



# Assessing Capacity for Work



Over the next three years 1.5 million current incapacity benefits claimants will be reassessed for eligibility for Employment and Support Allowance. A key component is a face-to-face functional assessment of an individual's capabilities, part of the Work Capability Assessment. This briefing discusses the role of the Assessment and its suitability as a gateway to benefit.

## Background

### A brief history

Since the 1960s disabled people have campaigned for greater recognition in the social security system. This led to the creation of the contributions-based invalidity benefit in 1972 and Non Contributory Invalidity Pension (later Severe Disablement Allowance) in 1975. Invalidity benefit was replaced with Incapacity Benefit in 1995. At the same time, the All Work Test was established as the medical test to determine eligibility. The government felt that medical assessment had to become more objective and rooted in occupational health to ensure that benefit was claimed only by those who genuinely needed it. Before 1995, eligibility was largely determined by the claimant's GP. The test was reformed again in 2000 and called the Personal Capability Assessment.

Expenditure on disability payments has risen from the equivalent of £4.7 billion in 1972/73 to £14.0 billion in 2010/11. The number of claimants on invalidity and sickness benefits has risen from 1 million to 2.4 million. Since the 1990s the number of new Incapacity Benefit claims has remained relatively static. However, the number of new claims exceeds the number of people leaving to return to work, leading to a net increase. The Department of Work and Pensions (DWP) argues that people are becoming "trapped" on benefits, which is bad for claimants' economic, mental, physical and social well-being.

## Overview

- The Work Capability Assessment is the whole assessment process for Employment and Support Allowance. It includes a face-to-face assessment.
- It has caused controversy because some people previously considered disabled and entitled to invalidity benefits are now being found fit-for-work.
- The number of fit-for-work decisions being overturned on appeal has led to questions about the reliability of the assessment process.
- Independent external reviews have encouraged reform of the process and have led to an increase in the number of people being found eligible for support.

## The current reforms

The government has announced that it will phase out Incapacity Benefit by March 2014. 1.5 million claimants will be reassessed for Employment and Support Allowance (ESA) using the Work Capability Assessment (WCA). These were introduced in 2008 by the previous government for new claims. The current government agrees with the principle, but finds it inefficient in its current form because:

- Expenditure on Incapacity Benefit and ESA remain high.
- It has not resulted in claimants moving from these benefits into employment. For example, in a recent survey only a quarter rejoined the workforce.<sup>1</sup>

The reform is primarily intended to help people off benefit and into work, reducing welfare dependency. However, it may also potentially target resources at those who need them most and reduce overall expenditure on social security.

## The assessment process

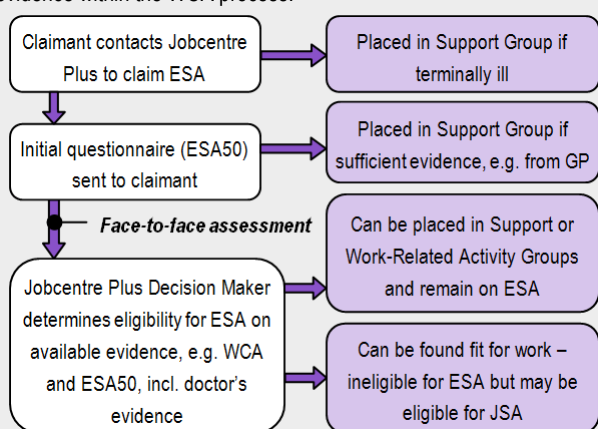
Claimants fill out a self-assessment form (ESA50) which is used in conjunction with a face-to-face assessment and a health care professional's evidence to make a decision on ESA eligibility. The face-to-face assessment is conducted by health care professionals employed by Atos Healthcare, a private company which provides medical advice to the DWP decision maker. Professionals include doctors, nurses and

physiotherapists who are registered with their professional body and approved by DWP’s Chief Medical Adviser.

The WCA uses 17 activities with associated “descriptors” which award points to claimants based on their ability to perform certain tasks related to the workplace. Any claimant scoring fewer than 15 points is considered capable of work. For example, descriptor 4 covers ‘picking up and moving by using the upper limbs’. Being unable to pick up and carry a 0.5 litre container scores 15 points. If the person can do this but ‘cannot transfer a light but bulky object such as a cardboard box’ they score 9 points. The claimant’s final score is the total from each of these activities.<sup>2</sup>

**Box 1. The claim process for ESA**

Claimants to ESA go through a ‘claimant journey’. One does not “pass” or “fail” the face-to-face assessment – it merely provides evidence within the WCA process.



Those awarded ESA are divided into one of two groups based on their perceived capability for work-related activity.

- **Support Group:** The claimant has limited capability for work-related activity. Benefit here is paid at a higher level and claimants are not expected to be available for work. They can, however, volunteer themselves for work-focussed training and support.
- **Work Related Activity Group (WRAG):** Claimants with limited capability for work are expected to ‘take part in some work-related activity’ and receive support to achieve this goal. Since 30 April 2012, claims in the WRAG are time-limited to 365 days for contributions-based ESA. After that point they can go elsewhere within the benefit system (such as to Job Seekers’ Allowance (JSA)) or leave benefit entirely. If subsequently they are found to qualify for the Support Group they can return to ESA.<sup>1</sup>

**Appeals**

Appeals are decided by tribunal with a judge and an independent doctor. There is currently a backlog, with appeals taking, on average, 24.7 weeks in England, though this is falling.<sup>3</sup> This is problematic for government and claimants. In 2010/11, tribunals cost £42.2m.<sup>4</sup> Claimants will also be on a lower rate of benefit (such as JSA) during the appeal process. Since re-assessment of incapacity benefits claimants began in 2010, 41% fit-for-work decisions have been appealed and 38% of these have found in favour of the claimant.<sup>5</sup> DWP notes that this does not necessarily mean that the claimant’s WCA was flawed. Extra evidence – such as from the claimant’s doctor – can be made available at appeal which may not initially be available to Jobcentre Plus. Further, it has been shown that claimants who have representation from rights organisations stand a much

bigger chance of being awarded ESA after appeal than those who do not.

**Reforms in Practice**

The current reforms have caused tension between the government and some disability campaigners. Such groups question key aspects of the reassessment process, including:

- the extent to which the WCA can be used to assess problematic conditions such as mental health disorders or health conditions that fluctuate;
- the scope of the evidence taken into account in assessing eligibility for benefits more generally;
- the reliability of the decision making process;
- the impact of reassessment on disabled people;
- and the impact on perceptions of the benefit system.

**Problematic Conditions**

Certain medical conditions are particularly difficult to assess. The two most problematic areas are mental health and fluctuating conditions. This has historically been a problem, which disability organisations attribute to:

- Mental health descriptors which are poorly designed and do not reflect the full range of issues experienced by those with mental health disorders.
- The “snapshot” problem of the face-to-face interview. This can lead to an underestimation of the full impact of conditions if the claimant is assessed on a “good day” (and vice-versa for a “bad day”).

An occupational physician – Professor Malcolm Harrington – is producing annual reviews of the WCA from 2010 to 2012.<sup>6</sup> There will be two more annual reviews following these. A common complaint is that the WCA is weighted in such a way that the mental health needs of claimants are underrepresented. A group of mental health experts met with Professor Harrington, suggesting more descriptors so that a fuller picture of an individual’s capabilities could be drawn. This would identify what support the individual needed to find work. They suggested 10 cognitive descriptors – the current WCA has 7. However, the government argues that this was too ambitious and required a substantial redesign of the entire system which could be impractical. It continues to work with these groups to refine the WCA.<sup>7</sup>

The WCA is politically sensitive. Disability organisations cite cases of suicide where the coroner has mentioned denial of benefit as a contributory factor. A recently leaked memorandum published in the *Guardian* suggests DWP is aware of the potential impact on claimants.<sup>8</sup>

Some organisations have stressed the need for Atos employees to be more aware of the potential effects of changeable and mental health conditions. Disability group Action for ME has suggested that WCAs be suspended for those diagnosed with severe fluctuating conditions until a more suitable system is put in place. The Minister for Disabled People has said that more care and attention must

be paid by professionals to the descriptors and the ability to perform a task “reliably, repeatedly and safely”.<sup>9</sup>

**Scope of the evidence examined**

There is a consensus that some form of medical test is needed to determine who is entitled to disability-related benefits. But a common criticism of the assessment process is that it places too much weight on the face-to-face assessment. Disability groups argue that other factors should be considered. This includes assessment of social factors as well as evidence from a claimant’s own doctor.

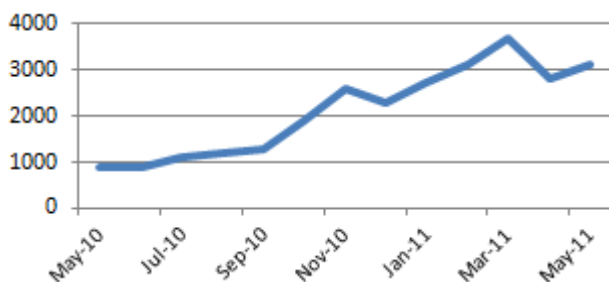
*Assessment of other factors*

As outlined in **Box 2**, there are different models of disability. The social model argues that disabled people are not disabled because of their health condition. Rather, people are disabled because of the barriers imposed by society. Disability groups suggest that any assessment of a person’s eligibility for disability benefits needs to take account of the wider range of factors encompassed by this model. Many organisations argue that the WCA focuses on functional limitations at the expense of other factors identified by the social model.

DWP claims that the decision making process for ESA as a whole is based on the biopsychosocial model. It suggests that between them, the face-to-face assessment and a claimant’s evidence covers the full range of biological, social and psychological factors. Disability groups are sceptical about the extent to which psychological and social factors are being taken into account.

For instance, the first Harrington review found that many DWP decision makers were simply “rubber stamping” Atos’s decision from the face-to-face assessment rather than examining all available evidence. It recommended that DWP decision makers take a more active role in deciding ESA eligibility. DWP insists that these wider factors are considered, and Harrington has commended them for making efforts to improve the process. Disability groups claim that they are not seeing these changes, yet the number of decisions differing from the Atos recommendation has increased markedly since May 2010 (see **Figure 1**).

**Figure 1. Number of DWP decisions on ESA which differed from Atos recommendation for new claims<sup>11</sup>**



Disability groups point out that determining the theoretical capacity for work is not the same as finding or holding down a job. Furthermore, two people with the same health condition may have very different employment prospects. The Employers’ Disability Forum and Royal College of Psychiatrists argue that an assessment process for ESA

**Box 2. Models of Disability**

**Social model**

In the mid-twentieth century most people acted on the assumption that medical conditions caused disability. Campaigners from the 1970s onwards pursued a model which argues that disability is discrimination imposed upon people with impairments.<sup>10</sup> In the case of employment, that could mean a combination of (but not limited to):

- attitudes of employers and fellow workers;
- availability of suitable jobs in the local economy;
- ability to make adjustments to the work place;
- availability of flexible hours;
- availability of formal and informal support networks;
- a person’s qualifications and work experience.

**Biopsychosocial model**

Developed by psychiatrists in the 1970s, this model argues that biological, psychological and social problems all have to be taken into account to manage the health of an individual, and provide an effective treatment. The current United Nations model of disability, the International Classification of Functioning (ICF), describes the interaction of these factors along with a person’s health to explain how and where people might be disabled.

could focus more on the capabilities of a person so that businesses can make the necessary adjustments to enable their employment. Research from these organisations and the Royal College of GPs shows that supporting people early greatly increases their chances of finding work.

One suggestion made by Harrington is that a new “real world test” could be introduced. This would build social factors into the WCA. However, neither Harrington nor DWP are yet to see a practical version of such a test.

*Evidence from a claimant’s doctor*

Some organisations believed that evidence from a claimant’s own doctor was not being given enough weight in the decision making process and that it should be given more emphasis. Harrington passed on this recommendation and it has been implemented by DWP. However, sole reliance on doctors’ evidence is problematic for a variety of practical and historical reasons (**see Box 3**).

**Reliability**

*Reliability of the WCA*

The WCA includes an objective test of the functional impact of a claimant’s health condition or disability. It is considered more useful than a GP’s “sick note” (**see Box 3**). But the interaction between different descriptors is difficult to measure – especially for those with cognitive *and* physical limitations. A combination of minor issues can also have a significant impact upon a person’s ability to work. However, DWP’s own internal review found that the WCA was accurately identifying those eligible for benefit.

Disability groups have criticised Atos Healthcare for the accuracy of assessments. For instance, DWP figures for October 2008 to February 2010 show that 60% of those who were awarded ESA after appeal scored *zero points* on the initial assessment.<sup>12</sup> Citizens’ Advice argues that this raises questions about the assessment’s reliability and the way that it is conducted, as they would expect appeals around borderline cases only.

**Box 3. Evidence from the Claimant's Doctor**

A test of functional limitations was introduced in 1995 because sole reliance on evidence from GPs was considered unreliable. They are not trained in occupational health. While they give an accurate summary of a claimant's symptoms, they cannot comment accurately or objectively on how this affects their ability to work. Businesses feel that doctors are too quick to sign people off work because they do not want to damage the doctor-patient relationship. Some claimants see GPs as too quick to label them "fit". Either way, decisions by GPs are not perceived as consistent. The WCA is seen by government as a more reliable, independent assessment of an individual's ability to work.

However, specialists who know the claimant well may be able to describe the effects of long-term and fluctuating conditions that a one-off WCA may not pick up. Organisations for people with ME, MS, HIV, arthritis, Crohn's and Parkinson's have therefore advocated a greater role for the evidence of a doctor nominated by the claimant.<sup>13</sup> GPs at the BMA voted in June to call for the WCA to be abolished.

DWP notes that their form for requesting additional information on ESA decisions from GPs is only returned in 50% of cases. Preliminary research by GPs in Leicestershire, however, suggests that GPs would like to have a line of communication with DWP to provide evidence on ESA claimants. They say this system should be anonymous so that they are not pressured to sign people off who they believe to be capable of some form of work – but would also allow them to provide evidence on those they believe to be "clearly" in need of support.

Some have also questioned the quality of assessments. Atos responds that its reports are audited and have been shown to exceed the 95% target of reports found "fit for purpose". It further claims only 1% of those who undergo a WCA formally complain.

*Reliability of the decision making process*

Disability organisations question the validity of leaning too heavily on the face-to-face assessment when determining eligibility for benefit. This is crucial if DWP is committed to the biopsychosocial model. The face-to-face assessment is objective and medical, but social and psychological issues are more subjective concepts. Other evidence can help DWP determine which claimants are genuinely capable of work.

**Impact of the reforms on disabled people**

The government argues that the WCA aims to see what people *can* rather than what they *cannot* do. Furthermore, getting people into employment will not only reduce the social security bill – it will improve people's health and employment prospects. There is a lot of evidence that work has health benefits – people in employment can improve their mental health and sense of self-worth.<sup>14</sup> Many groups of disabled people agree. For decades they have fought for the right to work and to break down barriers to employment.

On the other hand, there is some concern that the process is being used to compel disabled people to work when this may not be in their best interests. Action for ME has stated that most of their members want to work, but feel they cannot because of their condition. They suggest that declaring people fit-for-work without adequate support will

not help them into employment. Other groups are concerned that there is a widespread perception that controlling expenditure appears more important to the government than claimants' economic and social well-being.

Two questions regularly asked by claimant groups are:

- Is the way that "fit-for-work" is defined by DWP fair on disabled people?
- Is the standard of "capacity" based on a sound evidence base of disabled people's needs in the labour market?

The UK Disabled Peoples' Council (UKDPC) say "no" to both. Disability Rights UK claims 280,000 people are likely to be put into poverty by the government's policy changes. Many groups believe the test is designed to find more people fit-for-work, but is not adequately designed to protect benefit entitlement for those who need it most. DWP notes it has consulted widely with disabled people, occupational health experts and industry. It argues that these reforms are necessary to ensure people are not trapped on disability benefits.

**Impact on perceptions of the benefits system**

Many disabled people also believe that Atos has a vested business interest in finding people fit-for-work. DWP and Atos both reject this claim. The Spartacus Report – research on disability benefits produced by disabled people – suggests that there is a "trust deficit" between disabled people and the government.<sup>15</sup> UKDPC argues that the test looks like it is deliberately designed to "trip people up". Atos and the government reject claims of bias or deliberately "failing" claimants.

Inclusion London has highlighted the role of the media in perpetuating negative views on benefit reform.<sup>16</sup> The Work and Pensions Select Committee has urged the government to do more to promote the positive aspects of being found fit-for-work, to combat irresponsible exaggerations of the level of fraud within the system and to generally improve the perception of the process. It says that this is necessary if the public are to have faith in the government's reform agenda. DWP broadly agrees, although it states that it has and should have no influence over newspapers' editorial lines.

**Endnotes**

- <sup>1</sup> Routes onto Employment and Support Allowance (DWP, 2011)
- <sup>2</sup> A Guide to ESA (ESA214, June 2011), <http://goo.gl/eDm72>
- <sup>3</sup> HC Deb 14 June 2012 cc621-22w
- <sup>4</sup> HC Deb 16 April 2012 c298w
- <sup>5</sup> Quarterly Official Statistics Bulletin (DWP, 24 Apr. 2012), <http://goo.gl/jgple>
- <sup>6</sup> See the independent review section of the DWP website: <http://goo.gl/6xRmD>
- <sup>7</sup> HC Deb 19 June 2012 cc246-47WH
- <sup>8</sup> *Guardian*, 20 June 2012, <http://goo.gl/fhU1m>
- <sup>9</sup> Maria Miller speaking at the disability all-party parliamentary group, 24 April 2012. Also, Medical Services WCA Handbook (MED-ESAAR2011HB-1), p. 11.
- <sup>10</sup> Boardman et al (eds), *Social Inclusion and Mental Health* (Royal College of Psychiatrists : London, 2010)
- <sup>11</sup> This does not include re-assessments. HC Deb, 21 March 2012, c705W
- <sup>12</sup> HC Deb, 28 June 2011, c662W
- <sup>13</sup> Various, *Making it work for people with fluctuating health conditions* (Apr. 2011), <http://goo.gl/V3trR>
- <sup>14</sup> Black, *Working for a Healthier Tomorrow* (London : TSO, March 2008)
- <sup>15</sup> Campbell et al, *Responsible Reform* (Jan. 2012), <http://goo.gl/S6OEc>
- <sup>16</sup> Various, *Bad News for Disabled People* (2012), <http://goo.gl/zRQb9>