the claimant has not been treated fairly, or an important stage of the decision making process has been handled incorrectly so that, even if the outcome was acceptable, there was potential for a wrong outcome.

The standard set for Quality Checking requires that each of the following elements be met. A decision that fails on one or more of these points will not reach the required standard:

- **The crucial issues are correctly identified and the decision is focused on these** - Crucial issues are those on which the case turns and any which are disputed or potentially difficult. Often there are likely to be

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several issues that are crucial to different stages of the decision making process. Each should be correctly identified and dealt with.

- **The necessary evidence gathered has been used appropriately to establish the relevant facts, if any of these were missing, or to clarify any points of doubt** - The evidence must be evaluated using accepted standards based on the rules of evidence in civil matters. The Decision Maker should say clearly in the decision what facts from the evidence have led to the decision. Where the Decision Maker is on notice that further information is needed in order to decide a particular question, they should have made reasonable efforts to obtain that information. Conversely, they should not have sought corroboration where the required standard of proof is already met.
- **The law, including the legislation, has been interpreted and applied correctly to the facts of the case** - All the tests of the relevant piece of law must be correctly identified and applied correctly to the facts of the case. The Decision Maker should not have introduced tests that are not apparent in the wording of the law. It should be clear that the decision has focused on the right issues and that the facts have been found in accordance with the rules about evidence and support the conclusions about each of the tests.
- **The Decision Maker is neutral and the claimant has been treated fairly** - There has been no bias: the decision maker has started from a neutral point and has not prejudged the case or made assumptions. The treatment of evidence complies with the rules of natural justice: the claimant has an adequate understanding of the case he has to make, any areas of doubt have been put to him and he has had sufficient opportunity to resolve them.
- **The key conclusions and the reasons for them are recorded and the decision is soundly based in fact and law** - The conclusion should flow naturally from the facts of the case and the correct application of the law to those facts. The conclusions should not be at odds with the *relevant facts of the case*. To demonstrate this standard, the decision maker must record their conclusions and the key reasons for those conclusions.
- **The outcome of the decision is one that is right in the circumstances** - Overall, the decision should be one that is rational and reasonable.

Crucial issues are correctly identified

Finding the Facts of the Case

The law must be applied to the facts of the case. Accurate findings of facts to which the law must be applied is therefore as important as knowing the law. In a sense, it is the more difficult part of the equation, since the facts of each case will be different, whereas the law is constant.

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There is a limited amount of law for decision makers to learn and understand but a wide and diverse range of facts is capable of being relevant. The difficult part of decision making is establishing the relevant facts and applying the law correctly to them.

Finding the relevant facts from the evidence is therefore a key skill for Decision Makers. If it not done properly, it is impossible to apply the law correctly, regardless of how well versed in the law the decision maker is.

Fact versus opinion

Medical fact

Medical fact is information that is objective and independently verifiable. Examples of medical fact include diagnoses, treatment, referrals, investigations, aids and appliances.

Medical fact may be provided by a treating healthcare professional, the claimant or another third party.

Medical fact should usually be weighted more highly than opinion. Medical fact provided by a treating healthcare professional is independent.

Opinion

This refers to reported symptoms and functional loss.

Opinion may be provided by a treating healthcare professional, the claimant or another third party. Claimant opinion is therefore not independent.

Remember that the claimant may have understated or overstated their problems.

However, this evidence still forms an important part of the overall evidence that requires evaluation as part of the decision making process.

With claimant opinion, additional information may be provided. For example, a claimant may have detailed in the ESA50 Limited Capability for Work Questionnaire that they cannot walk more than about 5 metres without getting breathless. They are breathless even on washing and dressing. This would be classed as opinion.

The claimant may indicate they are on home nebulisers 4 times daily for COPD and require home oxygen. They indicate they have been provided with a wheelchair by their Respiratory Consultant for their daughter to push them in outdoors. They have had an Occupational Therapy review and hoists and bathing aids have been

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installed in the home. They have been provided with a carer by social services to help with bathing as they are too breathless to manage this alone. This would be medical fact that would be potentially consistent with the claimant's opinion.

The Med 3 information may indicate "severe COPD – oxygen dependent". This independent medical evidence would be reasonably consistent with the medical fact and claimant opinion and a high level of disability could be accepted.

Sometimes the ESA50 Limited Capability for Work Questionnaire will indicate that DLA is in payment. This information should not be considered to be sufficient to allow you to accept incapacity. You have not had the opportunity to evaluate the evidence used to make the decision. You should use it rather as an *indicator* of possible severity; it may prompt you to obtain the appropriate DLA related information.

Your main options when making a decision are as follows:

- Make a Decision on the balance of probability on the basis of the evidence that is already available on file, utilising the framework for critical evaluation described above.

- Request further documentary evidence from the customer. In doing so, particular attention should be paid to identifying the best source of evidence, and ensuring that the questions that are asked are relevant and focused

- Discuss the case with an HCP to obtain an informed medical opinion concerning the effect of health issues on functional capability.

- Return the case for rework to Atos to clarify uncertainties.

Remember that if you make a decision which is contrary to the advice provided by the Atos healthcare professional on the ESA85 assessment report, following receipt of further information / evidence from the claimant, you must discuss the case with an Atos healthcare professional in order to be sure that the revised decision is medically reasonable and to ensure that there is a feedback loop to Atos.

Gathering and Interpreting evidence

Handling evidence – the basic rules

A commonly used definition of evidence is:

'That which tends to prove a fact – something that may satisfy the enquirer of the fact's existence'.

The definition in the Oxford Dictionary of Law is:

'That which tends to prove the existence or non-existence of some fact'.

Evidence is the raw material from which facts are found.

Almost anything that provides some information about the claimant's circumstances or account of events can be relevant to his decision.

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Evidence may be documentary, verbal or physical – for example from:

- An ESA Limited Capability for Work Questionnaire or Atos assessment report;
- Telephone calls;
- Correspondence and other supporting documents;
- Face to face interviews;
- Computer systems, whether a computer print out or what was shown on screen.

The standard of proof

For JCP decision makers the civil standard of proof applies – the balance of probability. A fact is therefore something that the evidence shows to be more probable than improbable. In percentage terms if something is more than 50% likely, then it is fact.

Clearly, this allows for a significant element of doubt: a fact in civil law is not something that is incontrovertible or beyond reasonable doubt as is the case for the criminal standard. However, a probability is not merely a possibility: the evidence must be compelling enough to have tipped the scales on the side of probability for a premise to be accepted as fact.

For example, a claimant may state that they are unable to walk but if clinical findings and observations etc. in the Atos Assessment show lower limb functions to be normal and the claimant has been observed to walk normally etc. then the verbal evidence would not be deemed compelling enough tip the balance of probability in their favour.

The burden of proof

The legal position is that 'he who asserts must prove'. The person who seeks to establish a fact must show by evidence that it is more likely than not.

For ESA, for example, the Decision Maker must prove that the claimant does not have a limited capability work.

For ESA Fail to Attend and other such good cause doubts, the burden of proof generally lies with the claimant. However, the burden of proof lies with a decision maker if he/she is making the assertion.

Inference

Inference means drawing conclusions by evaluating data. Facts must always be found by drawing inferences from the evidence, with no significant voids or breaks in the chain of reasoning. Findings of fact should never be based on guesswork or assumption, which means adopting something as fact without evidence that supports the conclusion.

Evaluating Evidence

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Not all evidence has the same tendency to prove a fact. Different pieces of evidence may have different probative values, meaning a greater or lesser tendency to prove the question at issue. Weak evidence may fall short of the standard of proof unless it is supported by additional evidence.

A claimant stating that they have a problem initiating and sustaining personal action would be best proved with the help of an array of supporting evidence to build their case and tip the balance, as opposed to just being accepted as fact by a Decision Maker as a statement on its own.

When drawing inferences, pieces of evidence with different probative values may need to be weighed together. Imagine putting the evidence on a pair of scales. It may take more weak evidence to achieve the 51% balance of probability than if it were strong evidence. Even stronger evidence may be needed if there is evidence weighing against it on the other side of the scale. A well written Atos assessment report with no contradictions would be seen as such and therefore strong claimant evidence may still not be enough. In general, the JCP DM must have an holistic view of the case before coming to a decision.

Inquisitorial Role

All decision makers have an inquisitorial role, which means they have a duty to gather sufficient evidence on which to base a properly reasoned decision. Identifying gaps in evidence and taking action to fill them **when appropriate** is a core skill.

The decision maker's inquisitorial role does not affect the burden of proof. A claimant still has to prove his case on the balance of probability. However, he must have the right opportunity to provide the evidence the decision maker needs on which to base the determination (see Neutrality of Decision Makers: Natural Justice).

What facts the decision maker needs depends on the issues on which the case turns. The first step is to decide what facts are relevant to the matters that must be decided. The questions are:

- What are the issues the law requires to be decided?
- What facts need to be established to determine the relevant issues?
- What evidence is available that goes to deciding those facts?
- Is other evidence necessary to decide the material facts?

Much of the evidence to make a decision should be provided with the referral, but depending on the detail required, there is always the possibility that the Decision Maker will have to gather additional evidence before proceeding to a determination.

This does not mean that the decision maker should fish for evidence when it is not **needed** and/or there is no indication of more relevant evidence. But if he is been told that more evidence does exist, or it is apparent that the claimant does not understand what is important to his case, then he should seek additional evidence to fill the gaps.

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A decision maker should seek additional evidence where existing evidence shows a **possibility** that some relevant circumstance is the case, but falls short of establishing a **probability**.

Where the available evidence is insufficient to find a relevant fact and the decision maker is aware that evidence may be available to fill the gap, his inquisitorial role requires him to seek that additional evidence. For ESA this normally would be by telephoning the claimant.

If additional evidence is not forthcoming, the decision maker must make a determination in its absence, but can reach only those conclusions that he can infer from the available evidence. The difference is that, if the claimant's evidence fails to achieve a balance of probability in his favour, he has had sufficient opportunity to make his case. Of course, if the evidence establishes a probability in the claimant's favour, the enquiries were unnecessary in the first place.

Interpreting and Applying the Law

Applying the Law

Remember, decisions are made by applying the law to the facts. Once the relevant facts have been established, the law must be applied to them correctly, so as to achieve the right outcome. This means achieving an outcome that complies with what the law requires and, when the Decision Maker has discretion, arriving at an outcome that is logical, rational and consistent with the overall aims of the benefit.

Interpretation

The law cannot be applied correctly to the facts unless it is interpreted correctly.

The law should be interpreted in a common sense manner, so as to give effect to its obvious intent. This safeguards against inappropriately technical or complex interpretations; it does not mean Decision Makers are entitled to import into the wording of the law their own views of what the legislation intended. It is important that Decision Makers do not add tests that are not included in the legislation.

The general rule for interpretation is the literal rule: that is that words and expressions are given their common, everyday meaning within the context of the construction of the phrase. Sometimes, using the literal rule will give a perverse outcome, in which case it will be appropriate to seek help with interpretation from other legislation.

Help with interpreting the legislation pertaining to the ESA WCA can be found in the **HCP Handbook**.

Neutrality of Decision Makers

Natural Justice

The laws of natural justice are concerned with fair treatment. Natural justice is closely connected with gathering and evaluating evidence.

Natural justice requires that decision makers are unbiased and that the person affected by a determination:

- Must know the case he has to make; and
- Must know any case against him

This means that, to have sufficient opportunity to put his case, the claimant must be given enough information about the conditions he must meet in order to receive benefit. He must be given a reasonable chance of providing relevant evidence. If any relevant evidence comes to light which is adverse to the claimant, that evidence must not be taken into account until he has been made aware of it and has had the opportunity to comment.

It follows that a claimant who has not had adequate information about the conditions of entitlement has not had sufficient opportunity to put his case. The decision maker's duty is to ensure the decision complies with the laws of natural justice, including that the claimant adequately understands the issues that are important to his case.

This may include clarifying something the claimant does not seem to understand; in spite of relevant information he has been given. The duty of making a claimant compliant with the laws of natural justice lies with the decision maker, regardless of who gathers the initial evidence.

Similarly, the claimant must be made aware of any evidence that is harmful to his case, and must be given the opportunity to comment. A determination based on or influenced by adverse evidence of which the claimant is unaware does not comply with the rules of natural justice.

Conclusions are soundly based in fact and law

Recording Decisions - Reasoning

As well as recording decisions on the Department's computer system, in most complex cases and certainly where the decision is revised or superseded, there is a requirement to record it clerically on form LT 54. For WCA disallowance decisions, which are supersessions of an earlier decision to award benefit, the decision must

1. identify the person to whom it relates
2. identify the decision it is changing
3. specify whether it is revising or superseding an earlier decision **and**

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4. specify the grounds or authority for doing so.

There has been much conjecture concerning the amount of reasoning that is required but operationally, there must be a balance between the level of reasoning and productivity.

The operational steer is that we focus our reasoning on the areas that contradict in the evidence provided. It should be clear why we have preferred the evidence we have relied upon in order for us to reach an overall decision. The conclusion should be that those areas that are not at odds with claimant evidence are accepted by all parties including the decision maker.

The QAF does not require the decision maker to justify, in any great detail, why they have preferred the HCP findings around a particular descriptor, for example, if the relevant claimant's evidence in the ESA50 Limited Capability for Work Questionnaire either agrees or is non-existent. The same approach should be used when assessing verbal evidence from the claimant.

The outcome is correct

It is self-evident that a sound decision is one which is properly documented, based on an impartial evaluation of the relevant evidence and a proper application of the law, and in which the outcome is reasonable in the circumstances.