

Employment And Support Allowance – Latest Developments

Introduction

Since Employment and Support Allowance (ESA) was introduced in 2008, it has generated huge media attention and no small amount of controversy. The purpose of this briefing paper is to highlight the on-going impact of ESA, and considers the background, research, outcomes, appeals, sanctions, and consequent developments and reviews.

Significantly more claimants are failing to obtain ESA than the UK Government predicted. A key element of ESA, the Work Capability Assessment (WCA), has been hugely controversial. With many critics, including the medical profession and disability organisations, believing that it is simply not fit for purpose and does not allow a full assessment to be made.

The consequences of failing the WCA are leaving many people with serious disabilities and illnesses with less income and expected to look for work in a time of high unemployment. Another consequence of failing the WCA is that people are denied the very assistance they may need to find and sustain employment.

As from the 30th of April 2012, the government has time limited contributory ESA for those in the work related activity group to one year. It is expected that around 300,000 people will lose nearly a £100 per week with this change by 2015.

Background

ESA was introduced in October 2008 for all new and repeat claimants on the grounds of incapacity. It replaced Incapacity Benefit and Income Support on the grounds of incapacity. A core component of ESA is that claimants must undertake a WCA.

The WCA is designed to look at what people can do rather than what they can't. The WCA is based on medical advice provided by Atos Healthcare, a private company contracted by the Department for Work and Pensions (DWP). Depending on the result of this medical test, successful claimants will fall into one of two categories:

- **The 'Work-related activity group'**-

Those claimants who are identified as capable of taking part in some form of work-related activity will be entitled to claim ESA. They will be required to attend work-focused interviews through the Work Programme to help them overcome their barriers to work. Those who don't fulfil these conditions without a good reason could have their ESA cut.

- **The 'Support group' –**

Those claimants who are identified as unable to take part in any work-related activity will not be expected to take part in work-focused activities unless they want to, but will not face any sanctions .

Those claimants who do not qualify for ESA after undertaking the WCA can apply for Jobseeker's Allowance (JSA). They will be expected to take part in work-focused interviews and programmes to help them get back to work.

The WCA consists of two components, namely; the limited capability for work test and the limited capability for work

related activity test. The medical specialist, employed by ATOS Healthcare, then compiles a report for the ESA Medical Assessor employed by Jobcentre Plus (JCP), to decide whether a claimant is entitled to ESA and, if so, which group.

The limited capability for work test determines entitlement to ESA. The activities for the test are broken down into descriptors covering physical, mental, cognitive and intellectual functions. The descriptors carry points. A claimant is assessed as being eligible for ESA if they score 15 or more points.

The limited capability for work related activity test determines whether a claimant is placed in the ESA work related activity group or the ESA support group. Similarly, the test is based upon activities, both physical and mental, broken down into descriptors. However, unlike the limited capability for work test, there is not a points system. As long as a claimant meets a single description, they will be classified as having limited capability for work related activity and placed in the support group.

Table 1: ESA Weekly Rates 2012/13

Basic Allowance	£71.00
A single person in the WRAG	Up to £99.15
A single person in the Support Group	Up to £105.05

Source: directgov

Catalogue of Errors

A man diagnosed with motor neurone disease (MND) has been refused Employment Support Allowance (ESA) after being assessed as being able to return to work in three months. Gary Dennis (47) was diagnosed with MND in 2009. TV medic, Dr Hilary Jones who interviewed Dennis on ITV's *Daytime*

programme, was appalled that he had been refused ESAⁱ.

Dennis's case is just one of the latest in a long list of people who have medical issues and have been refused ESA. Citizens Advice Scotland (CAS) has reported that their Citizens Advice Bureau service has been inundated with complaints about the ESA system, which they pronounce as a 'catalogue of errors'.

The service has found that many claimants have been judged ineligible for ESA, contradicting the evidence provided by their GPs that they are unfit to work. Furthermore, some clients have experienced severe delays in payment and consequently been driven into debt, while others have received the wrong benefit.

In 2009, then CAS Chief Executive Ms Kaliana Lyle said: *"Far from simplifying the system, the ESA has made matters much worse. It has created barriers to entitlement, and caused unnecessary financial distress and emotional strain to sick and disabled people all over Scotland"*ⁱⁱ.

One individual who contacted a CAB reported that the ESA Medical Assessor had found him fit enough to work and not entitled to receive ESA. He then applied

for JSA and was told by the same Jobcentre that he was unfit to work and therefore received neither benefit.

Another individual with cancer was judged by the ESA Medical Assessor as fit for work and denied ESA. He appealed against this decision and was successful in his claim for ESA. However, he suffered financial problems because of the original decisionⁱⁱⁱ.

Research carried out by the Parkinson's Disease Society found that two thirds of survey respondents who had gone through the WCA had been assessed as fit for work and either forced into early retirement, JSA, or the work related activity group of ESA. Nine in ten of respondents thought the decision was wrong. Val Buxton, the Parkinson's Disease Society, Director of Policy, Campaigns and Information said:

"We want the Government to give assessors training on the nature of Parkinson's, give them more time to assess people with Parkinson's, and to encourage assessors to consider previous medical history"^{iv}.

Furthermore, the Multiple Sclerosis Society does not consider that the WCA is working for people with MS. The society considers that claimants need to have the opportunity to correct inaccuracies and that there needs to be an independent review of the WCA^v.

The Disability Alliance, a charity which campaigns to improve the living standards of disabled people, has raised a number of concerns over the assessment over whether a claimant can work or not, particularly around the time constraints given to medical practitioners in assessing claimants to make an accurate assessment of the different descriptors which make up the assessment. It has also expressed concern over the lack of consistency in the language used in the descriptors^{vi}.

A report published by the House of Commons Committee of Public Accounts on the support to Incapacity Benefit claimants argues that the Department for Work and Pensions (DWP) needs to evaluate the accuracy of the WCA robustly to evaluate that it is fit for purpose^{vii}.

There is no doubt that the benefits system needed reform. The central tenet of understanding what an individual can do, rather than what they cannot do is correct. However, it is likely to be problematic to separate disabled claimants into the three groups, namely ESA support group, ESA work related activity group, and JSA.

Those placed on ESA support group risk being isolated as those who have been on Incapacity Benefits (though they can volunteer for any assistance available). Those placed on ESA work related activity group or JSA may potentially find themselves in situations which are not appropriate for them. Furthermore, those claimants who are found to be fit for work and not eligible for ESA are denied the opportunity to benefit from the very support they may well need to enter paid employment. If that is the case, then the system is counter-productive.

Professor Paul Gregg, designer of ESA back-to-work programmes has stated: *“It is not just about being harsh or tough on people, it is that too many people are likely to be put on JSA, which is not designed to help people with serious health problems. Not enough people are getting into the ESA zone where there is a specially designed programme for people with health problems. If we get this wrong, we end up spending more, not less^{viii}.”*

The contract between DWP and Atos runs between 2005 and 2012 and was worth £500 million^{ix}. In 2010, the DWP extended Atos’s contract to 2015, worth in excess of £300 million^x.

Outcomes

Table 2: Outcome of Initial Functional Assessment, Oct 2008 – Nov 2011

	ESA Support Group	ESA WRAG	Fit for Work
Scotland	20,400 (15%)	26,600 (20%)	88,300 (65%)
Great Britain	174,600 (14%)	317,600 (26%)	731,400 (60%)

Source: DWP

Statistics published by the DWP indicate that between October 2008 and November 2011, 174,600 (14%) of the 1,223,500 completed initial WCA assessments were medically assessed as eligible for the support group. Only 317,600 (26%) were eligible for the work related activity group, whilst 731,400 (60%) were found to be fit for work^{xi}. In Scotland, a higher proportion failed the WCA. Those found to be fit for work are no longer entitled to claim ESA. However, they may appeal against the decision.

But, before the introduction of ESA and the WCA, the government expected that 49% would be found fit for work, 46% would be put in the work related activity group and 5% cent in the support group^{xii}. Therefore, a significant proportion of those who were expected to receive ESA on the work related activity group, did not accrue enough points on the WCA and were found fit for work.

Table 3: Outcome of Initial Functional Assessment by Condition, Oct 2008 – Nov 2011 (GB)

Condition	ESA Support Group	ESA WRAG	Fit for Work
Mental and behavioural disorders	59,500 (13%)	125,600 (26%)	290,200 (61%)
Physical	115,100 (15%)	192,000 (26%)	441,200 (59%)

Source: DWP

The fact that a higher proportion of people with mental and behavioural disorders failed the WCA than people with a physical condition bears out the concerns over the WCA descriptors around mental health and learning difficulties. SAMH conducted research into the WCA and found that respondents reported that the questions asked simply didn't take account of their mental health issues^{xiii}.

Appeals

Around **40%** of claimants have appealed against WCA decisions finding them fit for work. The most recent statistics indicate that **38%** of appellants have won their appeal^{xiv}. This high proportion suggests there are serious flaws in the original decisions. This process costs the taxpayer £80 million a year^{xv}. The UK Government has admitted that 31 people had died whilst awaiting their appeals in the three years up until October 2011^{xvi}.

Sanctions

Sanctions can be imposed on ESA WRAG claimants if they do not attend or take part in a work-focused interview or compulsory work-related activity. Financially, claimants can face losing **50%** of the work related component for the first four weeks and **100%** in subsequent weeks. There are a number of 'good causes' which will be considered by decision makers before reducing a claimant's benefit. These include health or disability issues which prevent attendance, transport problems and bereavement.

Table 4: Number of conditionality sanctions imposed on ESA WRAG claimants between, by main disabling condition, Mar 2011–Feb 2012.

Main Disabling Condition	Number of sanctions (total)
Mental and Behavioural Disorders	5,140 (45%)
Diseases of the Musculoskeletal system and Connective Tissue	1,940 (17%)
Injury, Poisoning and certain other consequences of external causes	900 (8%)
Diseases of the Circulatory System or Respiratory System	590 (5%)
Diseases of the Nervous System	380 (3%)
Other	2,460 (22%)
Total	11,410

Source: DWP

Those claimants with mental health problems and learning difficulties are the group which have suffered the most number of sanctions. Though the basic allowance of ESA is protected, it will likely cause significant financial difficulties for some of the most vulnerable people in our society.

Reassessment of Existing Incapacity Benefit Claimants

The reassessment of 1.5 million existing IB claimants commenced in October 2010 with a trial in the Aberdeen and Burnley areas. The nationwide reassessment process began in April 2011 and is expected to take three years to complete. This is despite the concerns of some Liberal Democrat MPs whilst they were in opposition.

Table 4: Incapacity Benefits Reassessments: Outcomes of Work Capability Assessments. Oct 2010–July 2011

	ESA Support Group	ESA WRA G	Fit for Work
Clackmannanshire	30 (19%)	50 (30%)	90 (51%)
Falkirk	140 (28%)	120 (24%)	230 (48%)
Great Britain	37,560 (29%)	44,220 (34%)	47,410 (37%)
Glasgow	930 (32%)	920 (32%)	1,030 (36%)
Edinburgh	300 (28%)	430 (40%)	340 (32%)
Scotland	5,340 (34%)	5,470 (35%)	4,930 (31%)
Dundee	150 (39%)	140 (39%)	80 (22%)
Scottish Borders	100 (39%)	100 (40%)	50 (21%)
Eilean Star	50 (48%)	40 (31%)	20 (21%)
Highland	270 (40%)	260 (39%)	130 (20%)
Perth and Kinross	170 (42%)	150 (39%)	70 (19%)

Source: DWP

The figures indicate that around one in three Incapacity Benefit (IB) claimants is failing the WCA. This means that these claimants will see a drop of £27 a week when they are transferred from IB to JSA. Given the weakness of the labour market and the likely barriers to employment many of these claimants will have they may well struggle to find paid employment^{xvii}.

Furthermore, the differences in the outcomes of the WCA between different localities may well indicate the difficulties that assessors find in interpreting the WCA descriptors. Such variations will likely place differing demands on advice services and employability services.

Time Limiting Contributory ESA

The Chancellor announced in the comprehensive spending review that

from 30 April 2012, the Government will time limit contributory ESA for those in the work related activity group to one year. Research carried out by Sheffield Hallam University indicates that time limiting contributory ESA in the work related category will have significant implications for these claimants as they will only be eligible for the means-tested version as those with other sources of household income or significant savings may well find themselves pushed out of the benefits system entirely^{xviii}.

By 2015 around 300,000 people will be losing out nearly a £100 per week. This is despite the government's own estimates that 94% of people in the work-related group on contributory ESA will continue to need support for longer than 12 months. Indeed Paul Farmer, Chief Executive of Mind said; *"Most people with mental health problems need longer than 12 months of support before they are ready to seek employment. It is very alarming therefore that thousands of people are going to have their support cut off, putting a huge financial strain on them as well as their families"*^{xix}.

Harrington Review

In response to the growing criticism of the WCA, the new Government appointed Professor Malcolm Harrington in June 2010 to carry out an independent review of the WCA. Professor Harrington reported back in November 2010 with a number of key findings and recommendations^{xx}.

A key finding of the review was that claimants' dealings with Atos and Jobcentre Plus were found to be mechanistic, impersonal and lacking clarity which led to many claimants who were found fit to work feeling aggrieved and consequently more likely to appeal the decision. As the evidence above suggests, a key finding was that some of the descriptors used in the WCA are

likely to be inadequate to fully measure the impact of an individual's capability for work, particularly those with a mental health problem and other fluctuating conditions.

Another key finding from the review was that in reality the decision maker employed by JCP generally 'rubber stamped' the advice from the assessments undertaken by Atos, rather than being considered alongside other additional evidence to support a claim for ESA.

A number of key recommendations were made from the review. There is clearly a need for greater communication from JCP to the claimant to explain the process, the result and the support available after the WCA. The review felt that this would build more empathy into the process.

A key recommendation was that Atos employ "mental, intellectual and cognitive champions" in each Medical Examination Centre to assist in building understanding of these disabilities and spreading best practice. This would help in assessing those claimants with these types of impairments.

Another key recommendation from the review was the need to invest and empower decision makers. Clearly, there is a need for decision makers to collect and utilise additional information appropriately, so they can make the right decision and discuss this with the claimant.

The Government has announced that it will implement all the recommendations in the review. This review is the first of five annual independent reviews which will assess the WCA. However, research undertaken by CAS indicates that over a quarter of their advisers believe that the process had worsened since the recommendations were

introduced and only three per cent considered that the process had improved^{xxi}.

The second review was published in November 2011^{xxii}. This review developed a number of recommendations which complement the ones contained in the first report. One recommendation was to improve the communications and information sharing between Personal Advisors within DWP Operations and Decision Makers to make the reasons for decisions and the implications of the decisions clearer.

Another key recommendation is for ATOS and the DWP to engage with representative groups and their clinical advisers to ensure that guidance used for the WCA is clinically sound and up-to-date. Likewise, another recommendation is to undertake regular auditing of Decision Maker's performance to ensure evidence-based, consistent decisions are made. Prof. Harrington considers that the impact of the recommendations from the independent reviews needs to be monitored to see if they are having desired effect.

The report however considers that patients with cancer undertaking intravenous chemotherapy should not automatically qualify for the support group of ESA. The report considers that this has led to benefit dependency and that they should undertake the WCA. Understandably, this has been met by anger by cancer charities.

Prof Harrington will step down later in the year after producing his third review. The decision was made by the UK Government who want a fresh set of eyes to look at the system in the final two years of its review. The DWP state that a successor will be named before the end of the year^{xxiii}.

Paul Farmer, Chief Executive of Mind quit the panel responsible for monitoring the functioning of the WCA in April 2012. Despite some changes being implemented through the Harrington Review, Farmer considered that there was nothing to suggest that people's experiences have changed much and that the WCA remains flawed^{xxiv}.

In May 2012, GPs voted unanimously in favour of scrapping the WCA at their annual conference. The doctors backed a motion which stated that the computer-based assessments were inadequate and had little regard for the complexity or nature of the needs of disabled and long-term sick people. They called for the WCA to be replaced with a safer and more rigorous system^{xxv}.

Dr Steve Bick, an experienced GP, applied to Atos as an assessor to carry out the WCA. He secretly filmed his training for Channel 4's Dispatches programme. The filming showed his trainer telling him that he would be watched carefully over the number of applicants he found eligible for the ESA Support Group. If he found more than 12% or 13% eligible for ESA Support Group, he would be fed back that his rate was too high. The film also showed the unease that some trainers had because it is harder for some very severely disabled people to qualify for ESA^{xxvi}.

Conclusions and Recommendations

There is little justification in time limiting contributory WRAG ESA, given that the UK Government's own estimates are that the overwhelming majority of claimants will need longer than 12 months support. The policy will also likely lead to financial hardship for many.

The Harrington Review appears to be having little positive effect so far. Rather than tinkering around the edges of a system which prevents people with

disabilities from getting the support they need if they can't work or the support they need to enter and sustain employment if they can – a more fundamental question is how do you determine whether someone with a disability is fit for work? Given that many people have fluctuating medical conditions and different jobs require different attributes. Surely, it is far fairer to devise a system which recognises the additional costs that people with disabilities face, whilst providing appropriate support in order to pursue what is right in their situation, be it paid work, voluntary work, training or education.

Short of scrapping the WCA and starting welfare reform afresh, there are a number of recommendations which could be considered:

- DWP to fully track claimants to understand the outcomes of people with disabilities.
- DWP to review the time limit on contributory WRAG ESA with a view to extending time limit or scrapping all together.
- DWP to take full account of GP and other supporting evidence before a decision is made on a claim for ESA.
- DWP to give priority assistance to people with disabilities receiving JSA on the Work Programme.
- DWP to take full account of the circumstances of people with a disability before issuing a sanction as a last resort.
- DWP to make it easier for claimants to correct mistakes in the report of their WCA, before a decision is made of their case.

- DWP to initiate a financial penalty for Atos for every appeal upheld at a tribunal.
- Scottish Government to maintain and extend eligibility to passported benefits as part of its anti poverty strategy.
- Scottish Government to concentrate resources in job creation in areas of high unemployment.
- Scottish Government to protect and extend budgets for advice services as a key element in its anti-poverty strategy.
- Local Authorities to invest in advice services, including reinstating drop in sessions where they have been withdrawn.

This paper has been prepared by Stephen McMurray, independent consultant.

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